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

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

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110, and 114

[Notice 2006—8]

Internet Communications

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal to Congress.

SUMMARY: The Federal Election Commission is amending its rules to include paid advertisements on the Internet in the definition of ''public communication.'' These final rules implement the recent decision of the U.S. District Court for the District of Columbia in *Shays* v. *Federal Election Commission,* which held that the previous definition of ''public communication'' impermissibly excluded all Internet communications. The revised definition of ''public communication'' includes paid Internet advertising placed on another person's website, but does not encompass any other form of Internet communication. The Commission is also re-promulgating without change its definition of ''generic campaign activity'' and amending the scope of its disclaimer regulations, both of which incorporate the revised definition of ''public communication.'' Additionally, the Commission is adding new exceptions to the definitions of ''contribution'' and ''expenditure'' to exclude Internet activities and communications that qualify as individual activity or that qualify for the ''media exemption.'' These final rules are intended to ensure that political committees properly finance and disclose their Internet communications, without impeding individual citizens from using the Internet to speak freely regarding candidates and elections. Further information is provided in the Supplementary Information that follows.

DATES: *Effective Date:* May 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, Mr. Richard T. Ewell, Ms. Amy L. Rothstein, or Ms. Esa L. Sferra, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Introduction

The Commission is promulgating these final rules to provide guidance with respect to the use of the Internet in connection with Federal elections. The Commission commenced this rulemaking following a decision of the United States District Court for the District of Columbia in Shays v. Federal Election Commission, 337 F. Supp. 2d 28 (D.D.C. 2004) (''Shays District''), aff'd, 414 F.3d 76 (D.C. Cir. 2005) (''*Shays Appeal*''), *reh'g en banc denied* (Oct. 21, 2005), which required the Commission to remove the former wholesale exclusion of Internet activity from its definitions of two terms: ''public communication'' and ''generic campaign activity.'' In examining issues relating to Internet communications, the Commission has also decided to address several of its other rules to remove potential restrictions on the ability of individuals and others to use the Internet as a low-cost means of civic engagement and political advocacy.

These final rules follow the publication of a Notice of Proposed Rulemaking (''*NPRM*'') on Internet Communications, in which the Commission sought comments on several proposed revisions to its rules. *See* 70 FR 16967 (April 4, 2005). The Commission received more than 800 comments in response to the *NPRM,* the vast majority of which urged limited, if any, regulation of Internet activities. Additionally, the Commission received a letter from the Internal Revenue Service indicating that ''the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder.''

After reviewing the written comments and testimony provided at a hearing on June 28 and 29, 2005,[1] the Commission has decided to take the following six actions: (1) Revise its definition of ''public communication;'' (2) re-promulgate the definition of ''generic campaign activity'' without revision; (3) revise the disclaimer requirements; (4) add an exception for uncompensated individual Internet activities; (5) revise the ''media exemption;'' and (6) add a new provision regarding the use of corporate and labor organization computers and other equipment for Internet activities by certain individuals.

The Commission is aware of the heightened importance and public awareness of any change to its rules that could affect political activity and speech on the Internet. The Commission notes that the change to the definition of ''public communication'' in this rulemaking is a change to a definition that has a narrow impact on the law.[2] This term defines the scope of covered activity for a limited number of groups who are either already subject to Commission regulation, or who are coordinating with candidates or political parties who are themselves currently subject to regulation. Congress did not use the term ''public communication'' to regulate the vast majority of the American public's activity on the Internet or elsewhere. Everyday activity by individuals, even when political in nature, will not be affected by the changes made in this rulemaking.

Through this rulemaking, the Commission recognizes the Internet as a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach. The Internet's accessibility, low cost, and interactive features make it a popular choice for sending and receiving information. Unlike other forms of mass communication, the Internet has minimal barriers to entry, including its low cost and widespread accessibility. Whereas the general public can communicate through television or radio broadcasts and most other forms of mass communication only by paying

[1] The comments and a transcript of the hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml#Internet05.*

[2] The change affects only the following regulatory provisions: the restrictions on funding of Federal election activity by political party committees and State and local candidates (2 U.S.C. 431(20)); the allocation of costs of certain communications by some political committees under 11 CFR 106.6(b); the determination that certain communications must be treated as contributions if coordinated with a Federal candidate or political party committee under 11 CFR 109.21 and 109.37; and the requirement to include disclaimer statements on certain communications pursuant to 11 CFR 110.11.

substantial advertising fees, the vast majority of the general public who choose to communicate through the Internet can afford to do so.

When paid advertising on another person's website does occur on the Internet, the expense of that advertising sets it apart from other uses of the Internet, although even the cost of advertising on another entity's website will often be below the cost of advertising in some other media.

These final rules therefore implement the regulatory requirements mandated by the *Shays District* decision by focusing exclusively on Internet advertising that is placed for a fee on another person's website. In addition, these rules add new exceptions to the definitions of ''contribution'' and ''expenditure'' to protect individual and media activity on the Internet.[3]

As a whole, these final rules make plain that the vast majority of Internet communications are, and will remain, free from campaign finance regulation. To the greatest extent permitted by Congress and the *Shays District* decision, the Commission is clarifying and affirming that Internet activities by individuals and groups of individuals face almost no regulatory burdens under the Federal Election Campaign Act. The need to safeguard Constitutionally protected political speech allows no other approach.

Transmission of Final Rules to Congress

Under the Administrative Procedure Act (''APA''), 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on March 29, 2006.

Explanation and Justification

I. Unique Characteristics and Uses of the Internet

The Internet has a number of unique characteristics that distinguish it from traditional forms of mass communication.[4] Unlike television, radio, newspapers, magazines, or even billboards, ''the Internet can hardly be considered a 'scarce' expressive commodity. It provides relatively unlimited, low-cost capacity for communication of all kinds.'' *Reno* v. *ACLU,* 521 U.S. 844, 870 (1997). In response to the *NPRM,* one commenter noted that a ''computer and an Internet connection can turn anyone into a publisher who can speak to a mass audience.'' For example, an individual with access to a computer and the Internet can create a free blog[5] at sites such as *www.blogger.com*, *www.blogeasy.com*, *spaces.msn.com*, or *www.typepad.com.* Additionally, because an Internet communication is not limited in duration and is not subject to the same time and space limitations as television and radio programming, the Internet provides a means to communicate with a large and geographically widespread audience, often at very little cost.[6] Now that many public spaces such as libraries, schools, and coffee shops provide Internet access without charge, individuals can create their own political commentary and actively engage in political debate, rather than just read the views of others. In the words of one commenter, the Internet's ''near infinite capacity, diversity, and low cost of publication and access'' has ''democratized the mass distribution of information, especially in the political context.'' The result is the most accessible marketplace of ideas in history.

It is common for businesses, groups, and even individuals, to make their own media—their website space—available to readers without charge. Whereas a newspaper can afford to devote only a limited amount of its print to others without charge, in the form of letters to the editor, and a television station can afford to provide only a very limited amount of air time to viewers for similar purposes, some bloggers can and often do publish every message submitted by readers. In fact, one commenter drew upon his own experience as a blogger in noting that much of the emerging Internet culture depends on collaboration for the construction of a blog or website, the generation of content (according to the blogger's testimony, most blogs do not have paid staff to perform such functions), and the sharing of information and online resources. The commenter stated that his website has more than 50,000 registered users contributing to its content, and he estimated that he writes only about 2,000 of the 200,000 words of content published on his website each day.

A number of commenters also noted that the Internet differs from traditional forms of mass communication because individuals must generally be proactive in order to access information on a website, whereas individuals receive information from television or radio the instant the device is turned on, or passively view a billboard while driving or walking down a street. These comments echo the Supreme Court's observation that communications over the Internet are not as ''invasive'' as communications made through traditional media. *See Reno,* 521 U.S. at 869. For example, a broadcast television viewer or radio listener who turns on his television or radio set is automatically subjected to the limited, available programming. In contrast, a website's information is seen only by those who actively take the steps necessary to find, visit, and view the website.

During 2005, an estimated 204 million people in the United States used the Internet.[7] In the first half of 2005, an estimated 67 percent of the adult American population used the Internet.[8] At the end of 2004, 87 percent of American teens (ages 12–17, representing the next generation of voters) were using the Internet,[9] and on average, 70 million American adults

[3] The terms ''contribution'' and ''expenditure'' include gifts, subscriptions, purchases, payments, distributions, loans, advances or deposits of money, or anything of value made by any person for the purpose of influencing any election for Federal office. *See* 2 U.S.C. 431(8)(A)(i) and 431(9)(A); *see also* 11 CFR Part 100, Subparts B & D.

[4] *See* Enrique Armijo, *Public Airwaves, Private Mergers: Analyzing the FCC's Faulty Justification for the 2003 Media Ownership Rule Change,* N.C. L. Rev. 1482, 1494 (May 2004) (discussing broadcast media and the Internet as ''imperfect substitutes''); *see also* Ryan Z. Watts, *Independent Expenditures on the Internet: Federal Election Law and Political Speech on the World Wide Web,* 8 CommLaw Conspectus 149, 160 (Winter 2000) (discussing *Reno* v. *ACLU, 521 U.S. 844 (1997)* and the Internet's differences from traditional media).

[5] The word ''blog'' derives from the term ''Web log'' and is defined as ''an online diary; a personal chronological log of thoughts published on a Web page.'' Webster's New Millennium Dictionary of English, available at *http://www.dictionary.com* (last visited 3/24/06). People who maintain blogs are known as ''bloggers.''

[6] *See* Edward L. Carter, *Outlaw Speech on the Internet: Examining the Link Between Unique Characteristics of Online Media and Criminal Libel Prosecutions,* 21 Santa Clara Computer & High Tech. L.J. 289, 316–17 (January 2005) (''Internet is unlike traditional print or broadcast media in that messages can have a long shelf life—an Internet message can circulate via e-mail or remain posted somewhere even long after the message's creator has tried to retract it.'').

[7] *See* Internet World Stats *available at http://www.Internetworldstats.com/stats2.htm* (last visited 3/24/06).

[8] *See* Pew Internet & American Life Project, How Women and Men use the Internet, p. I, (2005) *available at http://www.pewInternet.org/pdfs/PIP_Women_and_Men_online.pdf* (last visited 3/24/06).

[9] *See* Pew Internet & American Life Project, Teens and Technology, p. I (2005) *available at http://www.pewInternet.org/pdfs/PIP_Teens_Tech_July2005web.pdf* (last visited 3/24/06).

logged onto the Internet on a daily basis.[10]

A growing segment of the American population uses the Internet as a supplement to, or as a replacement for, more traditional sources of information and entertainment, such as newspapers, magazines, television, and radio. By mid-2004, 92 million Americans reported obtaining news from the Internet.[11]

The 2004 election cycle also marked a dramatic shift in the scope and manner in which Americans used websites, blogs, listservs,[12] and other Internet communications to obtain information on a wide range of campaign issues and candidates.[13] The number of Americans using the Internet as a source of campaign news more than doubled between 2000 and 2004, from 30 million to 63 million.[14] An estimated 11 million people relied on politically oriented blogs as a primary source of information during the 2004 presidential campaign,[15] and 18 percent of all Americans cited the Internet as their leading source of news about the 2004 presidential election.[16]

Individuals not only sought information about campaigns on the Internet, but also took advantage of the low cost of Internet communication as they took active roles in supporting policies and candidates. According to a number of commenters, common Internet activities have included: Posting commentary regarding Federal candidates and political parties on their own websites; submitting comments regarding Federal candidates and political parties on websites owned by other individuals; creating advertisements, videos, and other audiovisual tools for distribution on the Internet; fundraising; promoting or republishing candidate-authored materials; participating in online ''chats'' about campaigns; providing hyperlinks from their own websites to campaign websites and other websites; and using e-mail to organize grassroots political activities.

A number of commenters suggested that the potential for a free exchange of information and opinions through the Internet promotes access to information about candidates, ballot measures, and legislation. More than half of the hundreds of commenters expressed concern that the same unique characteristics of the Internet that make it so widely accessible to individuals and small groups also makes it more likely that individuals and small groups whose web activities generally are not regulated by FECA might engage in activities that unintentionally trigger Federal regulation. Whereas the corporations and other organizations capable of paying for advertising in traditional forms of mass communication are also likely to possess the financial resources to obtain legal counsel and monitor Commission regulations, individuals and small groups generally do not have such resources. Nor do they have the resources, as one commenter cautioned, to respond to politically motivated complaints in the enforcement context. Several commenters warned that individuals might simply cease their Internet activities rather than attempt to comply with regulations they found overly burdensome and costly. Thus, some commenters asserted, it is essential that the Commission narrow the scope and impact of any regulation of Internet activity and establish bright-line regulations to delineate any restricted activity in order to avoid chilling political participation and speech on the Internet.

II. Congressional Action, Commission Action, and the Courts

The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (2002) (''BCRA''), amended the Federal Election Campaign Act of 1971, as amended (the ''Act''), 2 U.S.C. 431 *et seq.*, in various respects. The Commission implemented these changes in the law through a series of rulemakings during 2002.

A number of these changes hinged on the definition of ''public communication.'' First, Congress required State, district, and local political party committees and organizations, as well as State and local candidates, to use only Federal funds[17] to pay for any ''public communication'' that promotes, supports, attacks or opposes (''PASOs'') a clearly identified candidate for Federal office. *See* 2 U.S.C. 431(20)(A)(iii) and 441i(b) and (f); *see also* 11 CFR 100.24(b)(3) and (c)(1), 300.32(a)(1) and (2), and 300.71.[18] Congress defined a ''public communication'' as ''a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.'' 2 U.S.C. 431(22). When the Commission promulgated regulations to implement these BCRA provisions, it explicitly excluded all Internet communications from its definition of ''public communication'' and, therefore, none of the Commission's rules governing the funding of ''public communications'' applied to Internet communications. *See* 11 CFR 100.26; *Final Rules on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money*, 67 FR 49064 (July 29, 2002) (''*Soft Money Final Rules*'').

Second, Congress restricted the funds that State, district, and local political party committees may use for certain types of ''Federal election activity'' (''FEA''), including ''generic campaign activity.'' 2 U.S.C. 431(20)(A)(ii) and 441i(b); 11 CFR 100.24(2)(ii) and 300.33(a)(2).[19] Congress defined

[10] *See* Pew Internet & American Life Project, Trends 2005, Chapter 4, Internet: The Mainstreaming of Online Life, p. 58 (2005) *available at http://www.pewInternet.org/pdfs/Internet_Status_2005.pdf* (last visited 3/24/06).

[11] *See* Pew Internet & American Life Project and the University of Michigan School of Information, The Internet and the Democratic Debate, p. 2 (October 27, 2004) *available at http://www.pewInternet.org/pdfs/PIP_Political_Info_Report.pdf* (last visited 3/24/06).

[12] A ''listserv'' is a software program that automatically sends electronic mail messages to multiple e-mail addresses on an electronic mail list. *See, e.g., http://www.lsoft.com/products/listserv.asp* (last visited 3/24/06). The term ''listserv'' is commonly used, however, to denote the electronic mail list itself or the automated forwarding to all addresses on the mailing list of an e-mail sent only to the listserv's e-mail address.

[13] *See* Pew Internet & American Life Project, The Internet and Campaign 2004, *available at http://www.pewInternet.org/pdfs/PIP_2004_Campaign.pdf* (last visited 3/24/06).

[14] *See* note 9, above, The Internet and Democratic Debate, p. 2. During the same time period, the number of people reporting television as their primary source of campaign information declined. *Id.*

[15] *See* Jessica Mintz, *When Bloggers Make News—As Their Count Increases, Web Diarists Are Asking: Just What Are the Rules?* Wall St. J., Jan. 21, 2005 at B1.

[16] *See* note 10, above, The Mainstreaming of Online Life, p. 2.

[17] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g). ''Non-Federal funds'' are funds not subject to the limitations and prohibitions of the Act. *See* 11 CFR 300.2(k).

[18] There are four types of ''Federal election activity'': Type 1—Voter registration activity during the period that begins on the date that is 120 days before a regularly scheduled Federal election is held and ends on the date of the election; Type 2—Voter identification, get-out-the-vote activity, or ''generic campaign activity'' conducted in connection with an election in which a candidate for Federal office appears on the ballot; Type 3—A ''public communication'' that promotes, supports, attacks or opposes a clearly identified candidate for Federal office; and Type 4—Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election. *See* 2 U.S.C. 431(20) and 11 CFR 100.24.

[19] State, district, and local party committees and organizations may use an allocated mix of Federal funds and ''Levin funds'' to pay for ''generic campaign activity'' conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on

Continued

''generic campaign activity'' as ''campaign activity that promotes a political party and does not promote a [Federal] candidate or non-Federal candidate.'' 2 U.S.C. 431(21). The Commission incorporated the term ''public communication,'' along with its exclusion of Internet communications, into the definition of ''generic campaign activity'' in its rules. *See* 11 CFR 100.25; *Soft Money Final Rules*.

Third, Congress expressly repealed the Commission's then-existing rules on ''coordinated general public political communication'' at former 11 CFR 100.23 and instructed the Commission to promulgate new regulations on ''coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.'' *See* Public Law 107–155, sections 214(b) and (c) (March 27, 2002); *Final Rules on Coordinated and Independent Expenditures,* 68 FR 421 (Jan. 3, 2003) (*''Coordinated Communication Final Rules''*). When the Commission subsequently promulgated regulations implementing this provision, it required that a communication be a ''public communication'' as defined in 11 CFR 100.26 to qualify as either a ''coordinated communication'' or a ''party coordinated communication.'' 11 CFR 109.21(c) and 109.37(a)(2); [20] *see also Coordinated Communication Final Rules* at 428–431. Thus, Internet communications were excluded from the regulations pertaining to ''coordinated communications'' and ''party coordinated communications.''

Fourth, Congress revised the ''disclaimer'' requirements in 2 U.S.C. 441d by requiring a disclaimer whenever a disbursement for ''general public political advertising'' is either made by any political committee, or expressly advocates the election or defeat of a clearly identified candidate, or solicits any contribution. The Commission relied primarily on the definition of ''public communication'' in 11 CFR 100.26 when it implemented the new disclaimer requirements, although it also required disclaimers for political committee websites available to the general public and certain unsolicited electronic mailings of more than 500 substantially similar communications. *See* 11 CFR 110.11(a); *Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 FR 76962 (Dec. 13, 2002) (''Disclaimer Final Rules''). As a result, most Internet content was excluded from the disclaimer requirements. *See id.*

The Commission also incorporated the term ''public communication'' into two other regulations at 11 CFR 300.2(b)(4) and 11 CFR 106.6, and thereby excluded Internet content from those requirements as well. The first of these regulations defines an ''agent'' of a candidate for State or local office as a person who has actual authority by that candidate to ''spend funds for a public communication.'' *See* 11 CFR 300.2(b)(4); *Soft Money Final Rules*. The second of these rules incorporates the term ''public communication'' into the allocation rules governing certain spending by a separate segregated fund (''SSF'') or a nonconnected committee. *See Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees*, 69 FR 68056 (Nov. 23, 2004) (''*Political Committee Status Final Rules*''). Whenever an SSF or nonconnected committee pays for a ''public communication'' that (1) refers to a political party, but does not refer to any clearly identified Federal or non-Federal candidate, or (2) refers to one or more clearly identified Federal candidates, the SSF or nonconnected committee must pay for the communication entirely with Federal funds or by allocating such expenses between its Federal and non-Federal accounts in accordance with 11 CFR 106.6(b) and (f). See id.

The *Shays District* decision invalidated the Commission's definition of ''public communication'' at 11 CFR 100.26, *Shays District* at 64–65, based on the Commission's complete exclusion of Internet communications from this definition. After noting that Congress used the phrase ''or any other form of general public political advertising'' as a catch-all in BCRA's definition of ''public communication,'' the *Shays District* court concluded that ''[w]hile all Internet communications do not fall within [the scope of ''any other form of general public political advertising'], some clearly do.'' *Shays District* at 67.[21] The *Shays District* court left it to the Commission to determine ''what constitutes 'general public political advertising' in the world of the Internet,'' and thus should be treated as a ''public communication.'' *Id.* at 70.

The *Shays District* court also found the Commission's rule defining the term ''generic campaign activity'' to be similarly underinclusive because it incorporated the regulatory definition of ''public communication,'' which excluded all forms of Internet communications. *Id.* at 112. Although the *Shays District* court found that the 2002 Notice of Proposed Rulemaking for ''generic campaign activity'' failed to satisfy the requirements of the APA because it did not provide adequate notice to the public that the Commission might define ''generic campaign activity'' as a ''public communication'' in the final rules, the *Shays District* court otherwise approved the definition of ''generic campaign activity'' as limited to ''public communications.'' *Id.* at 112, citing the *Soft Money Final Rules* at 35675.

The *Shays District* court remanded the rules defining ''public communication,'' ''generic campaign activity,'' and ''coordinated communication'' to the Commission for further action consistent with its opinion. *Shays District* at 131. The Commission subsequently issued the

the ballot), or the party committee or organization must pay for the communication entirely with Federal funds. *See* 2 U.S.C. 441i(b)(2)(A); 11 CFR 300.32(b)(1)(ii), 300.32(c) and 300.33. ''Levin funds'' are a type of non-Federal funds created by BCRA that may be raised and spent by State, district, and local party committees and organizations to pay for the allocable portion of Types 1 and 2 Federal election activity. *See* 2 U.S.C. 441i(b)(2)(A) and (B); 11 CFR 300.2(i), 300.32(b). These funds may include donations from some sources ordinarily prohibited by Federal law (*e.g.*, corporations, labor organizations and Federal contractors) to the extent permitted by State law, but are limited to $10,000 per calendar year from any source or to the limits set by State law—whichever limit is lower. *See* 11 CFR 300.31.

[20] An ''electioneering communication'' may also be a coordinated communication. *See* 11 CFR 109.21(c)(1). However, because ''electioneering communications'' are limited to broadcast, cable, or satellite communications, they constitute a subset of ''public communications.'' *See* 2 U.S.C. 434(f)(3); 11 CFR 100.29 (defining an ''electioneering communication'' as a ''broadcast, cable, or satellite communication'' that refers to a clearly identified candidate for Federal office, is publicly distributed within 60 days before a general election for the office sought by the candidate, or within 30 days before the primary election for that office, and is targeted to the relevant electorate).

[21] The *Shays District* court analyzed the Commission's rules under a two-step test set out by the Supreme Court in *Chevron, U.S.A., Inc.* v. *National Res. Def. Council,* 467 U.S. 837 (1984) (''Chevron''). The first step of the Chevron analysis examines whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. In reviewing the definition of ''public communication,'' the *Shays District* court found that the rule's exclusion of all Internet communications did not comport with the plain meaning of the statutory requirement that all forms of general public political advertising be considered forms of ''public communication,'' and therefore did not satisfy step one of the *Chevron* test. *Shays District* at 69–70. The Commission did not appeal the portion of the *Shays District* decision regarding the definition of a ''public communication.'' The *Shays District* decision also stated that, in the alternative, the regulatory definition of ''public communication'' as applied to the ''content prong'' of the coordinated communication regulations in 11 CFR 109.21(c) was impermissibly narrowed by the coordination regulation, thereby undermining the purposes of the Act and thus providing an independent basis for invalidation under step two of the *Chevron* test. *See Shays District* at 70–71.

NPRM addressing the definition of ''public communication'' in each of the remanded regulations. In the *NPRM*, the Commission also noted that the term ''public communication'' is incorporated into two other sections of its regulations, 11 CFR 106.6(b) and (f) (allocation of expenses between Federal and non-Federal activities by SSFs and nonconnected committees), and 11 CFR 300.2(b)(4) (definition of ''agent'' for non-Federal candidates). The Commission also proposed new exceptions from the definitions of ''contribution'' and ''expenditure'' to exempt volunteer and independent activity on the Internet, and proposed an additional clarification that certain Internet activities would qualify for the media exemption. In addition, the Commission proposed revisions to its rules in 11 CFR 114.9 regarding employee use of corporate and labor organization computers, software, and other Internet equipment and services for individual Internet activities.

III. 11 CFR 100.26—Definition of ''Public Communication''

A. Proposed 11 CFR 100.26 Published in the NPRM

The *Shays District* decision required the Commission to identify those Internet communications that qualify as ''general public political advertising,'' and thus would be encompassed within the definition of ''public communication'' in 2 U.S.C. 431(22). While drafting a proposed rule, the Commission recognized the important purpose of BCRA in preventing actual and apparent corruption and the circumvention of the Act as well as the plain meaning of ''general public political advertising,'' and the significant public policy considerations that encourage the promotion of the Internet as a unique forum for free or low-cost speech and open information exchange. The Commission was also mindful that there is no record that Internet activities present any significant danger of corruption or the appearance of corruption, nor has the Commission seen evidence that its 2002 definition of ''public communication'' has led to circumvention of the law or fostered corruption or the appearance thereof. Therefore, the Commission proposed to treat paid Internet advertising on another person's website as a ''public communication,'' but otherwise sought to exclude all Internet communications from the definition of ''public communication.'' [22]

B. Comments on the Proposed Rule

Most commenters who addressed the *Shays District* court's requirement that the Commission include some forms of Internet communications as ''general public political advertising'' expressed general support for the rule as proposed in the *NPRM*.[23] These commenters praised the Commission's proposed separate treatment of communications on a person's own website as distinct from communications placed on another person's website, and nearly all commenters agreed that paid advertisements placed on another person's website are ''general public political advertising.'' One commenter noted that Congress had defined ''public communication'' in 2 U.S.C. 431(22) by listing several examples of media such as television, radio, billboards and newspapers. That commenter observed that communications through the listed forms of media are typically placed for a fee. The commenter concluded that it would be appropriate from a statutory perspective for the Commission to capture within the definition of ''public communication'' only those Internet communications placed for a fee on another person's website.

Another commenter generally supported the proposed rule, but recommended that the definition also encompass advertisements provided in exchange for something of value other than money (*e.g.*, an advertising trade or link exchange). Two other commenters, however, cautioned against including any Internet communications that do not involve the exchange of money. In light of the unique nature and variety of Internet communications, these commenters explained, the value of these communications would be difficult to ascertain under the Commission's traditional tests for normal and usual charge or fair market value.[24]

A few commenters expressed concern that the proposed rule would allow corporations and labor organizations to make unregulated in-kind contributions to Federal candidates through coordinated communications on the Internet, although such coordinated communications would be regulated or prohibited if done through other media. One group of commenters listed activities of this nature that they believed would be permitted under the proposed definition of ''public communication'' in 11 CFR 100.26, including: (1) An individual, political committee, or corporation pays to place banner advertisements [25] on another person's website for a fee; (2) a corporation or labor organization pays for a pop-up advertisement that will appear over another person's website; [26] (3) an individual pays to hire a video production company to produce a video that contains a message written by a candidate for Federal office, purchases an e-mail list, and sends the video to all the addresses on the purchased list; and (4) a State party committee pays to produce a video that refers solely to a candidate for Federal office and distributes the video only through its own website. Each of these activities is addressed below.

C. Revised Rule: Internet Communications Placed on Another Person's Website for a Fee Are ''General Public Political Advertising''

The Commission concludes that Internet communications placed on another person's website for a fee are ''general public political advertising,'' and are thus ''public communications'' as defined in 11 CFR 100.26. Under this rule, when someone such as an individual, political committee, labor organization or corporation pays a fee to

[22] The term ''person'' is defined to include ''an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.'' 2 U.S.C. 431(11).

[23] Several commenters argued that the Commission should preserve the *status quo* and continue to exclude all Internet communications from the definition of ''public communication.'' The Commission does not believe that such an approach would comport with the *Shays District* decision.

[24] The ''usual and normal charge for goods'' is defined as ''the price of those goods in the market from which they ordinarily would have been purchased at the time of the [contribution or expenditure],'' and the ''usual and normal charge for services'' is defined as ''the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.'' 11 CFR 100.57(d)(2) and 100.111(e)(2). *See, e.g.*, Advisory Opinion 2006–01 (Pac for a Change) (discounted rate provided by publisher to other large-quantity purchasers is the normal and usual charge that candidate's committee is required to pay to purchase large quantities of the candidate's book).

[25] ''Banner advertisements'' are advertisements on a Web page that convey messages in text, animated graphics, and sound. They traditionally appear in rectangular shape, but may take any shape. Typically, banner advertisements are linked to the advertiser's website, which enables a viewer to ''click through'' the advertisement to view the advertiser's website for further information on the product or service advertised. *See http://www.netlingo.com/lookup.cfm?term=ad+banner* (last visited 3/24/06).

[26] ''Pop-up'' advertisements usually appear in a separate browser window from the one being viewed. The advertisements are superimposed over the window being viewed, and require the viewer to take some action, such as closing the window in which the pop-up advertisement appears, to continue viewing the underlying browser window. *See http://www.netlingo.com/lookup.cfm?term=pop%2Dup%20ad* (last visited 3/24/06).

place a banner, video, or pop-up advertisement on another person's website, the person paying makes a ''public communication.'' Accordingly, the final rule is largely the same as the proposed rule. While no other form of Internet communication is included in the definition of ''public communication,'' the placement of advertising on another person's website for a fee includes all potential forms of advertising, such as banner advertisements, streaming video, pop-up advertisements,[27] and directed search results.[28] The rule thus resolves concerns about the first two activities described in the previous paragraph.

The revised definition of ''public communication'' comports with the *Shays District* decision by removing the wholesale exclusion of all Internet communications from the definition of ''public communication.'' At the same time, the rule is carefully tailored to avoid infringing on the free and low-cost uses of the Internet that enable individuals and groups to engage in political discussion and advocacy on equal footing with corporations and labor organizations (through their SSFs) and other political committees, without the need to raise large amounts of funds.

The forms of mass communication enumerated in the definition of ''public communication'' in 2 U.S.C. 431(22), including television, radio, and newspapers, each lends itself to distribution of content through an entity ordinarily owned or controlled by another person. Thus, for an individual to communicate with the public using any of the forms of media listed by Congress, he or she must ordinarily pay an intermediary (generally a facility owner) for access to the public through that form of media each time he or she wishes to make a communication. This is also true for mass mailings and telephone banks, which are other forms of ''public communication'' under 2 U.S.C. 431(22). A communication to the general public on one's own website, by contrast, does not normally involve the payment of a fee to an intermediary for each communication.

The cost of placing a particular piece of political commentary on the Web is generally insignificant. The cost of such activity is often only the time and energy that is devoted by an individual to share his or her views and opinions with the rest of the Internet community. In this respect, a communication through one's own website is analogous to a communication made from a soapbox in a public square. There is no evidence in the legislative history of BCRA of a Congressional intent to regulate individual speech simply because it takes place through online media.

Communications placed for a fee on another person's website, however, are analogous to the forms of ''public communication'' enumerated by Congress in 2 U.S.C. 431(23), particularly in light of the growing popularity of Internet advertising. As the public has turned increasingly to the Internet for information and entertainment, advertisers have embraced the Internet and its new marketing opportunities. Internet advertising revenue increased by 33.9 percent between the third quarter of 2004 and the third quarter of 2005 and reached $3.1 billion for the third quarter of 2005.[29] The cost of advertising on the Internet distinguishes it from other forms of Internet communication, such as blogging or publishing one's own website, which are generally performed for free or at low cost.

Moreover, because Congress did not include the Internet in the list of media enumerated in the statutory definition of ''public communication,'' an Internet communication can qualify as a ''public communication'' only if it is a form of advertising and therefore falls within the catch-all category of ''general public political advertising.'' *See* 2 U.S.C. 431(22). By definition, the word ''advertising'' connotes a communication for which a payment is required, particularly in the context of campaign messages. *See*, *e.g.*, The American Heritage® Dictionary of the English Language (4th ed. 2000) (''The activity of attracting public attention to a product or business, as by paid announcements in the print, broadcast or electronic media.''); The Random House Webster's Unabridged Dictionary (2d ed. 2005) (''1. The act or practice of calling public attention to one's product, service, need, etc., esp. by paid announcements in newspapers and magazines, over radio or television, on billboards, etc.; * * * 2. paid announcements; advertisements.''); J.I. Richards and C. M. Curran, *Oracles on ''Advertising'': Searching for a Definition*, 31 Journal of Advertising at 3 (June 2002) (An extensive survey of advertising and marketing textbooks revealed ''certain recurring elements: (1) Paid, (2) nonpersonal, (3) identified sponsor, (4) mass media, and (5) persuade or influence.'')

The Commission notes that this definition of ''public communication'' encompasses the types of advertising that some commenters believed should be covered, such as payments by anyone on behalf of a candidate or political committee for advertising on another person's website. As discussed below, this rule should be read together with other existing regulations regarding coordinated and independent expenditures and communications by corporations, labor organizations, and political committees.

On the Internet, where individuals can build blogs and other websites for free, an individual can communicate with the general public at little or no cost. However, this is not true in the case of paid advertising on another person's website. For example, one of the commenters operates a website and sells advertising space for between $1,300 and $5,000 per week.[30] Another commenter stated that the ''minimum to run a banner ad campaign on most newspaper websites and portals is roughly $5,000.'' The Chicago Tribune, for example, charges $5,000 per week for a ''header ad'' on *www.chicagotribune.com*, and $20,000 per week for a ''homepage cube.'' *See www.tribuneinteractive.com/chicago/mediakit/rates.htm* (last visited 3/24/06). Although paying for an advertisement on Chicagotribune.com may be less expensive than paying to place the same advertisement in the Chicago Tribune newspaper, both still require substantial funding. Furthermore, in both cases the advertiser is paying for access to an established audience using a forum controlled by another person, rather

[27] Although a pop-up advertisement may not technically be part of the underlying website or account, the Commission determines that it is ''placed on'' a website such that it qualifies as a ''public communication'' when a fee is paid for the pop-up.

[28] For example, companies such as Google and Yahoo! permit an advertiser to pay a fee to have its website appear as a ''sponsored link,'' or otherwise featured, when specific words are typed into the website's search engine. *See http://www.google.com/intl/en/webmasters/1.html* (last visited 3/24/06) and *http://searchmarketing.yahoo.com/srch/index.php* (last visited 3/24/06). If a fee is paid for such a service, then the resulting display of the product, hyperlink, or other message constitutes a form of ''general public political advertising.'' However, when the search results are displayed as a result of the normal function of a search engine, and not based on any payment for the display of a result, the search results are not forms of ''general public political advertising.'' In addition, where a search engine returns a website hyperlink in its normal course, and features the same hyperlink separately as the result of a paid sponsorship arrangement, the latter is a ''public communication'' while the former is not.

[29] *See* Interactive Advertising Bureau, ''Internet Advertising Revenues Surpass $3 Billion for Q3; Run Rate for Full Year 2005 on Pace to Exceed $12 Billion'' (Nov. 21, 2005), available at *http://www.iab.net/news/pr_2005_11_21.asp* (last visited 3/24/06).

[30] *See http://www.dailykos.com/special/advertising* (last visited 3/24/06).

than using a forum that he or she controls to establish his or her own audience.

Three commenters requested a clarification regarding the proposed rule's exclusion of all Internet ''communications'' with the exception of certain paid ''announcements,'' and asked whether the Commission intended to attach any significance to the use of ''announcements'' instead of ''communications'' in the exception. The Commission did not intend any distinction through the use of different terms. To avoid confusion, the Commission has substituted ''communication'' in place of ''announcement'' in the final rule.

One of the commenters suggested adding a content requirement to the Commission's definition of ''public communication'' by substituting the term ''express advocacy'' [31] for ''announcement'' and ''communication.'' The Commission is not limiting the definition of ''public communication'' by requiring any particular content, such as ''express advocacy.'' There is no content requirement in the statutory definition of ''public communication,'' and there is no other basis for providing an additional content standard in the definition itself, whether the communications are made through the Internet or another medium. *See* 2 U.S.C. 431(22). The content of the communication is addressed separately, such as the requirement that a State, district, or local party committee use only Federal funds to pay for ''public communications'' that PASO a Federal candidate. *See*, *e.g.*, 2 U.S.C. 431(20); 11 CFR 100.24(b)(3) and (c)(1), 300.32(a)(1) and (2), and 300.71. Thus, limiting the definition of ''public communication'' to only those communications containing ''express advocacy'' would be inconsistent with the Act's recognition in section 431(20) that some ''public communications'' contain PASO messages, but not express advocacy.

A different commenter suggested substituting ''advertising'' in place of ''communication.'' The Commission is not adopting this suggestion because it is circular and could inject ambiguity into the definition of ''public communication.'' The result of the commenter's proposed change would be that ''Internet *advertising* placed for a fee'' would be a form of ''general public political *advertising*.'' That approach would appear to indicate that there are forms of advertising on the Internet other than paid advertising, which is contrary to the Commission's view and to the basis of the revised definition of ''public communication,'' which rests on the definition of ''advertising'' as a paid communication.

D. No Threshold Payment Amount for ''General Public Political Advertising''

Several commenters argued that low-cost ''pay-per-click'' ads are too difficult to value because the cost of the advertisement is often variable, measured after the fact, and too low to warrant regulation as a ''public communication.'' For example, one commenter pointed to advertising opportunities available for $10–$25 per week through BlogAds.com. Commenters urged the Commission to revise the definition of ''public communication'' to capture only paid Internet ads that cost more than a certain threshold dollar amount. One of these commenters recommended that the Commission seek additional comment to determine the appropriate threshold amount and to index that resulting amount for inflation or re-examine the amount on a regular basis.

The Commission is not establishing a minimum threshold amount in the final rule. There is no stated threshold payment amount in the statutory definition of ''public communication,'' and it is not clear on what statutory basis the Commission could establish one. Nor was the Commission able to establish a record that would justify a particular threshold. Congress could have chosen, but did not, to establish a specific threshold cost below which an advertisement would not be a ''public communication.'' Thus, even late-night advertisements on small radio stations, low-cost classified ads in small circulation newspapers, and low-cost billboards in relatively remote areas are forms of ''public communication'' under 2 U.S.C. 431(13). Accordingly, all Internet communications placed for a fee on another person's Web site qualify as ''public communications.''

Nevertheless, as a matter of enforcement policy, the Commission may exercise prosecutorial discretion regarding ''public communications'' on the Internet that involve insubstantial advertising charges. The amount claimed to have been spent in violation of law is always a factor in the Commission's enforcement decisions, and here, the Commission will be additionally mindful of the importance of minimizing any potential regulatory burden on the use of the Internet.

E. Advertiser, Not Web Site Operator, Makes the ''Public Communication''

One commenter requested that the Commission clarify that the person who makes a ''public communication'' is the person seeking to place an Internet advertisement on another person's Web site, not the person controlling the Web site on which the advertisement appears. The Commission agrees that this is the intended operation of the rule and notes that the regulations that incorporate the term ''public communication'' clearly regulate the person paying for the ''public communication.'' *See* 11 CFR 100.24(b)(3) and (c)(1), 106.6, 109.21, 109.37, 110.11, 300.2, 300.32(a)(1) and (2), and 300.71. For example, if a political party committee pays an Internet advertising company to place a pop-up advertisement on a certain Web site, or to place the pop-up advertisement in a manner that it will be triggered based on some other action of a computer user, the political party committee—not the advertising company or the Web site owner—would be subject to the applicable restrictions on ''public communications.'' The Commission also notes that, as with other media included in the definition of ''public communication,'' the obligation to ensure that permissible sources are used rests with the entity whose funding is restricted by FECA, and not the Web provider.

F. Bloggers Not Addressed Separately

In the *NPRM*, the Commission noted that its proposed regulations were unlikely to cover blogging activities. Nevertheless, the Commission asked whether it should revise the proposed rule to explicitly exclude all ''blogs'' from the definition of ''public communication.'' Each of the bloggers who testified at the hearing, and the majority of commenters who addressed this issue, warned against crafting a regulation tied to specific forms of Internet communication like blogging. One commenter noted that while at present blogs might be readily distinguished from other Web sites based on particular software used to generate the blog, that software is likely to change. Moreover, this commenter noted that other forms of communications, such as peer-to-peer

[31] The term ''expressly advocating'' is defined in 11 CFR 100.22 to include phrases such as ''vote for the President, re-elect your Congressman,'' and other slogans and words ''which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s),'' or that, ''when taken as a whole and with limited reference to external events such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates.''

''podcasting,'' [32] may soon replace blogs as the ubiquitous format for low-cost Internet discussion and debate. Another commenter cautioned that providing special protection for bloggers might disadvantage others engaged in different yet analogous forms of Internet communication.

In light of the evolving nature of Internet communications, the Commission is not explicitly excluding from the definition of ''public communication'' any particular software or format used in Internet communications. The final rules already exclude ordinary blogging activity from the definition of ''public communication'' because blog messages are not placed for a fee on another person's Web site. Thus, an explicit exclusion focused on ''blogging'' is not only unnecessary but also potentially confusing to the extent that it implies that other forms of Internet communication, such as ''podcasting'' or e-mailing, might be regulated absent an explicit exclusion for each different form of Internet communication.

G. Paid Advertising on a Web Site Is a Form of ''General Public Political Advertising'' Even Where the Web Site Is Only Available to the Restricted Class of a Corporation or Labor Organization, or the Members of a Membership Organization

The revision to the definition of ''public communication'' does not affect the regulations governing corporate or labor organization communications within and outside of its restricted class,[33] or with the ability of a membership organization to communicate with its members on any subject.[34] The Commission sought comment, however, on the appropriate treatment of advertisements placed for a fee by a third-party advertiser on a corporation's or labor organization's Web site that is solely available to its restricted class, or on a membership organization's Web site available only to its members. Specifically, the Commission asked whether such advertisements should be excluded from the definition of ''public communication.'' *NPRM* at 16971. For example, if a political party committee pays to place an advertisement on a labor organization's password-protected Web site that is available only to that labor organization's restricted class, should that advertisement be considered a ''public communication''?

The Commission concludes that it should. There is no basis in the Act or the *Shays District* decision to justify such an exception to the definition of ''public communication.'' Moreover, three of the four commenters addressing this issue opposed a special exclusion on the grounds that a third-party advertiser does not have a special relationship with members of the restricted class of a corporation or labor organization that could justify treating Web site advertisements to this group of individuals differently than other paid Internet advertisements.[35] One of these commenters, a labor organization, explained that ''by definition, the payor of this sort of political advertising is a stranger to the restricted class that is the audience, and because that is so, we do not believe that under that circumstance a blanket exemption would be appropriate.''

The Commission agrees that the relationship between a third-party advertiser and members of a corporation's or labor organization's restricted class, or members of a membership organization, is not sufficiently distinctive to warrant a special exception to the definition of ''public communication.'' Therefore, a paid Internet advertisement is a ''public communication'' even if the advertisement is available only to the restricted class of a corporation or labor organization, or the members of a membership organization.

H. Electronic Mail is Not a Form of ''General Public Political Advertising''

The definition of ''public communication'' proposed in the *NPRM* did not encompass any e-mail communications. None of the commenters specifically addressed this aspect of the proposed rule, other than to state their general agreement with the limited scope of the proposed rule.

The Commission does not consider e-mail to be a form of ''general public political advertising'' because there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients, and there is nothing in the record that suggests a payment is normally required to do so.[36] All of the forms of ''public communication'' expressly listed by Congress normally involve at least some charge for delivery, such as telephone charges or postage.

In addition, Congress does not view e-mail in the same manner as mass mailings. The House of Representatives' franking rules place various franking restrictions on an ''unsolicited mass communication,'' which relies on a threshold (500 or more communications) that is almost identical to the threshold in ''mass mailing'' at 2 U.S.C. 431(23). Although mass e-mail communications were subject to the restrictions at the time BCRA was enacted, on September 5, 2003, the Committee on House Administration revised its own franking rules to remove mass e-mail communications from the list of ''unsolicited mass communications''

[32] ''Podcasting'' is a form of file distribution that is currently used primarily to distribute audio files, like a radio program, over the Internet in a format that can be received and played through an Apple iPod or similar device. *See http://www.ipodder.org/whatIsPodcasting* (last visited 3/24/06).

[33] The ''restricted class'' of a corporation is its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families. 11 CFR 114.1(j); *see also* 11 CFR 114.1(c). The ''restricted class'' of a labor organization is its members and executive or administrative personnel, and their families. *Id.*

[34] Under the Act and Commission regulations, corporations and labor organizations may communicate with members of their restricted class on ''any subject.'' *See* 2 U.S.C. 431(9)(B)(iii) and 441b(b)(2)(A); 11 CFR 100.134(a) and 114.3(a); *see also* Advisory Opinion 1997–16 (Oregon Natural Resources Council Action). Membership organizations may similarly communicate with their members. *Id.* Corporations, labor organizations, and membership organizations are generally prohibited, however, from making communications to the general public in connection with a Federal election, but they may publicly endorse Federal candidates on their Web sites in the normal course of releasing a press release so long as the press release is distributed in the normal manner and the organizations make efforts to allow only *de minimis* exposure of their Web sites beyond their restricted classes. *See* 11 CFR 114.4(c)(6) and Advisory Opinion 1997–16. Thus, corporations, labor organizations, and membership organizations may expressly advocate the election or defeat of a clearly identified Federal candidate on the corporate or labor organization Web sites that are solely available to their respective restricted class. *See* discussion of revisions to 11 CFR 100.132 in section IX, below, and 11 CFR 114.5(g); *see also* Advisory Opinions 2000–07 (Alcatel USA, Inc.) (corporation permitted to solicit its restricted class by providing a password to members of the restricted class and limiting access to its Web site solely to those password holders) and 1997–16 (membership organization prohibited from making a list of candidate endorsements available on its Web sites unless it limited access to the list to its members only).

[35] The other commenter addressing the issue supported an exception covering communications ''from corporations and labor organizations to their restricted classes.'' These communications, however, would not result in a ''public communication'' under the proposed or final rules because they are not communications placed on another person's Web site for a fee.

[36] Numerous e-mail service providers, such as Hotmail, Google, and Yahoo!, provide free Web-based e-mail accounts that permit a user to receive and send thousands of e-mail messages without charge. *See http://join.msn.com/?page=hotmail/plans&pgmarket* (last visited 3/24/06), *http://mail.google.com/mail/help/about.html* (last visited 3/24/06), *http://dir.yahoo.com/Business_and_Economy/Business_to_Business/Communications_and_Networking/Internet_and_World_Wide_Web/E-mail_Providers/Free_E-mail* (last visited 3/24/06).

requiring pre-authorization from the Franking Commission. *See* ''Meeting to Approve New Electronic Communications Policy'' at *http://www.access.gpo.gov/congress/house/house08bm108.html*. While not controlling in this rulemaking, the e-mail exclusion is indicative of a Congressional view that e-mail is appropriately regulated differently than postal mail. Accordingly, the revised definition of ''public communication'' does not encompass e-mail communications.

I. Costs of Producing Videos and Other Content for Communications

Under the Commission's revised rules at 11 CFR 100.26, posting a video on a Web site does not result in a ''public communication'' unless it is placed on another person's Web site for a fee. Nevertheless, one group of commenters called on the Commission to clarify the treatment of expenses by State, district or local party committees for the production costs of videos and other content displayed only on those committee's own Web sites. The commenters observed that the Commission generally treats the costs of producing campaign-related materials as subject to the same funding limits and source prohibitions as the costs of distributing the materials. For example, the direct costs of producing an ''electioneering communication'' are treated the same as the costs of distributing the communication and are included within the costs of that communication. 11 CFR 104.20(a)(2) (''costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media, and talent'').

Because the Commission is promulgating regulations that will place funding limits and source prohibitions on some specific content when it is placed for a fee on a third-party's Web site, a State party committee that pays to produce a video that PASOs a Federal candidate will have to use Federal funds when the party committee pays to place the video on a Web site operated by another person. This is entirely consistent with how the party committee would be required to pay for a communication that it distributes through television or any other medium that is a form of ''public communication.'' In such circumstances, the party committee must pay the costs of producing and distributing the video entirely with Federal funds. *See* 11 CFR 300.32(a)(2).

J. No Separate Definition of ''Public Communication'' for Web Sites of State, District, and Local Party Committees

Although the revised definition of ''public communication'' encompasses only those Internet communications that are placed for a fee on another person's Web site, the NPRM sought comment on whether the definition should be further expanded to encompass all Web sites of State, district, and local party committees. The Commission concludes that it should not.

BCRA defines ''Federal election activity'' to include ''a *public communication* that refers to a clearly identified candidate for Federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office[.]'' 2 U.S.C. 431(20)(A)(iii) (emphasis added); *see also* 11 CFR 100.24(b)(3). State, district, and local political party committees and organizations and their agents, as well as State and local officeholders and candidates and their agents, are prohibited from using any non-Federal funds to pay for this type of FEA. *See* 2 U.S.C. 441i(b) and (f); 11 CFR 100.24(b)(3) and (c)(1), 300.32(a)(1) and (2), and 300.71.

In the *NPRM*, the Commission explained that one reason it had originally excluded Internet activities from the definition of ''public communication'' in 11 CFR 100.26 was to permit State, district, and local party committees to refer to their Federal candidates on the committees' own Web sites or post generic campaign messages without requiring that the year-round costs of maintaining the Web site be paid entirely with Federal funds. *NPRM* at 16971. The record in this rulemaking demonstrates that State, district, and local party committees generally use their Web sites to promote a variety of party policies and candidates, and that these Web sites are not predominantly focused on Federal elections. Furthermore, given the ease of adding new Web pages to a Web site or altering the content of existing Web pages, both the number of Web pages within a Web site and the content of those pages change frequently, sometimes daily or even hourly. For example, a Federal candidate might be featured on a hyperlink from the home page of a State party committee Web site one day, but that hyperlink may be removed the next day as the party committee replaces it with a more current story.

One commenter supporting the proposed rule argued that it would be difficult, if not impossible, to identify a severable ''Federal'' portion of a State party committee Web site in light of a State party committee's frequent changes to its Web site content. Not only would the determination of the appropriate portion require a snapshot of a Web site at one particular time that would render the result somewhat arbitrary and inaccurate in light of the frequently changing content on the Web site, but it could also be easily manipulated because of the ease and low cost of generating new Web pages. For example, any percentage-based system (percentage of Web pages or Web space dedicated to Federal candidates) would require a calculation of the total number of Web pages or files comprising the party committee Web site. The logistical hurdles to this approach, coupled with the difficulty in determining the costs to be allocated, underscore the Commission's decision not to proceed in this fashion.

The commenter also warned that treating a State, district, or local party committee Web site as a ''public communication'' would deter these party committees from featuring Federal candidates or participating in ''generic campaign activity'' at all on their Web sites. The commenter explained that even if a party committee's Web site PASOs a Federal candidate on only a small portion of its Web site, such as a few lines on one Web page for a period of a few days, the committee would have to file monthly reports with the Commission for the remainder of the calendar year.[37]

[37] No commenters or witnesses supplied comments that would assist the Commission in determining how a State, district, or local party committee would pay for a Web site that was captured under the definition of ''public communication.'' The statute and regulations do not require a local party committee to pay for all of its ''public communications'' with Federal funds, only those that PASO a Federal candidate or otherwise constitute FEA, such as ''generic campaign activity.'' The Commission asked in the *NPRM* how the organizations would go about allocating the costs associated with the Web site if the Commission determined that Web sites for these organizations are ''public communications.'' Some commenters who supported including State, district, and local party committee Web sites in the definition of ''public communication'' suggested that a time/space allocation would be appropriate. However, the Commission is not convinced that the statute permits time/space allocation of any ''public communication'' that features PASO information about a Federal candidate. The existence of PASO would require the organizations to pay for the ''public communications,'' *i.e.*, the Web site itself, entirely with Federal funds. Such a result is inconsistent with the Act's regulation of Federal, but not non-Federal activity. For example, such a determination could have a ripple effect on the payment of other costs. The acquisition of the computers or the phone line (two costs that are generally allocated as administrative expenses) arguably could become expenses that would be required to be paid for entirely with Federal funds because one of the uses of the equipment would be to access or maintain a Web site.

Three other groups of commenters, however, advocated for a definition of ''public communication'' that included the individual Web sites of State, district, and local party committees. They argued that the term ''general public political advertising'' should be defined differently with respect to different speakers, applying a broad definition of ''general public political advertising'' to encompass less activity by individuals, but more Internet activity by State, district, and local party committees, other political committees, corporations, and labor organizations.[38] One group asserted that State, district, and local party committees should be particularly restricted by a broad definition of ''public communication'' because Congress used the term ''public communication'' in BCRA to restrict the use of non-Federal funds by State, district, and local party committees. *See* 2 U.S.C. 431(20)(A)(iii) and 441i(b).

The Commission disagrees with these latter commenters and is not including content placed by a State, district, or local party committee on its own Web site within the definition of ''public communication.'' As explained above, a political party committee's Web site cannot be a form of ''public communication'' any more than a Web site of an individual can be a form of ''public communication.'' In each case, the Web site is controlled by the speaker, the content is viewed by an audience that sought it out, and the speaker is not required to pay a fee to place a message on a Web site controlled by another person.

More importantly, Congress defined ''public communication'' in terms of the types of media used to convey a message (*e.g.*, newspaper, magazine, broadcast, mass mailing, phone bank), not the identity of the speaker using that media. 2 U.S.C. 431(22). There is simply no statutory support for defining ''public communication'' differently for different persons, whether they be individuals, groups, or political party committees. Instead, because Congress provided only one broadly applicable definition of ''public communication,'' the Commission is not free to conclude that a communication made through the same media is a ''public communication'' when made by an individual, but not when made by a political committee. Conversely, the Commission cannot conclude that a communication is not a ''public communication'' when made by an individual, but is a ''public communication'' if made by a party committee through the same media.

The definition of ''public communication'' at 2 U.S.C. 431(22) is just that: a definition. Congress could have, but did not, define the ''public communication'' differently with respect to different speakers. Instead, Congress chose to distinguish between different speakers only when establishing the consequences of making a ''public communication.'' The different treatment of different speakers is therefore provided separately in the Act, rather than in the definition of ''public communication'' itself. *See* 2 U.S.C. 431(20)(A)(iii) (including ''public communication'' in the definition of ''Federal election activity''), 2 U.S.C. 441i(b) and (f) (prohibiting State, district, and local party committees, and State and local candidates, but not other political committees or individuals other than candidates or officeholders, from paying for FEA with non-Federal funds), and 2 U.S.C. 434(e)(2) (requiring State, district, and local party committees to report receipts and disbursements for FEA that total at least $5,000 per calendar year).

IV. 11 CFR 100.25—Definition of ''Generic Campaign Activity'' Is Not Changed

BCRA defines ''generic campaign activity'' as ''campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.'' 2 U.S.C. 431(21). In 2002, as part of a rulemaking implementing BRCA, the Commission defined ''generic campaign activity'' to mean ''a *public communication* that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.'' 67 FR 49064, 49111; 11 CFR 100.25 (emphasis added). The Act requires State, district, and local party committees that conduct ''generic campaign activity'' in connection with an election in which a candidate for Federal office appears on the ballot to finance such activities with Federal funds or a mix of Federal funds and Levin funds. 2 U.S.C. 441i(b) and 431(20)(A); 11 CFR 100.24 and 300.33.

As noted above, the *Shays District* court remanded the Commission's definition of ''generic campaign activity'' on two grounds: first, that by incorporating the Commission's definition of ''public communication'' it improperly excluded all Internet communications, and second, for lack of notice to the public that the definition would be limited to ''public communications'' as defined in 11 CFR 100.26. The Commission did not appeal these holdings.

The Commission is addressing the *Shays District* court's first concern by revising the definition of ''public communication'' to include paid advertisements placed on another person's Web site, as explained above. The Commission has addressed the *Shays District* court's second concern by providing ample notice in the *NPRM* that it was considering defining ''generic campaign activity'' in terms of a ''public communication.'' Therefore, the Commission is adopting a final rule that has the same language as the previous rule and the rule proposed in the *NPRM*.

Two commenters addressed the Commission's proposal to retain the current definition of ''generic campaign activity.'' Both commenters urged the Commission to adopt a definition that includes activities beyond ''public communications.'' One commenter suggested that the proposed definition of the term ''generic campaign activity'' would improperly narrow the application of the term, thereby permitting State, district, and local party committees to use non-Federal funds for many activities that promote the political party (and thereby indirectly promote the party's Federal candidates) because the promotion does not occur in a ''public communication.'' Specifically, this commenter urged the Commission to adopt a broader definition, one covering ''*all* generic ''activities' '' of State, district, and local political party committees, such as phone banks and mailings to 500 or fewer people, and State, district, and local political party Web sites.

The Commission does not believe that expanding the definition of ''generic campaign activity'' beyond ''public communication'' is a sound policy decision or the result required by the Act. First, the Commission has not seen any evidence that its 2002 definition of ''generic campaign activity'' has led to circumvention of the Act or fostered corruption or the appearance thereof,

[38] One of these commenters called for limited rules focused exclusively on communications coordinated with corporations, while excluding all other communications. A different commenter urged the Commission to establish a separate rule for communications by State party committees on the grounds that ''campaign finance laws provide for different levels of regulation of individuals, corporations and labor unions, and political committees (including party committees).'' The four principal Congressional sponsors of BCRA asserted that the definition of ''general public political advertising'' applicable to State party committees should encompass all Internet communications ''intended to be seen by the general public.'' Similarly, a different group of commenters stated that a political committee should be deemed to make a ''public communication'' whenever it ''spends funds to communicate broadly over the Internet—buying Web site ads, sending e-mails, maintaining its own publicly accessible Web site— * * * just as if it were spending funds to communicate by broadcast or mass mailing.''

nor did the commenters point to any specific real-world examples where the definition of ''generic campaign activity'' has proven too narrow. Second, a broad definition of ''generic campaign activity'' would exceed the scope of the Act and pose Constitutional concerns by capturing State, district, and local party activities designed to support only State or local candidates, thereby improperly requiring that State, district, and local parties finance these activities with at least some Federal funds. For example, a State party committee that rents a bus to transport the party's slate of candidates for the State's executive offices during a State election occurring contemporaneously with a Federal election, would be required to use Federal funds or a mix of Federal and Levin funds to pay for the bus because providing the bus would constitute support of the party and its choice of candidates without clearly identifying any of the candidates. The Commission does not consider these results to be required by the Act.

The commenters also argued that the use of the term ''public communication'' creates a definition of ''generic campaign activity'' that is too narrow because it does not cover all communications, specifically ''mailing and phone banks directed to fewer than 500 [sic] people.'' The plaintiffs in *Shays District* made this same argument. The Commission countered that under such an argument, a series of substantially similar telephone calls made to 500 or fewer persons could be regulated as FEA if they promote a political party, even if they do not mention Federal candidates, whereas the same number of substantially similar telephone calls that do promote or oppose a specific Federal candidate would not be regulated as FEA.[39] The *Shays District* court specifically rejected the plaintiff's argument and agreed with the Commission's reasoning, stating: ''It would indeed be anomalous for Congress to have placed greater strictures on activities that promote political parties than on activities that support or attack a candidate.'' *Shays District* at 111. Accordingly, the *Shays District* court found that the Commission's definition of ''generic campaign activity'' was appropriate and reasonable in the context of FEA, particularly in excluding activities such as small phone banks and mailings. *Id.*

Therefore, the Commission has decided to retain the current definition of ''generic campaign activity'' at 11 CFR 100.25. The final rule is unchanged from the language proposed in the *NPRM*. ''Generic campaign activity'' will continue to mean a ''public communication,'' as defined in 11 CFR 100.26, that promotes or opposes a political party and does not promote or oppose a clearly identified Federal or non-Federal candidate.

V. 11 CFR 109.21 and 109.37—Definitions of Coordinated Communications and Party Coordinated Communications

To be a ''coordinated communication'' or a ''party coordinated communication,'' a communication must be a ''public communication'' as defined in 11 CFR 100.26.[40] *See* 11 CFR 109.21(c) and 11 CFR 109.37(a)(2). In *Shays District*, the court rejected the definition of the term ''public communication,'' because the effect of the definition was to exclude all Internet communications from the reach of the coordinated communication rules. *See Shays District* at 70.[41]

By including Internet advertising placed for a fee on another person's website in the definition of ''public communication'' in 11 CFR 100.26, the Commission is addressing the deficiency identified by the *Shays District* court in the coordinated communication rules. Consequently, the Commission is not amending the language of the coordinated communication rules in this rulemaking.

In the *NPRM*, the Commission did not propose any changes to the coordinated communication rule or the party coordinated communication rule. The Commission did, however, invite comments on a number of issues with respect to the two rules. The comments that the Commission received generally supported the Commission's decision to reconsider the coordinated communication rules in a separate rulemaking dedicated to that purpose.

A. In-Kind Contributions

The Commission would also like to reiterate that current regulations at 11 CFR 100.52(d)(1) make clear that the provision of goods or services ''without charge or at a charge that is less than the usual or normal charge for such goods or services'' is a contribution. The Commission does not view the ''public communication'' rule it is promulgating to permit vendors who normally charge for advertising space to provide such advertising space at a reduced charge or free of charge without making a contribution.

While the Commission recognizes that online business practices for the charging of advertising space vary greatly from one website to the next, the Commission would also like to make clear that when the customary business practice of a particular website regarding the payment for space is not followed, the vendor is making an in-kind contribution. This is similarly the case when any organization transfers to a political committee a tangible asset, such as an e-mail list. There is no need to show that a coordinated communication resulted from such a transfer for the actual asset to be an in-kind contribution to that committee.

B. Republication of Campaign Materials

The Commission sought comment about the republication of candidate campaign materials on the Internet. Under the existing coordinated communication rules, the content prong can be satisfied by a ''public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing.'' 11 CFR 109.21(c)(2). Several commenters urged the Commission to ensure that the republication of content from a candidate's website, or the republication of other campaign materials prepared by candidate, would not result in a ''coordinated communication'' when the republication occurs on a blogger's or individual's own website.

Testimony submitted during the rulemaking indicated that the approach outlined in the *NPRM* would be appropriate. As one of the lawyers for the Plaintiffs in the *Shays* litigation pointed out, the restrictions on republication of campaign materials were not promulgated with the Internet in mind. Because an individual need

[39] A telephone bank that supports or opposes a Federal candidate would be regulated as an additional form of FEA, which is a ''public communication'' that PASOs a clearly identified Federal candidate. 2 U.S.C. 431(20(A)(iii); 11 CFR 100.24(b)(3).

[40] As noted above, an ''electioneering communication'' may also be a coordinated communication. *See* 2 U.S.C. 441a(a)7)(C); 11 CFR 109.21(c)(1). However, ''electioneering communications'' are a subset of ''public communications.''

[41] The Court of Appeals found that the Commission had provided inadequate justification under the APA for excluding from the coordinated communication rules certain ''public communications'' that are publicly distributed or otherwise publicly disseminated more than 120 days before an election. *See Shays Appeal* at 100. The Commission initiated a separate rulemaking on the coordinated communication rules to address that issue. *See* Coordinated Communication Notice of Proposed Rulemaking, 70 FR 73946 (Dec. 14, 2005). The *Shays Appeal* decision did not address the definition of ''public communication.''

not incur any cost in downloading information derived from a candidate's website and reproducing that same information on a different website, republication on the Internet is fundamentally different from republication in other contexts, such as if an individual were to pay to reprint a candidate's campaign literature.

The revision to the definition of ''public communication'' in 11 CFR 100.26 adequately addresses those commenters' concerns, so no changes are required to the definition of ''coordinated communication.'' The definition of ''public communication'' does not encompass any content, including republished campaign material, that a person places on his or her own website. Therefore, a person's republication of a candidate's campaign materials on his or her own website, blog, or e-mail cannot constitute a ''coordinated communication.''

The Commission is taking this approach partly in recognition of the ease with which individuals are able to transmit information over the Internet. Exchanging hyperlinks, forwarding e-mail, and attaching downloaded PDF files are common ways most individuals who use the Internet exchange information. The Commission is taking this opportunity to make clear that such activity would not constitute in-kind contributions. The Commission notes that Senator Russ Feingold, one of BCRA's sponsors, stated recently that ''linking campaign Web sites, quoting from, or republishing campaign materials and even providing a link for donations to a candidate, if done without compensation, should not cause a blogger to be deemed to have made a contribution to a campaign or trigger reporting requirements.'' [42]

However, if a person pays to republish a candidate's campaign materials on another person's website, a ''public communication'' would result under revised 11 CFR 100.26, and such paid republication would therefore satisfy the content prong of the three-pronged ''coordinated communication'' test. For example, if a candidate pays to place a banner advertisement on the WashingtonPost.com homepage for one week, and then a different person pays the WashingtonPost.com for the continued display of the same advertisement for an additional week, the content prong of the ''coordinated communication'' test would be satisfied. The Commission notes, however, that satisfaction of the content prong does not, in and of itself, translate into a coordinated communication finding. The conduct prong must also be satisfied. *See* 11 CFR 109.21(d).

The Commission also notes that this provision does not supersede the limitations and prohibitions placed on disbursements for communications by corporations and labor organizations under 2 U.S.C. 441b and 11 CFR Part 114.

VI. 11 CFR 110.11—Scope of Disclaimer Requirements

The Commission's disclaimer rules promulgated in 2002 apply to ''public communications,'' as defined in 11 CFR 100.26, as well as to two specified additional types of Internet communications: unsolicited electronic mail of more than 500 substantially similar communications and Internet websites of political committees available to the general public. *See* 11 CFR 110.11(a); *see also* 2 U.S.C. 441d(a).

Whether a ''public communication'' requires a disclaimer depends on who makes the ''public communication'' and what the ''public communication'' says. Under the 2002 rule, a political committee must include a disclaimer on any ''public communication'' for which it makes a disbursement, as well as on all of its publicly available websites and on all substantially similar, unsolicited e-mail communications to more than 500 people. *See* 11 CFR 110.11(a)(1). Under the 2002 rule, when persons other than political committees make a ''public communication'' or send substantially similar e-mail messages to more than 500 persons, they need only include disclaimers when those communications expressly advocate the election or defeat of a clearly identified candidate for Federal office, solicit contributions, or qualify as ''electioneering communications'' under 11 CFR 100.29. *See* 11 CFR 110.11(a)(2)–(4). Persons other than political committees are not required to include disclaimers on their websites.

A. Disclaimer Requirements for Websites

Although the disclaimer rule was not at issue in *Shays*, the Commission noted in the *NPRM* that because a disclaimer is required for a certain class of ''public communication'' as defined in 11 CFR 100.26, the revision to the definition of ''public communication'' in 11 CFR 100.26 would affect the scope of the disclaimer requirement. The Commission received several comments stating that it would be appropriate to require disclaimers for certain ''public communications'' that take place over the Internet, provided that the definition of ''public communication'' was limited to advertisements placed for a fee on another person's website as proposed in the *NPRM*.

Moreover, Congress has required disclaimers for all forms of ''general public political advertising'' that contain certain content or are paid for by a political committee. 2 U.S.C. 441d(a). As the Commission explained in its original post-BCRA disclaimer rulemaking, the use of the same catch-all phrase in the definition of ''public communication'' and the disclaimer requirements ''should be interpreted in a virtually identical manner.'' [43] *See* 2 U.S.C. 441d(a) and 431(22). The Commission is therefore retaining the disclaimer requirement for any ''public communication'' that includes the content specified in 11 CFR 110.11(a).

In their comments, the Congressional sponsors of BCRA urged the Commission to retain the current additional requirement that all political committee websites include disclaimers. The Commission did not receive any other comments specifically addressing the disclaimer requirement for political committee websites, and did not propose changing that requirement in the *NPRM*. Accordingly, under the revised rules at 11 CRR 110.11, all political committee websites must continue to include the appropriate disclaimer statements.

This treatment of political committee websites is consistent with Congress's broader disclaimer requirements for political committees. In 2 U.S.C. 441d(a), Congress required a disclaimer ''[w]henever a political committee makes a disbursement'' for a class of communications, regardless of the content of the communication. In contrast, for all other persons, Congress only required a disclaimer if the communication contains specific content, such as a solicitation of contributions or a message expressly advocating the election or defeat of a clearly identified candidate for Federal office. *Id.*

B. No Disclaimer Required for Electronic Mail Unless Sent by a Political Committee

In the *NPRM*, the Commission proposed changing the disclaimer requirement for e-mail communications. The Commission noted that it had originally promulgated the regulatory requirement that disclaimers appear on large quantities of e-mail communications in an effort to focus on

[42] Senator Russ Feingold, ''Blogs Don't Need Big Government'' available at *http://www.mydd.com/story/2005/3/10/112323/534* (last visited 3/24/06).

[43] *See Disclaimer Final Rules*, 67 FR at 76963.

''spam'' e-mail.[44] *NPRM* at 16972. The Commission also stated that it had become ''concerned that the current regulation emphasizes the number of e-mail communications sent, rather than focusing on whether an expenditure was made that would justify governmental regulation.'' *Id.* In addition, the Commission was concerned ''that the lack of a definition of the term ''unsolicited'' could have the effect of discouraging individuals from engaging in discussion and advocacy that is core political speech protected by the First Amendment and that is virtually cost-free.'' *Id.* Accordingly, while proposing to maintain the requirement that a disclaimer appear on more than 500 substantially similar unsolicited e-mail communications, the Commission proposed defining the term ''unsolicited e-mail'' as e-mail ''sent to electronic mail addresses purchased from a third party.'' *Id.*

The commenters had mixed reactions to the Commission's proposal. Although they generally supported limiting the disclaimer requirement for e-mail communications to e-mail communications sent to a purchased or rented list, many commenters raised concerns about the proposed definition of ''unsolicited e-mail.'' One commenter asserted that the proposed definition would be confusing, because it differed from the commonly accepted meaning of the term ''unsolicited e-mail,'' which is not limited to e-mail communications sent to addresses purchased from a third party. A second commenter felt that the proposed definition was too narrow, and urged the Commission to expand it to include communications sent to an e-mail list provided by a candidate or political committee, regardless of whether the list was provided as part of a commercial transaction. A third commenter felt that the proposed definition was too broad, and urged the Commission not to require disclaimers on e-mail involving less than some minimum cost. A fourth commenter felt that the Commission should not attempt to regulate unsolicited e-mail at all, because of the lack of evidence that political e-mail was ''a tool of big money'' or otherwise harmful, while a fifth commenter urged the Commission to require disclaimers on all e-mail sent by any candidate, political party committee, political committee, or third party who ''paid to send electioneering e-mail.''

Commenters also raised concerns about the quantity threshold (*ie.*, ''more than 500'') for e-mail communications to trigger the disclaimer requirement. Although one commenter supported maintaining a numerical threshold to serve as a ''bright line rule,'' another suggested eliminating the threshold entirely and requiring disclaimers on e-mail sent to any address that had been purchased for the purpose of engaging in ''political spam,'' regardless of the number involved. Still others urged the Commission to replace the quantity threshold with a monetary threshold; suggestions for the monetary threshold ranged from $250 to $25,000 in expenditures for e-mail communications.

Several commenters voiced concerns about implementing the Commission's proposal. One commenter, for example, raised the issue of whether disclaimers would be permanently required for any e-mail communication sent to addresses originally acquired through a commercial transaction. Noting that his and other organizations often rented lists of e-mail addresses, the commenter asked, ''Does that mean that four months down the line, when we've been having ongoing communication [with a person whose e-mail address was on the rented list,] that because we rented the list originally, and the name was produced through a rented list[,] that * * * we have to put a disclaimer on e-mail to [that person]?'' The commenter also noted that the proposed rule could raise recordkeeping issues for organizations that obtain e-mail addresses through a combination of purchase or rental and other means.

Commenters also raised concerns about enforcing the disclaimer requirement on e-mail, particularly given the high volume of e-mail traffic and the low cost of sending large numbers of e-mail communications. In addition, some commenters questioned the Commission's rationale for requiring individuals to place disclaimers on unsolicited e-mail communications containing express advocacy or soliciting contributions, but not to require disclaimers on Internet blogs containing the same message. Several commenters suggested that the Commission simply eliminate the disclaimer requirement for e-mail communications.

The Commission agrees with some of the concerns expressed by the commenters and has decided to change 11 CFR 110.11(a) by eliminating the requirement that disclaimers appear on e-mail communications by persons other than political committees.[45] The Act does not expressly or implicitly require that disclaimers appear on e-mail communications. Congress used virtually the same language in the disclaimer provisions and in the definition of ''public communication,'' particularly with respect to the phrase ''or any other [type/form] of general public political advertising,'' and the Commission has previously concluded that the two phrases ''should be interpreted in a virtually identical manner.'' *See* 2 U.S.C. 441d(a) and 431(22); *Disclaimer Final Rules* at 76963. As discussed above, the Commission is changing the definition of ''public communication'' to reflect the Commission's conclusion that the only form of ''public communication'' on the Internet is advertising that appears for a fee on another person's Web site. *See* Part III, above.

A political committee, however, must continue to include a disclaimer whenever it sends more than 500 substantially similar e-mail communications. As noted above, Congress requires disclaimers on a broader class of communications for political committee than for all other persons. Since 2002, the Commission has required disclaimers for ''unsolicited electronic mail of more than 500 substantially similar communications.'' 11 CFR 110.11(a). The Commission notes that political committees have generally complied with this requirement, and that the inclusion of a disclaimer statement poses only a minimal burden for political committees. Also, the Commission is not aware of significant concerns that might warrant the removal of this requirement for political committees at this time. However, in light of confusion that many commenters expressed regarding the meaning of ''unsolicited e-mail,'' the Commission is removing the requirement that e-mail be ''unsolicited.''

The Commission notes that e-mail communications by corporations and labor organizations are otherwise regulated by 11 CFR Part 114. *See* 2 U.S.C. 441b and 11 CFR 114.4. Generally, these entities are prohibited from sending e-mail in connection with Federal elections outside their restricted class. 2 U.S.C. 441b and 11 CFR 114.4.

C. Technical Reorganization

The Commission is making two other changes to 11 CFR 110.11(a) for purposes of clarity. First, the Commission is deleting the first

[44] ''Spam'' is a common term for ''bulk e-mail sent out over the Internet. These messages are often unsolicited and unwanted by the recipient.'' *Modern Dictionary for the Legal Profession*, 866 (3rd ed. 2001).

[45] *See* note 22 for the definition of ''person.''

sentence from paragraph (a). Second, the remaining sentence in that paragraph is being revised to provide that disclaimers are required only on: (1) A ''public communication,'' as defined in 11 CFR 100.26, made by a political committee; (2) electronic mail of more than 500 substantially similar communications when sent by a political committee; (3) a political committee website available to the general public; and (4) a ''public communication,'' as defined in 11 CFR 100.26, made by any person that contains express advocacy, solicits a contribution, or qualifies as an ''electioneering communication'' under 11 CFR 100.29.

D. Bloggers Paid by Candidates

The Commission invited comments on whether it should revise the disclaimer rule in 11 CFR 110.11(a) to require bloggers to disclose payments from a candidate, a political party, or a political committee. The Commission did not propose any change because current Commission rules at 11 CFR 110.11(a) already require a political committee to disclose this type of disbursement on its publicly available reports filed with the Commission. *NPRM* at 16973.

All but one of the comments received on this subject supported the Commission's proposed approach that would not require bloggers to disclose payments received from candidates. Typical of the reaction was this comment: ''The ethics of taking money to express opinions without disclosing those payments can certainly be questioned. But for purposes of the election laws, * * * no disclaimer should be required. Payments by campaigns are disclosed by campaigns. To require more of bloggers when others who receive payments from campaigns are not subject to similar disclosure requirements would not be fair.''

The Commission agrees that the Act does not require a disclaimer when a blogger or other person accepts payment from a Federal candidate. Accordingly, it is not changing the disclaimer rule to require bloggers to disclose payments from a candidate, a political party committee, or other political committee. Please note, however, that disbursements for particular communications, as opposed to more generalized payments to bloggers for consulting or other services, might still require disclaimers. For example, if a candidate or political committee pays a fee to place an advertisement on the website of a blogger, the advertisement would require a disclaimer because it would be a disbursement for a ''public communication'' by a political committee.

VII. Other Uses of the Term ''Public Communication'' in the Commission's Regulations

The term ''public communication'' is also used in 11 CFR 106.6(b) and (f) (allocation of expenses between Federal and non-Federal activities by SSFs and nonconnected committees) and 11 CFR 300.2(b)(4) (definition of ''agent'' for non-Federal candidates). Thus, the revisions to the definition of ''public communication'' in amended 11 CFR 100.26 affect the application of these two regulations.

A. 11 CFR 106.6—Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Political Committees

In 2004, the Commission revised its allocation regulations at 11 CFR 106.6 governing the source of funds for certain ''public communications'' by SSFs and nonconnected committees. Whenever either of these entities pays for a ''public communication'' that (1) refers to a political party, but does not refer to any clearly identified Federal or non-Federal candidate, or (2) refers to one or more clearly identified Federal candidates, the SSF or nonconnected committee must pay for the communication entirely with Federal funds or by allocating such expenses between its Federal and non-Federal accounts in accordance with 11 CFR 106.6(b) and (f). *See Political Committee Status Final Rules.* Because all Internet communications were exempted from the definition of ''public communication,'' SSFs and nonconnected committees were not required to comply with the new provisions in 11 CFR 106.6 when funding Internet communications.

In the *NPRM,* the Commission noted that the effect of the proposed revisions to the definition of ''public communication'' in 11 CFR 100.26 would be to apply the allocation rules in 11 CFR 106.6(b)(1), (b)(2), and (f) to those Internet communications covered by the revised definition of ''public communication.'' Thus, SSFs and nonconnected committees would be required to use Federal funds to pay for certain ''public communications'' over the Internet. The Commission invited comment on this result.

The Commission received two comments addressing this issue. Both urged the Commission not to apply the allocation rules in section 106.6 to communications over the Internet. Both comments expressed concern about whether it would be feasible to ascertain the costs of the communications to which the allocation rules would apply.

Because the revised definition of ''public communication'' covers only paid Internet advertising placed on another person's website, and application of the section 106.6 allocation rules to these communications will be based on readily determinable costs, the commenters' concerns are resolved by the new definition in 11 CFR 100.26. The cost of Internet advertising included within the revised definition of ''public communication'' will be as discrete and readily identifiable as the costs of other ''public communications,'' and application of the section 106.6 allocation rules to these Internet communications will therefore not be any more complex than for other forms of communication covered in the definition of ''public communication.'' Moreover, the costs of paid Internet advertising must be allocated under 11 CFR 106.6 only if the SSF's or nonconnected committee's advertising refers to a political party or a clearly identified Federal candidate.

Therefore, the Commission is not amending the language of the allocation rules in 11 CFR 106.6. All SSFs and nonconnected committees must continue to use Federal funds to pay for all covered forms of ''public communication,'' which now also includes paid Internet advertising placed on another person's website.

B. 11 CFR 300.2(b)(4)—Definition of an ''Agent'' of State and Local Candidates

BCRA prohibits candidates for State and local offices, and their agents, from using non-Federal funds to pay for any ''public communication'' that PASOs a candidate for Federal office. *See* 2 U.S.C. 441i(f). Under the Commission's regulations, an ''agent'' of a candidate for State or local office is a person who has actual authority conferred by that candidate to ''spend funds for a public communication,'' as defined in 11 CFR 100.26. 11 CFR 300.2(b)(4).

In the *NPRM,* the Commission sought comment on whether further revisions to the definition of ''public communication'' are necessary to address its potential effect on the definition of ''agent'' in 11 CFR 300.2(b)(4). Specifically, the Commission noted that as a result of the proposed change to the definition of ''public communication,'' a person would be an agent of a State or local candidate if he or she is authorized by that candidate to pay for any Internet communication that is included within the revised definition of ''public

communication.'' The Commission received no comments on this issue.

The Commission believes that no further revisions to the definition of ''agent'' in 11 CFR 300.2(b)(4) are necessary to address the effect of the revised definition of ''public communication'' in 11 CFR 100.26. The definition of ''agent'' was based on the anticipated scope of a principal's activities. Now that the principal (*i.e.*, a State or local candidate) is subject to certain restrictions when making one type of Internet communication, it follows that a corresponding change to the scope of the agent's anticipated activities is consistent with the original purpose of the definition of ''agent.'' Therefore, a person will continue to be an agent of a State or local candidate if he or she has actual authority to pay for a ''public communication'' on behalf of the candidate, which now includes paid Internet advertising placed on another person's website.

VIII. 11 CFR 100.94 and 100.155—Exceptions to the Definitions of ''Contribution'' and ''Expenditure'' for Internet Activity by Individuals

The Act and Commission regulations currently exempt certain activities by individuals from the definitions of ''contribution'' and ''expenditure.'' *See* 2 U.S.C. 431(8)(B)(i) and (ii); 11 CFR 100.74–100.76 and 100.135–100.136. For example, ''the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee'' is not a ''contribution'' to the candidate or political committee. 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74. Similarly, ''the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, * * * voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities'' is not a ''contribution'' or ''expenditure.'' 2 U.S.C. 431(8)(B)(ii). *See also* 11 CFR 100.35, 100.36, 100.75, and 100.76.

The Internet has changed the way in which individuals engage in political activity by expanding the opportunities for them to participate in campaigns and grassroots activities at little or no cost and from remote locations. Accordingly, in the *NPRM,* the Commission proposed new rules to extend explicitly the existing individual activity exceptions to the Internet to remove any potential restrictions on the ability of individuals to use the Internet as a generally free or low-cost means of civic engagement and political advocacy. *See NPRM* at 16975–76. Specifically, the Commission proposed two sections, 11 CFR 100.94 and 100.155, to exempt from the definitions of ''contribution'' and ''expenditure'' the value of uncompensated Internet activity by volunteers.

All of the numerous commenters addressing this issue supported the Commission's proposal and favored a broad exemption from regulation for uncompensated Internet activity by individuals. The commenters affirmed that individuals currently use the Internet to engage in both individual and collective grassroots political activity. As one commenter stated, ''[t]he Internet provides individuals with the ability to engage in widely disseminative political discourse without requiring the expenditure of large sums of money.'' Another commenter stated that campaigns in the 2004 election cycle ''relied to an unprecedented degree on using the Internet as an organizing tool, both financially as well as [for] an unprecedented number of volunteers who came to the campaign through the Internet.'' This commenter noted that ''[p]eople who volunteered through the Internet * * * were volunteering not because they thought they were going to get some job in the administration, not because they wanted to be close to the center of action * * * [but] because they wanted to make a difference.'' A different commenter suggested that ''[i]ndividual Americans should be able to engage in election related political speech online and spend reasonable sums of their own money to support that speech, without having to disclose their identity, worrying about whether they are violating campaign finance laws, or having to hire a lawyer to advise them.''

One commenter summarized the general benefit to be derived from the proposed exceptions: ''[a]doption of this rule would in itself address the vast majority of concerns and objections that have been expressed about this rulemaking. This rule would make clear, appropriately so, that individuals engaging in unfettered political discourse over the Internet using their own computer facilities (or those publicly available) would not be subject to regulation under the campaign finance laws, whether or not such activities are coordinated with a candidate.''

After considering all the comments, the Commission is adding new 11 CFR 100.94 and 100.155, which together expressly remove Internet activity by an individual or group of individuals from the definitions of ''contribution'' and ''expenditure'' when the individual or group of individuals perform uncompensated Internet activities for the purpose of influencing a Federal election.

A. 11 CFR 100.94(a) and 100.155(a)—Exception for Uncompensated Internet Activity

Although the final versions of 11 CFR 100.94 and 100.155 are structured somewhat differently from the rules proposed in the *NPRM,* they have the same scope and application. Thus, under these final rules, any individual or group of individuals who, without compensation, uses Internet equipment and services for the purpose of influencing a Federal election does not make a contribution or expenditure and does not incur any reporting responsibilities as a result of that activity.

1. Exception Not Restricted to Volunteers Known to a Campaign

In the *NPRM,* the Commission sought comment on whether the final rules should apply to all individual Internet activities, regardless of whether such activities are known to a candidate, authorized committee, or political party committee. The Commission proposed regulations that would apply regardless of whether the individual's Internet activities were known to any of these groups. All commenters addressing this issue supported the Commission's proposal. As one commenter stated, ''[f]or the sake of clarity, the rule should apply to all 'individuals,' whether or not they are 'volunteers' for a campaign that are 'known' to the campaign, or employees of a campaign.''

The Act does not require that a candidate or political committee formally recognize an individual as a ''volunteer'' for that individual's activities to be exempt from the definitions of ''contribution'' and ''expenditure.'' On the contrary, the plain language of the Act uses the term ''volunteer'' as relating to the provision of voluntary and uncompensated services, rather than to the formal status of the actor in relation to a campaign. *See* 2 U.S.C. 431(8)(B)(i) (exempting from the definition of ''contribution'' ''the value of services provided without compensation by an individual who volunteers'') and 2 U.S.C. 431(8)(B)(ii) (exempting from the definition of ''contribution'' ''the use of real or personal property * * * voluntarily provided by an individual to any candidate or any political committee of

a political party in rendering voluntary personal services''). Moreover, one commenter pointed out that, in light of the new opportunities to engage in political activity through the Internet, ''it would be an odd result if a campaign volunteer was exempt but someone acting independently was not.''

The Commission agrees. Therefore, the new rules exempt Internet activity by individuals acting both with and without the knowledge or consent of a candidate, authorized committee, or political party committee. The new rules use the phrase ''acting independently'' to cover any individual who is unknown to, or acting without the consent of, a candidate, authorized committee, or political party, and the phrase ''in coordination with'' to cover any individual who is a formal or informal volunteer known to, and acting with the consent of, a candidate, authorized committee or political party committee.[46]

Finally, commenters raised concerns that the new rules would not apply to groups of individuals who act collectively. One commenter pointed out that, ''While it is true that any 'group' comprises individuals, the plain reading of the [proposed] rule suggests that only individuals acting 'individually' are protected from regulation of 'contributions' or 'expenditure.' ''

In response to this concern, the Commission in the final rules uses the terms ''individual or group of individuals.'' Individuals are eligible for the exceptions whenever they engage in Internet activities for the purpose of influencing a Federal election alone or collectively as a group of individuals. For example, if several individuals share the responsibilities of operating a blog or other website, then each individual would be covered under new 11 CFR 100.94 and 100.155. The Commission also notes that a group of individuals will not trigger political committee status through Internet activities covered by the new exceptions because those Internet activities would not constitute contributions or expenditures under the Act.[47]

2. Republication

In the *NPRM,* the Commission noted that its proposed regulations would protect an individual or volunteer who produces or maintains a website or blog, or conducts other grassroots activity on the Internet. The *NPRM* noted that this activity would not result in individuals or volunteers making a contribution or expenditure and they would not incur any reporting responsibilities. For example, if an individual downloaded materials from a candidate or party website, such as campaign packets, yard signs, or any other items, the downloading of such items would not constitute republication of campaign materials.

Even if this activity is done in cooperation, consultation, or concert with a candidate or a political party committee, no contribution or expenditure would result, and neither the candidate nor the political party committee would incur reporting responsibilities. Additionally, if an individual forwarded an e-mail received from a political committee, the forwarding of that e-mail would not constitute republication of campaign materials or be an in-kind contribution. The Commission has chosen to adopt such an approach in the final rules. In doing so, the Commission recognizes the importance of grassroots activity and the role of the Internet. Under the final rules at 11 CFR 100.94 and 100.155, individuals are free to republish materials using the Internet without making a contribution or expenditure. However, the Commission notes that 11 CFR 100.94(e) would not exempt from the definition of ''contribution'' any ''public communication'' that arises as the result of the republication of such materials. For example, if an individual downloaded a campaign poster from the Internet and then paid to have the poster appear as an advertisement in the New York Times, the advertisement in the New York Times would not be within the exemption of the final rules.

3. Personal Services Exempted

As was noted above, the Act and Commission regulations exempt certain activities by individuals from the definitions of ''contribution'' and ''expenditure.'' *See* 2 U.S.C. 431(8)(B)(i) and (ii); 11 CFR 100.74–100.76 and 100.135–100.136. For example, the Act provides that ''the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee'' is not a ''contribution'' to the candidate or political committee. 2 U.S.C. 431(8)(B)(i). *See also* 11 CFR 100.74. Consistent with these provisions, the narrative accompanying the exceptions proposed in the *NPRM* made clear that the value of an individual's uncompensated Internet services would be excepted from the definitions of ''contribution'' and ''expenditure.'' *See NPRM* at 16976. Accordingly, under new 11 CFR 100.94 and 100.155, the value of an individual's uncompensated time and the value of any special skills that individuals may bring to bear on their Internet activities are exempt from the definitions of ''contribution'' and ''expenditure.''

4. Individual Services Must Be Uncompensated

The Commission sought comments, but received none, on whether an exception for individual Internet activity should be extended to individuals who receive some form of payment for their Internet services from a candidate or a political committee. The Commission notes that the Act and Commission regulations exempt only ''services provided *without compensation*'' from the definitions of ''contribution.'' 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74 (emphasis added). Likewise, the proposed rule limited the new exceptions to uncompensated services.

Accordingly, these final rules exempt only those Internet services for which an individual does not receive any compensation. Campaign employees, for example, are not eligible for the exceptions in 11 CFR 100.94 and 100.155 for activities for which they are compensated. However, campaign employees are still within this exemption when they engage in uncompensated Internet activities. Moreover, bloggers would not lose eligibility for the exceptions by selling advertising space to defray the operating costs of the blog, but would not be eligible for the exceptions for campaign work for which the blogger is compensated by a campaign committee or any other political committee. For example, if a political committee pays a blogger to write a message and post it within his or her blog entry, the resulting blog entry would not be exempted as ''uncompensated Internet activity.'' While not exempted under the final rules, such a payment to the blogger would not otherwise restrict the blogger's activities or create an obligation on the part of the blogger to

[46] In Advisory Opinion 1999–17 (George W. Bush for President Exploratory Committee), the Commission concluded that a campaign's permission ''at some level'' was essential for the volunteer exception to apply to an individual's Internet activity on behalf of a presidential candidate. Advisory Opinion 1999–17 is superseded to the extent that it indicates that the campaign or political committee must be aware of or sanction the individual's Internet activities in order for the individual's activity to be exempt.

[47] *See* 11 CFR 100.5 (''Political committee means * * * any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 or which makes expenditures aggregating in excess of $1,000 during a calendar year''). As discussed below, payments to place advertisements on another person's website, other than for a nominal fee, are not exempt under the new exceptions for Internet activities by individuals, and such payments could result in expenditures or contributions.

report the payment. The expenditure by the political committee is akin to a vendor payment, which the political committee must report to the Commission. Similarly, if a campaign pays a blogger for technical consulting services regarding the campaign's website, the blogger's activities on his or her own blog would remain eligible for the exceptions in 11 CFR 100.94 and 100.155.

If a campaign committee or other political committee reimburses an individual for any out-of-pocket costs that the individual may incur in performing Internet activities, such reimbursements do not constitute compensation under the final rules. Accordingly, individuals may be reimbursed by political committees for any out-of-pocket expenses they incur in performing Internet activities and remain within the exemptions in 11 CFR 100.94 and 100.155. If a political committee pays the costs of setting up a website or controls the overall content, however, the website may need to carry an appropriate disclaimer under 11 CFR 110.11(a)(1).

5. Individual Internet Activity is Exempt Regardless of Who Owns the Computer Equipment and Where the Internet Activities Are Performed

The proposed rules in the *NPRM* covered three situations involving the use of computer equipment and services by an individual for uncompensated Internet activities: (1) The use of computer equipment and services that the individual owns; (2) the use of computer equipment and services available at a public facility; and (3) the use of computer equipment and services on the individual's residential premises.

Some commenters opposed this proposed structure as ''overly lengthy and complicated in part because the proposed rule tries to predict how and where individuals will be using computers.'' Some of these commenters also complained that distinguishing between sources of equipment unnecessarily complicated the proposed rules. ''These individuals and volunteers should use whatever computer is normally available to and used by them,'' stated one commenter. This commenter also stated that ''[t]he question is not which computer is used, but whether it is used in the course of uncompensated individual and volunteer activity.''

The Commission agrees. Distinguishing between sources of computer equipment and locations where the Internet activities occur could lead to anomalous results. For instance, the proposed rules may have been interpreted to exempt an individual's Internet activity if the individual used a neighbor's computer in the individual's own home or in an Internet café, but not if the individual uses a neighbor's computer in the neighbor's home. Additionally, the proposed rules may have been interpreted to exempt an individual's Internet activities performed at the individual's residence using a computer supplied by the individual's employer, but not if the Internet activities were performed by the individual at his or her own place of work.

As this result was not the Commission's intent, the final rules do not distinguish between sources of computer equipment nor locations where the Internet activities are performed. Under new 11 CFR 100.94 and 100.155, an individual does not make a contribution or expenditure when using equipment or services for uncompensated Internet activities for the purpose of influencing a Federal election, regardless of who owns such equipment or where the equipment is located. The final rules thus avoid disparate treatment of individuals or volunteers who may not be able to afford the purchase or maintenance of their own computers and websites and explicitly protect individuals who may borrow a computer from a friend, neighbor, family member, or anyone else to engage in political activity.

B. 11 CFR 100.94(b) and 100.155(b)—Definition of ''Internet Activities''

In the rule proposed in the *NPRM,* the Commission defined the term ''Internet activities'' to include ''e-mailing, including forwarding; linking, including providing a link or hyperlink to a candidate's, authorized committee's or party committee's website; distributing banner messages; blogging; and hosting an Internet site.'' *NPRM* at 16978.

The final rules encompass all of the same activity covered by proposed 11 CFR 100.94 and 100.155, but also include the phrase ''and any other form of communication distributed over the Internet.'' The Commission added the phrase ''and any other form of communication distributed over the Internet'' to ensure that future advances in technology will be encompassed within the final rules. For example, the new rules not only cover such things as sending or forwarding electronic messages; providing a link or other direct access to any person's [48] Internet site; posting banner messages; and blogging, creating, maintaining, or hosting an Internet site; but also cover technology that has not yet been developed. Furthermore, the new rules cover ''podcasting'' and any other form of Internet communication that is, or might be, used for political activity. The Commission notes that the new definition of ''Internet activities'' contains an illustrative, rather than an exhaustive, list of the activities that are covered.

C. 11 CFR 100.94(c) and 100.155(c)—Definition of ''Equipment and Services''

The proposed rules focused on exempting an individual's use of ''computer equipment and services'' for activities on the Internet and listed examples of the types of computer equipment and services covered by the proposed rules. Specifically, paragraphs (c) of both proposed 11 CFR 100.94 and 100.155 stated that ''computer equipment and services'' includes, but is not limited to, computers, software, Internet domain names, and Internet Service Providers (ISP).

The Commission has adopted the language in the *NPRM* defining ''equipment and services'' as including, but not limited to, computers, software, Internet domain names, and Internet Service Providers (ISP). In response to concerns that the proposed language was technology specific, the Commission has added the phrase ''and any other technology that is used to provide access to or use of the Internet,'' to ensure that future innovations in computer equipment and services will be included within the final rules. New sections 100.94 and 100.155 include, but are not limited to, computers, handheld communication devices that provide access to the Internet, software, routers, servers, Internet access purchased from an ISP, subscription fees, blog hosting services, bandwidth, licensed graphics, domain name services, and e-mail services.[49]

[48] *See* note 22 for the definition of ''person.''

[49] In Advisory Opinion 1998–22 (Leo Smith), the Commission concluded that even if an individual acting independently incurs no additional costs in creating a website that expressly advocates the election or defeat of a clearly identified candidate, at least some portion of the underlying costs of creating and maintaining that website is an expenditure under the Act and must be reported if it exceeds $250 in a calendar year. Later, in Advisory Opinion 1999–17 (George W. Bush for President Exploratory Committee), the Commission concluded that in the course of developing a website for a campaign, an individual could use ''his or her personal property at home, *i.e.*, a home computer'' and incur ''related costs (such as maintaining Internet service with a provider) that are part of the upkeep'' of the website without making a contribution or expenditure, and without incurring any reporting obligations. Advisory Opinion 1998–22 is superseded to the extent that it treated as an ''expenditure'' an individual's use of computer equipment and services for uncompensated Internet activity.

The Commission notes that while individuals incur no liability for using equipment and services in the course of their uncompensated political activity, this rule change does not exempt all political activity involving the use of technology from regulation. Therefore, for example, a political committee's purchase of computers for individuals to engage in Internet activities for the purpose of influencing a Federal election, remains an ''expenditure'' by the political committee. Additionally, a corporation would make a prohibited in-kind ''contribution'' and a prohibited ''expenditure'' by providing software and Internet access for the specific purpose of enabling its employees to influence a Federal election through political Internet activities. *See* 2 U.S.C. 441b(a); 11 CFR 114.2. *See also* discussion of 11 CFR 114.9, below.

D. 11 CFR 100.94(d) and 100.155(d)—Exceptions Applicable to Incorporated Bloggers and Similar Corporations

Corporations and labor organizations are generally prohibited from making ''contributions'' or ''expenditures'' in connection with any Federal election. 2 U.S.C. 441b. In the *NPRM,* the Commission sought comment on whether bloggers, acting as incorporated or unincorporated entities, should still be eligible for the exceptions to the definitions of ''contribution'' and ''expenditure.'' *NPRM* at 16975.

All commenters who addressed this topic supported exempting Internet activity by incorporated bloggers from the definitions of ''contribution'' and ''expenditure.'' Some commenters observed that bloggers often incorporate mainly for tax reasons or to limit their liability for the operation of their blogs. ''Every month now, somebody threatens to sue me,'' stated one blogger who indicated that the popularity of his website and the nature of the political opinions he expresses on his blog made it necessary for him to incorporate for his own legal protection.

The Commission agrees that providing an exception that applies to all individuals, whether incorporated or unincorporated, is the best approach. Therefore, individuals who choose to incorporate are also eligible for the new exceptions in 11 CFR 100.94 and 100.155 for Internet activities by individuals. Although the activities of some incorporated bloggers may also be exempt under the media exemption (discussed below), the separate exceptions for individual activity may reach some incorporated entities that are not acting within the scope of the media exemption or that are not press entities at all. *See* 2 U.S.C. 431(9)(B)(i) and 11 CFR 100.73.

The purposes of the Act would not be furthered by prohibiting individuals' Internet activities simply because an individual incorporates for liability or tax reasons. The Supreme Court has stated that the Act's prohibitions on corporate expenditures and contributions arise from ''Congress's concern that organizations that amass great wealth in the economic marketplace not gain unfair advantage in the political marketplace.'' *FEC* v. *Massachusetts Citizens for Life,* 479 U.S. 238, 263 (1986). The Court acknowledged, however, that ''[s]ome corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens * * * solely because of their incorporated status.'' *Id.* The Commission concludes that a corporation whose purpose and function is to permit an individual to engage in Internet activity is more akin to a political association than to a business firm formed to amass wealth, and thus should not be subject to the burdens of the prohibitions on corporate contributions and expenditures. Thus, the application of the new exceptions in sections 100.94 and 100.155 to individuals who choose to incorporate for these specific purposes only avoids penalizing individuals for using the corporate form merely to limit their personal liability.

Although all commenters who discussed this issue agreed that Internet activity by individuals who choose to incorporate should be treated the same as Internet activity by unincorporated individuals, the commenters disagreed on the scope of such treatment. Some commenters noted that the Commission permits political committees to incorporate ''for liability purposes only,'' *see* 11 CFR 114.12, and recommended that the exceptions for Internet activities by individuals only apply to bloggers who incorporate for liability purposes. However, several other commenters asked the Commission to focus on the activities of the resulting corporation and their relation to the Internet activities that are the subject of the exceptions. Specifically, one commenter recommended ''permit[ting] the incorporation of small online-only speakers in cases where the business of the corporation consists of the operation of a blog or other forum for online discourse.'' Other commenters advocated ''an exempt category of 'blogger corporation' [defined] as an incorporated entity whose principal purpose is to conduct blogging activities. Such corporations could be treated as individuals for purposes of the campaign finance rules applicable to Internet activity.''

The Commission believes that the best approach to creating an exception tailored to individuals engaged in Internet activity who choose to incorporate, including bloggers, is to focus on the activities of the resulting corporation, rather than delving into the reasons for incorporation. The result of such an approach is that an individual who engages in Internet activity after incorporating is treated the same under the new exceptions as an unincorporated individual who engages in similar Internet activity.

Accordingly, new 11 CFR 100.94(d) and 100.155(d) provide that the exceptions in sections 11 CFR 100.94(a) and 100.155(a) apply to a corporation that meets three criteria: (1) It is wholly owned by one or more individuals; (2) it engages primarily in Internet activities; and (3) it does not derive a substantial portion of its revenues from sources other than income from its Internet activities. The Commission recognizes that incorporated bloggers and other similarly incorporated individuals often generate revenue primarily through the sale of advertising space on their own websites or through other Internet activities, such as providing subscription and membership services, and may also generate ancillary revenue from non-advertising sources, such as T-shirts, mugs, and similar merchandise. The third requirement is therefore added to preserve the exception for such incorporated bloggers and similar corporations, without creating an overly broad exception to the definitions of ''contribution'' and ''expenditure'' that would encompass the activities of any corporation engaged in online activities merely as a platform for other commercial activities. *See, e.g.,* Advisory Opinion 2004–19 (DollarVote.org) (concerning a for-profit corporation that provided commercial services to both citizens and candidates via DollarVote.org website). The exceptions in 11 CFR 100.94(d) and 100.155(d) are not limited to blogging activities or any other particular Internet activity. Rather, the language in new sections 100.94(d) and 100.155(d) ensures that the Internet activities of individuals who choose to incorporate are exempt from regulation as ''contributions'' or ''expenditures,'' regardless of whether the individual chooses to ''blog'' or to engage in any other form of Internet activity.

E. 11 CFR 100.94(e)(1) and 100.155(e)(1)—Exemption for Communications Placed for a Nominal Fee on Another Person's Website

In the *NPRM*, the Commission noted that, consistent with the proposed revision to the definition of ''public communication'' to encompass communications placed for a fee on another person's website, payments for a ''public communication'' on the Internet could also be a contribution or expenditure. Therefore, the Commission proposed excluding payments for placing communications on another person's website from the new exceptions for individual Internet activity, unless the communications were placed for a nominal fee, in which case they would be excepted from the definitions of contribution and expenditure. *See NPRM* at 16976.

The Commission has decided to adopt this approach. Accordingly, new paragraphs 11 CFR 100.94(e)(1) and 100.155(e)(1) state that the new rules exempt nominal payments for a ''public communication,'' as defined in 11 CFR 100.26, from the definitions of ''contribution'' and ''expenditure.'' The Commission notes, however, that a payment for a ''public communication'' would not necessarily result in a contribution or expenditure just because it is not exempted by one of the new exceptions; only those payments made for the purpose of influencing a Federal election or ''in connection with'' a Federal election would result in a contribution or expenditure. *See* 2 U.S.C. 431(8) and (9), 441b; 11 CFR 100.52(a), 100.111(a) and 114.2(a).

The allowance for the payment of a nominal fee in connection with uncompensated campaign activity on the Internet is consistent with the rules as proposed in the *NPRM* and the existing volunteer exception that allows for payment of a nominal fee in connection with an individual's use of real property. *See* 11 CFR 100.75 (permitting payment of a nominal fee for the use of a community room on an individual's residential premises). It recognizes, as one commenter noted, that ''[t]he Internet has effectively put the power of advertising communication into the hands of every citizen * * * [a]ds on blogs, for example, cost as little as $10 per week, and ads on search engines such as Google can cost just 10 cents per click.'' While the commenter's remarks describe the low cost of some individual Internet advertisements, the Commission notes the aggregate cost of a communication, rather than the cost on a per click or per view basis, determines whether a fee is nominal. Additionally, the exemption recognizes that because many individuals who use the Internet cannot, or do not, maintain their own websites, or simply wish to post to a blog in a place where it is more likely to be seen by others, an exemption for any nominal fee to post on another person's website is appropriate. Therefore, individuals or groups of individuals, acting independently or as volunteers, who post blogs or other content on host sites, would be entitled to the exception just as if the content were posted on their own website.

F. 11 CFR 100.94(e)(2) and (3) and 100.155(e)(2) and (3) '' No Exemption for Payments for E-mail Lists Made at the Direction of a Political Committee or Transferred to a Political Committee

In the *NPRM*, the Commission stated that it would continue to view the purchase of mailing lists (including e-mail lists) as expenditures or contributions when the lists are used to distribute candidate and political committee communications for the purpose of influencing Federal elections. *See NPRM* at 16976. Paying for an e-mail list is often expensive, whereas distributing the e-mail communications is usually free or at negligible cost. The Commission is concerned, however, that the new exceptions for individual Internet activities might be construed to permit individuals to pay for e-mail lists that might then be transferred to, or used by, a political committee without any contribution or expenditure resulting. Therefore, new 11 CFR 100.94(e)(2) and 100.155(e)(2) provide that the exemption for individual Internet activities does not apply to any payment for the purchase or rental of an e-mail address list when that payment is made at the direction of a political committee. Similarly, new 11 CFR 100.94(e)(3) and 100.155(e)(3) provide that the exemption for individual Internet activities does not apply to payments for any e-mail address list that is subsequently transferred to a political committee, whether that transfer is permanent or temporary (*i.e.*, sharing the list of e-mail addresses for a one-time use). Under the new rule, a contribution or expenditure would not result when an e-mail list is purchased by an individual unless either of the conditions in paragraphs (e)(2) or (e)(3) of 11 CFR 100.94 and 100.155 are met.

IX. 11 CFR 100.73 and 100.132—Exception for News Story, Commentary, or Editorial by the Media

In the Act, Congress exempted from the definition of ''expenditure'' costs associated with ''any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.'' 2 U.S.C. 431(9)(B)(i). This exemption, commonly known as the ''media exemption,'' recognizes ''the unfettered right of the newspapers, television networks, *and other media* to cover and comment on political campaigns.'' H.R. Rep. No. 93–1239, 93d Congress, 2d Session at 4 (1974) (emphasis added). The media exemption is implemented in sections 100.73 and 100.132 of the Commission's rules. *See* 11 CFR 100.73 (media exemption for contributions) and 100.132 (media exemption for expenditures).

In determining whether the media exemption applies, the Commission has traditionally applied a two-step analysis. First, the Commission asks whether the entity engaging in the activity is a press entity as described by the Act and Commission regulations. Second, in determining the scope of the exemption, the Commission considers: (1) Whether the press entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the press entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its ''legitimate press function'').[50]

In the *NPRM*, the Commission proposed changing its rules to clarify that the protections in the Act for news stories, commentary, and editorials appearing in traditional media also apply to news stories, commentary, and editorials appearing on the Internet. Specifically, the Commission proposed revising 11 CFR 100.73 and 100.132 to indicate that news stories, commentaries, and editorials that otherwise would be entitled to the media exemption are likewise exempt when they are distributed using the Internet.

The Commission invited comment generally on the proposed changes to the media exemption. The Commission also asked a number of specific

[50] *See Reader's Digest Association* v. *FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC* v. *Phillips Publishing*, 517 F. Supp. 1308, 1312–1313 (D.D.C. 1981); Advisory Opinions 2005–16 (Fired Up! LLC), 2004–07 (MTV, MTV Networks, Viacom, Inc. and Viacom Internation, Inc.), 2000–13 (Ampex Corporation and iNEXTV Corporation), 1998–17 (Daniels Cablevision), 1996–48 (National Cable Satellite Corporation), 1996–41 (A.H. Belo Corporation), 1996–16 (Bloomberg, L.P.) and 1982–44 (Democratic National Committee and Republic National Committee).

questions, including whether the proposed changes were consistent with or required by the Act; what the appropriate breadth of the exemptions should be; and whether the exceptions should be limited to entities that also have traditional, non-Internet media operations.

Thirty-seven of the comments filed in response to the *NPRM* addressed the proposed changes to the media exemption. All but one of these commenters supported extending the exemption to media activities on the Internet,[51] although they differed with respect to the scope of the exemption. Some commenters, for example, suggested that the Commission extend the media exemption to any independent entity that publishes material, regardless of the medium used, and regardless of whether the entity is a member of the traditional media. Others, however, opined that not everything disseminated on the Internet constitutes media activity within the meaning of the media exemption, and urged the Commission to require entities operating on the Internet to satisfy the same criteria as entities operating in traditional media in order to qualify for the exemption. All of the commenters who addressed the question agreed that applying the media exemption to the Internet would be consistent with the Act, and none of the commenters supported limiting the media exemption to entities that also have traditional, non-Internet media operations.

The commenters' views on regulating bloggers were more diverse. While all commenters who addressed this topic agreed that the media exemption should extend to at least some bloggers, the commenters differed with respect to whether a blanket exemption should be created to cover all bloggers. At one end of the spectrum were those commenters who believed that ''all bloggers, whether big, small, incorporated, or moonlighting, deserve the media exemption.'' They opined that online news provided by blogs is as ''vibrant and vital'' as any offline publishing; that blogs satisfy public information needs not met by traditional media; that it would be impractical for the Commission to ''police'' bloggers; and that it would be ''harmful'' for the Commission to draw lines between individual bloggers.

Several commenters explicitly equated bloggers to the proverbial speaker on a soapbox in the town square, and argued that any blogger who publishes ''campaign-related'' opinions should be shielded from regulation under the media exemption. One commenter suggested that the Commission exempt all bloggers from financial reporting and coordination requirements, while still requiring them to disclose on their websites any payments that they receive from candidates or political committees for taking a particular position in connection with a Federal election.

Several commenters recommended against exempting bloggers as a class from regulation. One commenter observed that ''crucial questions'' must be answered before any blogger or online news source qualifies for the media exemption, such as whether the entity's resources are ''devoted to collecting and disseminating information to the public''; whether the entity ''inform[s] and educate[s] the public, offer[s] criticism, and provide[s] [a] forum[] for discussion and debate''; and whether the entity ''serve[s] as a powerful antidote to governmental power abuses and hold[s] officials accountable to the people.'' Another commenter urged the Commission to consider a number of ''relevant factors'' in determining whether a blogger qualifies for the media exemption, such as whether the blogger receives payments from a campaign; whether the blogger solicits money for candidates; and whether the blogger engages in newsgathering or editorializing.

The Commission has decided to revise 11 CFR 100.73 and 11 CFR 100.132 to clarify that the media exemption applies to media entities that cover or carry news stories, commentary, and editorials on the Internet, just as it applies to media entities that cover or carry news stories, commentary, and editorials in traditional media, such as printed periodicals or television news programs. The Commission is also clarifying that the media exemption protects news stories, commentaries, and editorials no matter in what medium they are published. Therefore, the Commission has added ''website'' to the list of media in the exemption and is also adding ''any Internet or electronic publication'' to address publication of news stories, commentaries, or editorials in electronic form on the Internet.[52] In so doing, the Commission recognizes that the media exemption is available to media entities that cover or carry news stories, commentaries, or editorials solely on the Internet, as well as to media entities that cover or carry news stories, commentaries, and editorials solely in traditional media or in both traditional media and on the Internet.

The application of the media exemption to Internet communications is consistent with past instances in which the Commission has extended the media exemption to forms of media that did not exist or were not widespread when Congress enacted the exemption in 1974. For example, in 1996 the Commission changed its rules to make clear that the media exemption also applies to news stories, commentary, and editorials appearing in cable programming.[53] The Commission noted that, ''in exempting news stories from the definition of 'expenditure,' Congress intended to assure 'the unfettered right of the newspapers, TV networks and other media to cover and comment on political campaigns.' ''[54] The Commission found that, ''although the cable television industry was much less developed when Congress expressed this intent, it is reasonable to conclude that cable operators, programmers and producers, when operating in their capacity as news producers and distributors, would be precisely the type of 'other media' appropriately included within this exemption.''[55]

Similarly, although Congress could not have envisioned the Internet when it created the media exemption more than thirty years ago, much less the revolutionary changes in the area of political communication that the Internet has made possible, the Commission finds it reasonable to conclude that entities providing news on the Internet are precisely the type of ''other media'' appropriately included within the media exemption. As the Supreme Court noted, ''It is not the intent of Congress in [FECA] * * * to limit or burden in any way the First

[51] The lone dissenting commenter supported exempting all Internet publications from regulation, but recommended that the Commission craft a broad exception independent of the media exemption.

[52] The terms ''website'' and ''any Internet or elctronic publication'' are meant to encompass a wide range of existing and developing technology, such as websites, ''podcasts,'' etc. *See e.g.*, Testimony of Markos Moulitas Zuniga, Federal Election Commission Public Hearing on Internet Communications at 27–28 (June 28, 2005) (''It is really truly impossible for any one person to grasp the scope of Internet communication technologies * * * [O]ff the top of my head, I could think of * * * blogging, e-mail, instant messaging, message boards, Yahoo groups, Internet Relay Chat, chat groups, podcasting, Internet radio, Flash animations, Web video, Webcams, peer-to-peer, and social networking software. Then, there is Grokster, * * * And the new Apple operating system has these little applications called widgets * * * and Microsoft promises to do the same. All of these technologies have political applications, obviously, yet they are vastly different.'').

[53] *Final Rules on Candidate Debates and News Stories*, 61 FR 18049 (Apr. 24, 1996).

[54] *Id.* at 18050 (*quoting* H.R. Rep. No. 93–1239, 93rd Cong., 2d Sess. at 4 (1974)).

[55] *Id.*

Amendment freedoms of the press and association. Thus, the exclusion assures the unfettered right of newspapers, TV networks, and other media to cover and comment on political campaigns.'' *Massachusetts Citizens for Life*, 479 U.S. at 250 (citing H.R. Rep. No. 93–129 at p.4 (1974)).

The Commission finds as a matter of law that the media exemption applies to the same extent to entities with only an online presence as to those with an offline component as well. The Washington Post, New York Times, CNN and other newspapers and broadcast news sources maintain an online presence in addition to their traditional means of distribution and dissemination. Salon.com, Slate.com, and Drudgereport.com operate exclusively online. The Commission concludes that the media exemption applies with full force to all these types of entities.

The Commission has consistently viewed online, Internet-based dissemination of news stories, commentaries, and editorials to be indistinguishable from offline television and radio broadcasts, newspapers, magazines and periodical publications for the purposes of applying the media exemption under the Act. For example, in Advisory Opinion 2004–07, the Commission determined that the media exemption applied to MTV's posting on its website of election-related educational materials and the results of a survey of people's preferences for President of the United States. As the Commission noted, ''websites are a common feature of many media organizations. The Commission considers posting news stories, commentaries, and editorials on a press entity's website to be within the entity's legitimate press functions.'' Advisory Opinion 2004–07 (MTV, MTV Networks, Viacom, Inc. and Viacom International, Inc.). The Commission also concluded that the media exemption would apply to MTV's contemporaneous announcement and publication of survey results to the public via e-mail and text messages. *Id. See* also Advisory Opinion 2003–34 (Viacom, Inc., Showtime Networks, Inc., and TMD Productions, Inc.) (promotion by Showtime and Viacom on their websites of a television series about a fictional presidential election that depicted some real Federal candidates and officeholders qualified for the media exemption).

The Commission has considered whether an Internet video programming operator that webcast content was entitled to the media exemption when it provided coverage of the Democratic and Republican National Conventions over the Internet. In Advisory Opinion 2000–13 (Ampex Corporation and iNEXTV Corporation), iNEXTV did not create programming under its own name, but rather operated its own network of specialized news and information sites that offered direct access to governmental and business news events, interviews, and commentary with political figures, and a forum where viewers could state their opinions on specific issues via computer. The Commission concluded that iNEXTV's activities on the Internet were viewable to the general public and were akin to a periodical or news program. Therefore, iNEXTV's proposed gavel-to-gavel coverage of the Democratic and Republican National Conventions fit into the categories of news story and commentary that are exempted from the definition of ''contribution'' and ''expenditure'' under the Act.

The Commission has also made clear that the press exemption applies to a wide variety of online and offline activities. In Advisory Opinion 2005–16, the Commission determined that the media exemption applied to an entity whose Internet sites were publicly available and carried news stories, commentaries, and editorials that supported or opposed Federal candidates—even where the entity was founded and controlled by a former Federal officeholder and a former State party executive director. The Commission has specifically determined that the press exemption applies regardless of whether the news story, commentary, or editorial contains express advocacy. Media entities routinely endorse candidates, and the media exemption protects their right to do so. *See* Advisory Opinion 2005–16 (Fired Up! LLC) at 6 (noting that ''an entity otherwise eligible for the press exception would not lose its eligibility * * * even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office.'').

The Commission has also concluded that press entities do not forfeit the press exemption if they solicit contributions for candidates. *See* Advisory Opinion 1980–109 (James Hansen) (endorsement of a Federal candidate and solicitations to the Federal candidate's campaign by a publication were covered by the news story exemption); Advisory Opinion 1982–44 (Democratic National Committee and Republican National Committee) (concluding that solicitations for a national party committee on cable programming were protected by the press exemption).[56]

Moreover, Commissioners have repeatedly concluded that the media exemption applies without regard to whether programming is biased or balanced. *See* MUR 3624 (Walter H. Shapiro) (concluding that pro-Bush/Quayle broadcast by Rush Limbaugh fell within the media exemption even though the broadcast was arguably biased); Statement of Reasons by Commissioners Wold, McDonald, Mason, Sandstrom, and Thomas in MURs 4929, 5006, 5090 and 5117 (ABC, CBS, NBC, New York Times, Los Angeles Times and Washington Post) (''Unbalanced news reporting and commentary are included in the activities protected by the media exemption.''); Statement of Reasons by Commissioners Wold and Mason in MUR 4946 (CBS News, Fox Network News, CNBC News, MSNBC News, CNN and ABC News) (''politically biased reporting and commentary remain within the ''legitimate press function.''''). *See also* Statement of Reasons by Commissioner Weintraub in MURs 5540, 5545, 5562, and 5570 (CBS, Kerry/Edwards 2004, Inc. and Sinclair Broadcasting) at 2 (''It is not the role of the Federal Election Commission to determine whether a news story issued by a press entity is legitimate, responsible, or verified * * * Whether particular broadcasts were fair, balanced, or accurate is irrelevant given the applicability of the press exemption.'').

Commissioners have also concluded that the presence or absence of alleged coordination between a press entity and a candidate or political party is irrelevant to determining whether the Act's press exemption applies. See, *e.g.*, Statement of Reasons of Commissioners Toner, Mason and Smith in MURs 5540 and 5545 (CBS, Kerry/Edwards 2004) (''Allegations of coordination are of no import when applying the press exemption. What a press entity says in broadcasts, news stories and editorials is absolutely protected under the press exemption, regardless of whether any

[56] There have been recent instances in which media entities have solicited contributions for Federal candidates. See *e.g., Kerry for Prez: Why Him, Why Now and How to Put Him in the White House,* Philadelphia Daily News, June 16, 2004 (containing a lead editorial that stated ''[Y]ou can learn more about Kerry, make a donation or volunteer to help through his web site * * * The commonwealth—indeed the nation—cannot afford another four years of George Bush.''). *See also* Charles Krauthammer, *The Delusional Dean,* Washington Post, December 5, 2003 at A31 (op-ed by a syndicated columnist containing a solicitation for the Republican National Committee, including instructions on where readers should send contributions).

activities occurred that might otherwise constitute coordination under Commission regulations.''); Statement of Reasons of Commissioner Weintraub in MURs 5540, 5545, 5562, and 5570 (CBS, Kerry/Edwards 2004, Sinclair Broadcasting) (''I believe it is important to emphasize that the press exemption shields press entities from investigations into alleged coordination.'')

More recently, the Commission has determined that the media exemption applied to a blogger that covered and carried news stories, commentaries, or editorials. In Advisory Opinion 2005–16, the Commission analyzed the Internet activity of Fired Up! LLC (''Fired Up''), an entity that maintained a network of Internet websites but had no offline media presence. The Commission found that a primary function of Fired Up's websites was to provide news and information to readers through commentary on, quotes from, summaries of, and hyperlinks to news articles appearing on other entities' websites and Fired Up's original reporting. The Commission viewed the posting of reader comments to the website as similar to letters to the editor and noted that FiredUp retained editorial control over the content displayed on its websites.[57] The Commission concluded that the activities of Fired Up's websites were protected by the media exemption.

The Commission has decided not to change its rules regarding the media exemption so as to exempt all blogging activity from the definitions of ''contribution'' and ''expenditure.'' The Commission believes that such an exemption for one technology-specific category would be both too broad and too narrow: it would apply equally to blogging activity ''that [is] not involved in the regular business of imparting news to the public'' [58] and communications that are not news stories, commentary or editorials within the meaning of the media exemption;[59] at the same time, it would overlook other forms of Internet communication, such as publishing websites in other formats or ''podcasting,'' that are equally deserving of consideration under the media exemption.[60] Moreover, given that methods of communicating over the Internet ''are constantly evolving and difficult to categorize precisely,'' the wholesale exemption of any particular method of Internet communication would be ill advised. *Reno,* 521 U.S. at 851.

The Commission concludes that bloggers and others who communicate on the Internet are entitled to the press exemption in the same way as traditional media entities. This is in keeping with the roles that bloggers play in the way that the public receives their news and information. Bloggers were issued press credentials for the National Nominating Conventions in 2004 [61] and, more recently, a blogger was issued permanent press credentials as a member of the White House press corps.[62] Bloggers who are covering and reporting news stories in the same way that traditional media entities have reported on newsworthy events are entitled to the same media exemption protection that applies to media entities such as CNN, NBC, and other traditional media.[63]

The Commission recognizes that the Internet allows for constant, up-to-the-minute reporting and coverage. The Commission has concluded that online providers of news stories, commentaries and editorials are within the press exemption. This conclusion reflects a broad reading of ''periodical publication.'' In Advisory Opinion 1980–109 (James Hansen), the Commission stated that a ''periodical publication'' means ''a publication in bound pamphlet form appearing at regular intervals (usually either weekly, bi-weekly, monthly or quarterly) and containing articles of news, information, or entertainment.'' However, with the advent of the Internet, frequent updating of the content of a website has become commonplace and is not tied to a publishing schedule but to the fast pace of breaking news and the availability of information. The Commission finds that the term ''periodical'' within the meaning of the Act's media exemption ought not be construed rigidly to deny the media exemption to entities who update their content on a frequent, but perhaps not fixed, schedule. Nor can ''periodical publication'' be restricted to works appearing in a bound, pamphlet form. To the extent that the conclusions in Advisory Opinion 1980–109 are not applicable to online media, that advisory opinion is hereby distinguished. The Commission notes that media entities such as WashingtonPost.com and Drudgereport.com, as well as many blogs, are updated throughout the day and function consistent with a dynamic definition of periodical publication.

X. 11 CFR 114.9—Use of Corporate or Labor Organization Facilities

In the *NPRM,* the Commission proposed amending its rule regarding the provision of corporate or labor organization facilities [64] in connection with a Federal election to clarify that an employee's ''occasional, isolated, or incidental use'' of computer equipment and Internet services for Federal campaign activities would not be an expenditure or contribution by the corporation or labor organization. Based on the comments received in response to the proposal, the Commission is not amending 11 CFR 114.9 precisely as proposed, but instead is reaching the same result by adding a new safe harbor specifically allowing the use of corporate and labor organization facilities for certain individual Internet activity in connection with a Federal election.

As noted above, corporations and labor organizations are prohibited from making contributions or expenditures, or facilitating the making of contributions by certain persons, in connection with a Federal election. 2 U.S.C. 441b(a); 11 CFR 114.2(a), (b), and (f). However, corporations and labor organizations do not make contributions or expenditures, or facilitate the making of a contribution, by permitting ''occasional, isolated, or incidental use'' of corporate or labor organization facilities in connection with a Federal election by stockholders and employees of a corporation and officials, members, and employees of a labor organization. *See* 11 CFR 114.2(f)(i) and 11 CFR 114.9(a) and (b). Under section 114.9, certain classes of individuals may use corporate or labor organization facilities for Federal election purposes, but must reimburse the corporation or labor organization to the extent that, if at all,

[57] In Advisory Opinion 1982–44 (Democratic National Committee and Republican National Committee) the Commission made clear that ''commentary'' within the meaning of the press exemption is not limited to commentaries made by the broadcaster. The Commission emphasized that ''commentary'' was intended to allow third persons access to the media to discuss issues. The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the ''commentary'' exemption.''

[58] *McConnell,* 540 U.S. at 208.

[59] *See id.* (''Section 304(f)(3)(B)(I)'s effect * * * excepts news items and commentary only.'').

[60] *See* note 52 clarifying that the terms ''Website'' and ''any Internet or electronic publication'' are meant to address a wide range of technology that may be used by entities entitled to the press exemption.

[61] *See http://www.cnn.com/2004/TECH/internet/07/23/conventionbloggers/* (last visited 3/24/06).

[62] *See http://www.foxnews.com/story/0,2933,149689,00.html* (last visited 3/24/06).

[63] The Commission notes that media entities such as the Washington Post, MSNBC, Fox News, and CNN have bloggers reporting news and commentary on their Web sites.

[64] The Commission notes that under current 11 CFR 114.9 the term ''facilities'' covers a wide variety of office equipment and supplies, including, but not limited to, copiers, fax machines, telephones, printers, scanners, and meeting and office space.

its overhead or operating costs are increased by the individual's ''occasional, isolated, or incidental use'' of the facilities. *See* 11 CFR 114.9(a)(1) and (b)(1). However, if a stockholder or employee of a corporation, or an official, member, or employee of a labor organization, makes more than ''occasional, isolated, or incidental use'' of corporate or labor organization facilities, and does not reimburse the corporation or labor organization within a commercially reasonable time at the normal and usual rental charge for the facilities used (rather than merely for the increase in overhead or operating costs), then the corporation or labor organization will have made a prohibited contribution or expenditure. *See* 11 CFR 114.9(a)(3) and (b)(3).[65]

Although section 114.9 provides only general guidance for determining what constitutes ''occasional, isolated, or incidental use,'' *see* 11 CFR 114.9(a)(1)(i) and (b)(1)(i), the section does contain safe harbor provisions. The safe harbors provide that any use of corporate or labor organization facilities, regardless of whether it occurs during or after working hours, is considered ''occasional, isolated, or incidental use'' if the use does not exceed one hour per week or four hours per month. *See* 11 CFR 114.9(a)(2)(ii) and (b)(2)(ii).

In the *NPRM,* the Commission proposed amending 11 CFR 114.9 to clarify that the term ''facilities'' includes computers, software, and other Internet equipment and services, but the Commission noted that an individual's use of corporate or labor organization computers and Internet services for campaign activity over the Internet at home, or at locations outside of work, would remain subject to the ''occasional, isolated, or incidental use'' restriction.

Comments on the Commission's proposal to amend 11 CFR 114.9 were mixed. Some commenters did not think that the rule needed clarification because the language of the current rule is already flexible enough to cover corporate and labor organization computers and Internet services used for political activity. Others commented that an explicit extension of § 114.9 to cover computers and Internet services would be ''appropriate'' and ''reasonable.'' A number of commenters argued that the safe harbor of one hour a week or four hours a month was not adequate for election-related personal Internet activities. As one commenter stated, applying the time limitations of the safe harbor provision to Internet activities ''is simply not realistic in today's political environment.''

Many commenters argued that in light of the unique nature of Internet activities and the portable nature of the computers and other facilities needed to conduct these activities, the Commission should treat the use of corporate and labor organization facilities for Internet activities differently from the use of such facilities for other activities. One commenter stated:

> [I]t is now common for companies and unions to permit (and at times encourage or even require) employees to keep and use company-or union-owned laptops during non-working hours. Thus, for many employees, a company- or union-owned computer is their primary or only home computer, and the employees are permitted to make essentially unlimited personal use of those computers—including, for those so inclined, for political speech on the Internet.

In light of these developments, the vast majority of commenters who addressed this topic, including commenters from several reform organizations, argued that the Commission should abolish any time restriction on the use of corporate or labor organization computers and other Internet equipment and services.

The Commission acknowledges that personal use of corporate and labor organization laptops, e-mail, Internet service, and other similar facilities is often permitted, and the Commission agrees with these commenters that it would serve little purpose for Commission regulations to prohibit or overly restrict such common uses of facilities. The Commission agrees with a commenter who said ''[c]orporate or labor organization provision of a computer and Internet access is not analogous to the use of a building or facility, either in financial or practical terms. What would be comparable is providing a pen and paper.''

Accordingly, the Commission is amending 11 CFR 114.9 to add new safe harbors specifically addressing the provision of corporate or labor organization facilities for Internet activities. *See* 11 CFR 114.9(a)(2)(ii) and (b)(2)(ii). The new safe harbors provide that a corporation or labor organization may permit its employees, shareholders, officials, and members to use its computer and Internet facilities for volunteer individual Internet activity, as defined in 11 CFR 100.94, without a contribution resulting, provided that the activity does not prevent an employee from completing the normal amount of work for which the employee is paid or is expected to perform, as specified in 11 CFR 100.54, does not increase the overhead or operating costs of the corporation or labor organization, and the activity is in no way coerced.

Thus, the new provisions of 11 CFR 114.9 complement the provisions of 11 CFR 100.94 and 100.155. Under 11 CFR 100.94 and 100.155, individuals are free to use whatever computer and Internet facilities that are otherwise available to them to engage in uncompensated Internet political activities. Under 11 CFR 114.9, corporations and labor organizations may permit access to their computers and Internet facilities so that stockholders, employees, members, and officials may conduct these activities. The final rules make clear that corporations and labor organizations may not condition the availability of their facilities on their being used for political activity or on support for or opposition to any particular candidate or political party. *See* 11 CFR 114.9(a)(1) and 114.9(b)(1). Rather, corporations and labor organizations may permit use of their facilities for political activities to the extent these facilities are available for other non-work-related purposes.

In the new safe harbors, the Commission is not quantifying a permissible level of use of corporate and labor organization facilities for Internet activities. As one commenter explained, ''any organization, union or corporation, is going to have policies that control [the ability of employees or staff to use corporate facilities and union facilities], that restrict [such use] in order for it to do its ordinary business. And [] you can leave it to these organizations acting sensibly that they are not going to have a workplace where anyone can, to an unlimited amount, [at least] on the job, use their facilities for private pursuits, political pursuits, anything unrelated to the organization's mission.'' Additionally, because 11 CFR 100.54 applies to the safe harbors at 11 CFR 114.9(a)(2) and 114.9(b)(2), employees must complete their normal work in order to avail themselves of these safe harbors. Thus, individual Internet activities must be undertaken on the individual's own time.

One witness testified that ''a lot of us work at all hours of the day, and it's very useful to be able to use the computer at the office for some of our personal work as well, whatever that may be * * * [to be limited to 1 hour per week and 4 hours per month is] basically just forcing people to kind of live an abnormal life.'' The reference to 11 CFR 100.54 is meant to address this type of situation and confirm that so

[65] The Commission notes that an individual using corporate or labor organization facilities to engage in personal uncompensated Internet activities will not make a contribution or expenditure because such Internet activities by individuals is exempt under new 11 CFR 100.94 and 100.155, as discussed above.

long as the campaign activity does not, as one witness stated, ''interfere with their normal work,'' *i.e.* the normal amount of work that the employee usually performs, no contribution will result.

The reference to 11 CFR 100.54 applies to the safe harbors at 11 CFR 114.9(a)(2) and (b)(2). Thus, while there is no specific time limit on Internet activities, employees must complete their normal work in order to avail themselves of these safe harbors. A corporation or labor organization may not subsidize the activity by, for example, reducing an employee's workload to provide extra time for campaign activities at corporate or labor organization expense. Subject to those conditions, there is no ceiling on the amount of time that an employee may spend in a given day or week engaging in online political activities.

In addition to the safe harbors for the use of corporate or labor organization facilities to engage in Internet activities, the Commission is also preserving the one hour per week/four hours per month safe harbors, which will continue to apply across-the-board to usage of all types of corporate and labor organization facilities. *See* 11 CFR 114.9(a)(2)(i) and 114.9(b)(2)(i).

In the *NPRM*, the Commission sought comment on whether additional rules would be necessary to ensure that corporations and labor organizations did not ''coerce'' their employees or others into engaging in campaign activities over the Internet. The Commission received unanimous agreement from commenters addressing this issue that the current rules prohibiting corporate and labor organization coercion for contributions or fundraising activities are sufficient to prevent such behavior regarding Internet activities. Since the new safeguards for individual Internet activity encompass more than fundraising activities, however, the Commission is adding new provisions at 11 CFR 114.9(a)(2)(ii)(C) and (b)(2)(ii)(C) to ensure that every individual is free to express his or her own views, without fear of reprisal. The Commission notes that corporations and labor organizations providing their facilities to their employees, stockholders, officials, or members remain subject to the prohibitions contained in 11 CFR 114.2, which includes a prohibition on the use of coercion, including threat of detrimental job action, any other financial reprisal, or force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. *See* 11 CFR 114.2(f)(2)(iv); *see also* 2 U.S.C. 441b(b)(3). The Commission is also adding new paragraph (e) to § 114.9 to indicate that this section does not alter other provisions of 11 CFR part 114 regarding communications to and beyond a corporation's or labor organization's restricted class.

The Commission is also making technical amendments to 11 CFR 114.9 to restructure the format of the existing safe harbor. This change does not alter the substance of the rule or the existing safe harbor, but merely provides a clearer rule structure to accommodate the new safe harbor provision.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

Regulatory Flexibility Act

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the individuals and not-for-profit entities affected by these proposed rules are not ''small entities'' under 5 U.S.C. 601. The definition of ''small entity'' does not include individuals, but classifies a not-for-profit enterprise as a ''small organization'' if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4).

State, district, and local party committees affected by these proposed rules are not-for-profit committees that do not meet the definition of ''small organization.'' State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately.

Separate segregated funds affected by these proposed rules are not-for-profit political committees that do not meet the definition of ''small organization'' because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated.

Most other political committees affected by these rules are not-for-profit committees that do not meet the definition of ''small organization.'' Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

To the extent that any State party committees representing minor political parties or any other political committees might be considered ''small organizations,'' the number affected by this proposed rule is not substantial. Additionally, the proposed rule preserves the Commission's general exclusion of Internet communications from the scope of regulation, and only State, district, and local political parties and candidates could be subject to different funding requirements for certain communications. Accordingly, to the extent that any other entities may fall within the definition of ''small entities,'' any economic impact of complying with these rules will not be significant.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, elections, labor.

■ For the reasons set out in the preamble, the Federal Election Commission amends Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.25 is republished to read as follows:

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.

■ 3. Section 100.26 is revised to read as follows:

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.

■ 4. The introductory text of § 100.73 is revised to read as follows:

§ 100.73 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

* * * * *

■ 5. Section 100.94 is added to subpart C to read as follows:

§ 100.94 Uncompensated Internet activity by individuals that is not a contribution.

(a) When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is a contribution by that individual or group of individuals:

(1) The individual's uncompensated personal services related to such Internet activities;

(2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

(b) *Internet activities.* For the purposes of this section, the term ''Internet activities'' includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's Web site; blogging; creating, maintaining or hosting a Web site; paying a nominal fee for the use of another person's Web site; and any other form of communication distributed over the Internet.

(c) *Equipment and services.* For the purposes of this section, the term ''equipment and services'' includes, but is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

(d) Paragraph (a) of this section also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.

(e) This section does not exempt from the definition of contribution:

(1) Any payment for a public communication (as defined in 11 CFR 100.26) other than a nominal fee;

(2) Any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or

(3) Any payment for an e-mail address list that is transferred to a political committee.

■ 6. The introductory text of § 100.132 is revised to read as follows:

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

* * * * *

■ 7. Section 100.155 is added to read as follows:

§ 100.155 Uncompensated Internet activity by individuals that is not an expenditure.

(a) When an individual or a group of individuals, acting independently or in coordination with any candidate, authorized committee, or political party committee, engages in Internet activities for the purpose of influencing a Federal election, neither of the following is an expenditure by that individual or group of individuals:

(1) The individual's uncompensated personal services related to such Internet activities;

(2) The individual's use of equipment or services for uncompensated Internet activities, regardless of who owns the equipment and services.

(b) *Internet activities.* For the purposes of this section, the term ''Internet activities'' includes, but is not limited to: Sending or forwarding electronic messages; providing a hyperlink or other direct access to another person's website; blogging; creating maintaining or hosting a website; paying a nominal fee for the use of another person's website; and any other form of communication distributed over the Internet.

(c) *Equipment and services.* For the purposes of this section, the term ''equipment and services'' includes, but is not limited to: Computers, software, Internet domain names, Internet Service Providers (ISP), and any other technology that is used to provide access to or use of the Internet.

(d) Paragraph (a) of this section also applies to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.

(e) This section does not exempt from the definition of expenditure:

(1) Any payment for a public communication (as defined in 11 CFR 100.26) other than a nominal fee;

(2) Any payment for the purchase or rental of an e-mail address list made at the direction of a political committee; or

(3) Any payment for an e-mail address list that is transferred to a political committee.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 8. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

■ 9. Paragraph (a) of § 110.11 is revised to read as follows:

§ 110.11 Communications; advertising; disclaimers (2 U.S.C. 441d).

(a) *Scope.* The following communications must include disclaimers, as specified in this section:

(1) All public communications, as defined in 11 CFR 100.26, made by a political committee; electronic mail of more than 500 substantially similar communications when sent by a political committee; and all Internet websites of political committees available to the general public.

(2) All public communications, as defined in 11 CFR 100.26, by any person that expressly advocate the election or defeat of a clearly identified candidate.

(3) All public communications, as defined in 11 CFR 100.26, by any person that solicit any contribution.

(4) All electioneering communcations by any person.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 10. The authority citation for part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

■ 11. In § 114.9, paragraphs (a) and (b) are revised and new paragraph (e) is added to read as follows:

§ 114.9 Use of corporate or labor organization facilities.

(a) *Use of corporate facilities for individual volunteer activity by stockholders and employees.*

(1) Stockholders and employees of the corporation may, subject to the rules and practices of the corporation and 11 CFR 100.54, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. A corporation may not condition the availability of its facilities on their being used for political activity, or on support for or opposition to any particular candidate or political party. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities.

(2) *Safe harbor.* For the purposes of paragraph (a)(1) of this section, the following shall be considered occasional, isolated, or incidental use of corporate facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the corporation; and

(C) The activity is not performed under coercion.

(3) A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

(b) *Use of labor organization facilities for individual volunteer activity by officials, members, and employees.*

(1) The officials, members, and employees of a labor organization may, subject to the rules and practices of the labor organization and 11 CFR 100.54, make occasional, isolated, or incidental use of the facilities of a labor organization for individual volunteer activity in connection with a Federal election and will be required to reimburse the labor organization only to the extent that the overhead or operating costs of the labor organization are increased. A labor organization may not condition the availability of its facilities on their being used for political activity, or on support for or opposition to any particular candidate or political party. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by members other than employees during the working period, such use does not interfere with the labor organization in carrying out its normal activities.

(2) *Safe harbor.* For the purposes of paragraph (b)(1) of this section, the following shall be considered occasional, isolated, or incidental use of labor organization facilities:

(i) Any individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours; or

(ii) Any such activity that constitutes voluntary individual Internet activities (as defined in 11 CFR 100.94), in excess of one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, provided that:

(A) As specified in 11 CFR 100.54, the activity does not prevent the employee from completing the normal amount of work for which the employee is paid or is expected to perform;

(B) The activity does not increase the overhead or operating costs of the labor organization; and

(C) The activity is not performed under coercion.

(3) The officials, members, and employees who make more than occasional, isolated, or incidental use of a labor organization's facilities for individual volunteer activities in connection with a Federal election are required to reimburse the labor organization within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.52(d)(2), for the use of such facilities.

* * * * *

(e) Nothing in this section shall be construed to alter the provisions in 11 CFR Part 114 regarding communications to and beyond a restricted class.

Dated: March 27, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–3190 Filed 4–11–06; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2006–16]

RIN 1550–AB48

Community Reinvestment Act—Community Development

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: In this final rule, OTS is revising the definition of ''community development'' in its Community Reinvestment Act (CRA) regulations to reduce burden and provide greater flexibility to meet community needs. The change is designed to encourage savings associations to increase their community development lending, qualified investments, and community development services in distressed or underserved rural areas and designated disaster areas. This change will make OTS's definition of ''community development'' and the definition of the other federal banking agencies uniform. OTS is also making a technical change to conform the lettering of its definitions

to that of the other federal banking agencies.

Accompanying this final rule and published in the Notices portion of today's **Federal Register**, is a Notice and Request for Comment to revise OTS's CRA guidance. That notice contains proposed questions and answers related to the revised definition of ''community development'' and other topics as well as revisions to existing questions and answers.

DATES: This rule is effective on April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Celeste Anderson, Senior Program Manager, Operation Risk, (202) 906–7990; Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 24, 2004, OTS published a notice of proposed rulemaking (NPR) proposing changes to, and soliciting comment on, its CRA regulations in two areas: (1) The definition of ''community development'' and (2) the assignment of ratings. 69 FR 68257. OTS indicated that it was considering addressing these areas to reduce burden to the extent consistent with the safe and sound supervision of the industry and provide institutions with more flexibility to make their own determinations about how best to serve their communities.

OTS designed the proposal to further the CRA burden reduction it began in its final rule published in the **Federal Register** on August 18, 2004 (69 FR 51155), which revised the definition of ''small savings association'' (2004 Final Rule). It also furthered the burden reductions in the interim final rule published in the **Federal Register** on November 24, 2004 (69 FR 68239) as part of OTS's review of regulations under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) (EGRPRA Interim Final Rule).

On March 2, 2005, OTS adopted changes to the way it assigns CRA ratings. 70 FR 10023. Specifically, OTS provided additional flexibility to each savings association evaluated under the large retail institution test to determine the combination of lending, investment, and service it will use to meet the credit needs of the local communities in which it is chartered, consistent with safe and sound operations. OTS deferred action, however, on revising the definition of ''community development.'' OTS noted that the Federal Deposit Insurance Corporation (FDIC) had also issued a proposal to expand the definition of ''community development.'' 69 FR 51611 (August 20, 2004). OTS indicated that it was deferring action on this portion of its proposal to allow for further consideration of, and coordination on, these and other proposals.

On March 11, 2005, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the FDIC issued a joint notice of proposed rulemaking which, among other things, proposed to expand the definition of ''community development'' to include certain community development activities in underserved rural areas and designated disaster areas. 70 FR 12148 (Three-Agency Proposal). Like OTS's proposal, the Three-Agency Proposal responded to suggestions from both institutions and community organizations that the current definition of ''community development'' was too narrow.

II. OTS's November 2004 Proposal

Under OTS's current CRA regulation at 12 CFR 563e.12(f), ''community development'' means:

(1) Affordable housing (including multifamily rental housing) for low-or moderate-income individuals;

(2) Community services targeted to low-or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize low-or moderate-income geographies. 12 CFR 563e.12(f).

The definition of ''community development'' significantly affects the requirements on large retail savings associations. OTS evaluates them under a three-part test that can include consideration of their ''community development'' loans and services, as well as their qualified investments. To earn CRA credit for these activities, the primary purpose must be ''community development.'' 12 CFR 563e.12 and 563e.21–563e.24.

The definition also affects the requirements for wholesale or limited purpose savings associations, since they are evaluated under a test specifically focused on their community development lending, qualified investments, and community development services. 12 CFR 563e.25. The definition could even affect small savings associations. For a small savings association, OTS considers its performance in making community development loans and qualified investments and providing community development services for purposes of raising a rating, where the savings association so requests. 69 FR at 51159.

The appropriate definition of ''community development'' was an issue discussed in the July 2001 joint advance notice of proposed rulemaking and the February 2004 joint notice of proposed rulemaking. OTS's November 2004 proposal would have revised the definition of ''community development'' with respect to rural areas and solicited comment on also encompassing any areas affected by natural or other disasters or other major community disruptions.

With respect to rural areas, OTS proposed to expand the second and fourth paragraphs of the community development definition. Under the expanded definition, community development would also include community services targeted to individuals in rural areas and activities that revitalize or stabilize rural areas.

OTS did not propose a specific definition of ''rural'' in the NPR. However, it solicited comments on the appropriate definition. 69 FR at 68258–68259.

The proposal also solicited comment on further encouraging savings associations to perform community development activities in any areas affected by natural or other disasters or other major community disruptions. OTS designed this portion of the proposal to build on the long-standing OTS policy of extending CRA credit for relief efforts in the wake of natural and other disasters. This policy was formalized in OTS Thrift Bulletin 71 (August 8, 1997), which states, ''OTS will consider the institution's response to a disaster as an important element of ''performance context'' under [OTS's] Community Reinvestment Act regulations (12 CFR § 563e.21(b)) when evaluating the institution's reconstruction, stabilization and redevelopment activities in its community.'' OTS has reiterated this policy in a long line of agency guidance pertaining to natural disasters, including Hurricanes Katrina, Rita, and Wilma, as well as other disasters such as the September 11, 2001 terrorist attacks.

III. The Comments

As summarized in the March 2005 final rule, OTS received over 4,000

comments on its November 2004 proposal. The vast majority of comments came from consumer and community organizations and representatives (Consumer Comments). These comments opposed the proposal, though a significant number did not address the portion of the proposal on the community development definition. Many expressed concern that the proposal would allow thrifts to serve affluent neighborhoods in rural areas and areas affected by natural disasters, while neglecting low- and moderate-income neighborhoods. They argued that expanding the definition of ''community development'' would burden low- and moderate-income individuals who would have no other option but to turn to predatory and subprime lenders to finance their homes and small businesses. One joint comment letter from 28 members of the House of Representatives (including 13 members of the Committee on Financial Services) argued that neither the CRA nor its legislative history supports treating all rural activities as qualifying for CRA credit. The Representatives emphasized that the proper focus of the CRA should be on the needs of low- and moderate-income areas without a distinction between urban and rural areas.

In contrast, OTS received about two hundred comments from financial institutions and industry trade associations (Financial Institution Comments). Almost all of these supported the proposal, including the portion on the definition of community development. A common argument was that thrifts with assessment areas that include rural areas often have few opportunities to provide qualified CRA loans, investments, and services. As a result, these thrifts often invest in housing bonds in statewide areas that do not benefit the institution's community. Further, the current rule encourages thrifts to undertake activities primarily in urban areas, leaving many rural areas underserved, notwithstanding the fact that low- and moderate-income families are often dispersed throughout rural areas.

There was no consensus among those who commented on how best to delineate the rural areas that would count for community development. Yet, there was strong sentiment that the public needed a definition for clarity.

IV. Today's Final Rule Revising the Community Development Definition

Having carefully considered the comments, OTS is revising the definition of ''community development'' to be the same as the definition that the Board, OCC, and FDIC adopted in their August 2005 final rule. The revision is designed to encourage all savings associations to increase their community development lending, qualified investments, and community development services in certain nonmetropolitan middle-income areas as well as areas affected by designated disasters. The reason OTS is making this revision is to encourage more community development activities in more areas, to cover the full range of activities that should receive favorable consideration, and to reduce burden by affording savings associations greater flexibility in serving their communities. This revision will make OTS's definition of ''community development'' and the definition of the other federal banking agencies uniform.

OTS does not believe that the exclusive focus of CRA must be on low- and moderate-income individuals and geographies. The CRA statute indicates: ''It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the *local communities in which they are chartered* consistent with the safe and sound operation of such institutions.'' 12 U.S.C. 2901(b) (emphasis added). Congress also provided in the CRA statute that the written evaluations are to assess ''the institution's record of meeting the credit needs of *its entire community, including low and moderate-income neighborhoods.*'' 12 U.S.C. 2906(a)(1) (emphasis added).

Given the statutory text, it is appropriate that we evaluate an institution's record of meeting the credit needs of its entire community, particularly, but not limited to, low- and moderate-income neighborhoods and individuals. Accordingly, OTS believes the CRA rule must allow for due consideration of an institution's service to areas and individuals in its community with credit needs, even if those individuals or areas are not low- or moderate-income.

Today's revisions will help ensure that OTS can appropriately consider how well an institution serves the credit needs of certain nonmetropolitan middle-income areas and areas affected by disasters, since these areas can also be part of an institution's community. The revisions do this, in part, by increasing the number and kinds of tracts, particularly rural tracts, in which a savings association's community development activities would receive full CRA credit.

Specifically, OTS is expanding the fourth paragraph of the community development definition. This is the ''revitalize or stabilize'' category of the definition of ''community development.'' Under the expanded definition, community development will include activities that revitalize or stabilize:

- Low-or moderate-income geographies;
- Designated disaster areas; or
- Distressed or underserved, nonmetropolitan middle-income geographies designated by OTS based on rates of poverty, unemployment, and population loss or based on population size, density, and dispersion.

Under the revised definition of ''community development,'' eligible rural tracts will also include nonmetropolitan middle-income tracts designated by OTS as distressed or underserved based on either of two sets of criteria: (1) Criteria indicating a community is in distress (rates of poverty, unemployment, and population loss) or (2) criteria indicating a community may have difficulty meeting essential community needs (population size, density, and dispersion). ''Nonmetropolitan'' means an area outside of an MSA. Eligible rural tracts will continue to include tracts currently defined as low-income or as moderate-income. OTS will base the ''distressed or underserved'' designations on objective criteria. OTS will designate a nonmetropolitan middle-income tract if it is in a county that meets one or more of the following triggers that the Community Development Financial Institution (CDFI) Fund employs as ''distress criteria': (1) An unemployment rate of at least 1.5 times the national average; (2) a poverty rate of 20 percent or more; or (3) a population loss of ten percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census. 12 CFR 1805.201(b)(3). While the CDFI Fund uses other criteria as well, including an income trigger different from the definition of ''low-or moderate-income'' under the CRA regulations, OTS is not incorporating these other criteria. Activities will qualify as revitalizing or stabilizing in these tracts, like in low-or moderate-income tracts, based on the regulation and applicable guidance.

A nonmetropolitan middle-income tract will also be designated if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center

that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. OTS will use, as the basis for the designations, the ''urban influence codes'' maintained by the Economic Research Service of the United States Department of Agriculture. These codes can be found at *www.ers.usda.gov/Briefing/Rurality/urbaninf.* In designated areas, savings association financing for construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing, generally, will be considered to meet essential community needs, so long as the infrastructure or facility serves low- and moderate-income individuals. Other savings association activities in such areas, generally, will not qualify for revitalization or stabilization consideration unless the area meets the distress criteria. In these cases, the decision about whether a particular activity qualifies for such consideration, based on the regulation and applicable guidance, will continue to be made on a case-by-case basis.

The distressed or underserved, nonmetropolitan middle-income geographies OTS designates will be listed on the web site of the Federal Financial Institutions Examination Council (*www.ffiec.gov*). That web site contains the list of eligible rural tracts that are distressed or underserved. OTS will use the same list as the other three federal banking agencies. Year-to-year changes in the tracts designated based on the distress criteria are expected to be minimal; to account for such changes there will be a uniform lag period of twelve months for removal from the list of any tract designated based on those criteria. The lag will help promote investments that take an extended period to arrange. A qualifying loan, investment, or service in the area will count as long as the savings association made or entered into a binding commitment to make the loan or investment while the area remains on the FFIEC list. It will also count if the savings association provided or entered into a binding commitment to provide the service during the same period.

OTS is also revising the definition of ''community development'' to include savings association activities to revitalize or stabilize designated disaster areas as eligible for CRA consideration. Under the revised community development definition, a ''designated disaster area'' is an area that has received an official designation as a disaster area.

This change will serve to codify, through regulation, OTS's long-standing policy of encouraging savings associations to take an active role in assisting in disaster recovery efforts. Particularly in light of several recent severe hurricanes, it is appropriate that OTS recognize the critical role that savings associations should play in helping revitalize affected communities and assisting borrowers affected to recover their financial strength. Examiners will give significant weight to a savings association's revitalization activities in a disaster area that benefit low- or moderate-income individuals.

Accompanying this final rule and published in the ''Notice'' portion of today's **Federal Register,** is a Notice and Request for Comment to revise OTS's CRA guidance as contained in the Interagency Questions and Answers Regarding Community Reinvestment. 65 FR 36620 (July 12, 2001). That notice contains proposed questions and answers related to the revised definition of ''community development'' and other topics as well as revisions to existing questions and answers. The proposed guidance in that notice is consistent with final guidance the other federal banking agencies recently issued. *See* 71 FR 12424 (March 10, 2006).

V. Technical Amendment

OTS is also making a technical change to conform the lettering of the definitions in its CRA rule to that of the other federal banking agencies. Because OTS's rule applies to savings associations rather than banks, OTS's rule does not define the term ''bank'' whereas the CRA rules of the other federal banking agencies do. Compare 12 CFR 563e.12 with 12 CFR 25.12(e), 228.12(e), and 345.12(e). As a result, OTS designated many of the definitions in its rule with the letter that precedes the letter the other federal banking agencies use in their rules. These designations have caused technical complications, including complications in referencing the appropriate paragraph of the rule for purposes of interagency guidance.

Today's final rule reserves one lettered paragraph in § 563e.12 to provide for greater consistency among the federal banking agencies regulations.

Regulatory Analysis

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with the 30-day delay of effective date mandated by the Administrative Procedure Act. 5 U.S.C. 553. OTS believes that this procedure is unnecessary and contrary to the public interest because this final rule imposes no additional requirements. It reduces burden by expanding the types of community development activities for which savings associations may receive CRA consideration. It is particularly appropriate that the provisions regarding CRA credit for revitalizing and stabilizing designated disaster areas are put into effect immediately in light of the unprecedented and tragic devastation caused by several recent Gulf coast hurricanes. In this way, OTS will further encourage savings associations to take an active role in assisting in disaster recovery efforts.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication. 12 U.S.C. 4802. This section does not apply because this final rule imposes no additional requirements. It reduces burden by expanding the types of community development activities for which savings associations may receive CRA consideration.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is currently approved under OMB Control Number 1550–0012. This final rule does not change the collection of information.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the final rule will not have a significant economic impact on a substantial number of small entities. It will not impose any additional paperwork or regulatory reporting requirements. It will simply encourage savings associations to increase their community development lending, qualified investments, and community development services in certain nonmetropolitan middle-income areas and areas affected by disasters. The technical amendment to the paragraph lettering in § 563e.12 has no impact whatsoever.

Executive Order 12866 Determination

OTS has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, exceeding the expenditure threshold. Accordingly, OTS has not prepared a budgetary impact statement nor specifically addressed the regulatory alternatives considered.

Executive Order 13132

OTS has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects in 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. In § 563e.12:

■ a. Redesignate paragraphs (e) through (w) as (f) through (x);

■ b. Add and reserve a new paragraph (e); and

■ c. Revise newly redesignated paragraph (g)(4) to read as follows:

§ 563e.12 Definitions.

* * * * *

(e) [Reserved]

* * * * *

(g) *Community development means:*

* * * * *

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved, nonmetropolitan middle-income geographies designated by OTS based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

* * * * *

Dated: March 31, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 06–3472 Filed 4–11–06; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22423; Directorate Identifier 2005–NM–068–AD; Amendment 39–14556; AD 2006–08–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747–200C and –200F series airplanes. That AD currently requires repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, the existing AD also provides an optional repair/modification, which extends certain repetitive inspection intervals. This new AD reduces the compliance time for all initial inspections and reduces the repetitive interval for a certain inspection. This AD results from new reports of cracks in the upper deck floor beams occurring at lower flight cycles. We are issuing this AD to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and loss of controllability of the airplane.

DATES: This AD becomes effective May 17, 2006.

The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005, as listed in the AD as of May 17, 2006.

On March 15, 2004 (69 FR 5920, February 9, 2004), the Director of the **Federal Register** approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–03–11, amendment 39–13455 (69 FR 5920, February 9, 2004). The existing AD applies to certain Boeing Model 747–200C and –200F series airplanes. That NPRM was published in the **Federal Register** on September 16, 2005 (70 FR 54668). That

NPRM proposed to require repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, the NPRM also proposed an optional repair/modification, which extends certain repetitive inspection intervals.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Revise Initial Inspection Threshold for Certain Airplanes

For airplanes that have accumulated 17,000 or more total flight cycles, the Air Transport Association (ATA) on behalf of one of its members, Northwest Airlines, requests that we revise the grace period for the initial inspection threshold specified in paragraph (f)(2) of the NPRM from 90 days to 500 flight cycles. They state that this change would implement a definitive inspection limit to more accurately measure fatigue-related concerns and would align with operators' regularly scheduled heavy maintenance check.

We partially agree. We agree with ATA and Northwest Airlines that cracking of the affected upper deck floor beams is attributed to fatigue, and that a compliance time based on flight cycles is appropriate for inspecting for fatigue cracking. However, we do not agree with their request to revise the grace period for the inspections required by this AD. In developing an appropriate compliance time for this AD, we considered the safety implications, the airplane manufacturer's recommended compliance time, and normal maintenance schedules for the timely accomplishment of the inspections and repair if necessary. In consideration of these items, as well as the reports of significant cracking at the affected floor beams on airplanes that had accumulated as low as 19,580 total flight cycles, we have determined that the 90-day grace period specified in paragraph (f)(2) of this AD is appropriate. For high-cycle airplanes that have accumulated 17,000 or more total flight cycles as of the effective date of this AD, the 90-day grace period is merely a time that we provide the operators to plan for the necessary actions and to avoid immediate grounding of airplanes. This grace period will ensure an acceptable level of safety and will allow the required inspections to be done during scheduled maintenance intervals for most affected operators. However, under the provisions of paragraph (l) of the AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. Therefore, we find that no change to the final rule is necessary in this regard.

Request To Clearly Distinguish the Old and New Requirements

Boeing requests that we revise paragraphs (g)(1), (h)(1), and (h)(2) of the NPRM to more clearly distinguish between the old and new requirements. They state that those paragraphs specify requirements from AD 2004–03–11, as well as new requirements. They believe that this could cause operators to be confused as to which requirements to comply with. They also state that paragraphs (f) through (k) of the NPRM are under a header titled, ''REQUIREMENTS OF AD 2004–03–11,'' which would imply that those paragraphs have no new information.

We agree. For clarification purposes, we have revised the AD as follows:

- Revised the header ''REQUIREMENTS OF AD 2004–03–11'' to ''RESTATEMENT OF REQUIREMENTS OF AD 2004–03–11, BUT WITH A NEW REDUCED THRESHOLD AND REDUCED REPETITIVE INTERVALS FOR CERTAIN FLOOR BEAMS'';
- Added a new header, ''NEW REQUIREMENTS OF THIS AD'';
- Moved paragraphs (i) and (j) of the NPRM under the new header and reidentified paragraph (j) as paragraph (k);
- Moved the sentences in paragraphs (g), (g)(1), and (h)(1) that require operators to do the required actions, as of the effective date of this AD, in accordance with Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; to new paragraph (j), ''New Revision of Service Bulletin,'' in the AD; and
- Clarified in paragraphs (h)(1) and (h)(2) that the repetitive inspection interval is 3,000 flight cycles, as shown in Figure 1 of the service bulletin.

Request To Delete Reference to Part 1 of the Service Bulletin in Paragraphs (g)(1) and (h)(1)

Boeing also requests that we delete the reference to ''Part 1'' of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005, in the last sentence of paragraph (g)(1) and in the second sentence of paragraph (h)(1). They state that Revision 1 of the service bulletin specifies that repaired areas are inspected only in accordance with Part 6 of the Work Instructions, and that there is no path that could lead back to Part 1. They also state that paragraph (h) of the NPRM is relevant to repair and post-repair inspections, and that Part 1 applies to neither.

We partially agree. We agree with Boeing that Revision 1 of Boeing Alert Service Bulletin 747–53A2439 refers only to Part 6 for post-repair inspections, and that paragraph (h) is relevant to repair and post-repair inspections. Part 6 describes procedures for inspecting areas that have been repaired in accordance with Figure 8, 9, 10, or 12 of the service bulletin. However, we do not agree with them that the reference to Part 1 should be deleted. The procedures specified in Part 1 are applicable to areas that have been repaired by hole over-sizing only (without reinforcement) in accordance with Part 3. We find that no change to the AD is necessary in this regard.

Request To Clarify Repetitive Inspection Interval

Boeing also requests that we clarify the repetitive inspection intervals in paragraphs (g)(2)(i) through (g)(2)(iii) and (g)(2)(iii)(A) of the NPRM. Because paragraph (g)(2) of the NPRM specifies repetitive inspection requirements, they believe that specifying ''repeat'' in paragraphs (g)(2)(i) through (g)(2)(iii) is redundant. They also note that paragraphs (g)(2)(ii) and (g)(2)(iii) state, ''Repeat that inspection * * *.'' They point out that, at the time of any inspection if no crack is found, an operator has a choice of doing the inspection specified in paragraph (g) of the NPRM in accordance with Part 1 or 2 and thus the interval could change. Therefore, they suggest that the compliance time in paragraphs (g)(2)(i) through (g)(2)(iii) apply only to the ''next inspection.''

We partially agree. We agree with Boeing that clarification is necessary. We have revised paragraph (g) to clarify that, during the repetitive inspections, any combination of the applicable inspection methods may be used, provided that the corresponding repetitive interval is used. We do not agree with the changes that they suggested to paragraph (g)(2)(iii)(A). We used that language to correspond with the requirements of paragraph (a)(2) of AD 2004–03–11, which has been revised and re-identified as paragraph (g)(2)(iii)(A) in this AD.

Request To Refer to Upper Chords Rather Than Airplanes

In addition, Boeing requests that paragraph (h) of the NPRM refer to ''upper chords'' instead of ''airplanes.''

They believe that some operators will inspect or have inspected some upper chords in accordance with Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; or Revision 1, dated March 10, 2005; and will inspect or have inspected other chords in accordance with Part 2 of the Work Instructions due to more difficult access. They note that the service bulletin recommends the proposed inspection in accordance with Part 2 at some locations.

We partially agree. We agree with Boeing's rationale for revising paragraph (h). However, we find that using the term ''areas'' rather than ''upper chord,'' as they suggested, in that paragraph will capture all areas that are being inspected in accordance with paragraph (g) of this AD. We have revised paragraph (h) accordingly.

Request Not To Delay Repetitive Inspections if Optional Repair/ Modification Is Done

In addition, Boeing requests that we delete the second sentence in paragraph (h). As an alternative if that sentence is not deleted, they request that the requirement be clarified in the preamble under ''Differences Between the Proposed AD and Service Bulletin.'' They state that Part 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and Revision 1, dated March 10, 2005; provides no instructions path for operators to jump from Part 2 to Part 3, because operators would not choose to do hole repairs if fasteners have not been removed and no cracks have been found.

We do not agree. As explained in the preamble of the NPRM under ''Change to Existing AD,'' this AD retains certain requirements of AD 2004–03–11. The optional repair/modification specified in paragraph (h) of this AD corresponds to requirements in paragraph (b) of AD 2004–03–11. As explained in the preamble under ''Request To Expand Provisions for Optional Repair/ Modification'' of AD 2004–03–11, we added the second sentence of paragraph (h) of this AD (paragraph (b) of AD 2004–03–11) based on a request from Boeing. We have determined that providing the optional repair/ modification specified in paragraph (h) is beneficial to operators. The repair procedures in Part 3 of the Work Instructions include procedures for doing an open hole high frequency eddy current inspection of the affected fastener holes. Therefore, we have determined that doing the optional repair/modification provides an acceptable level of safety and thus warrants an extension of the threshold for the initiation of the repetitive inspections required by paragraph (g)(2). In addition, we do not agree that this optional action differs from the service bulletin. We find that no change to the final rule is necessary in this regard.

Request To Add New Inspections and Reduce Inspection Threshold

Boeing also requests that, for floor beam chords at stations 440 and 520, we revise paragraph (h)(1) of the NPRM to lower the inspection threshold and to add new inspection requirements for a certain post-repair/modification. They state that analysis has shown that additional inspections and a reduced inspection threshold are needed of the holes in the flange adjacent to the trim-out.

We acknowledge Boeing's concern, but do not agree with their request. Since the suggested changes would expand the scope of the actions in this AD, additional rulemaking (i.e., supplemental NPRM) would be necessary to reopen the comment period. We find that to delay issuance of the AD would be inappropriate in light of the identified unsafe condition, and that the required inspections must be conducted to ensure continued safety. We may consider additional rulemaking, however, once the new inspection method is developed, approved, and available. We find that no change is necessary to this AD in this regard.

Request To Allow Not Counting Flight Cycles When Cabin Differential Is at 2.0 Pounds Per Square Inch (psi) or Less

Further, Boeing requests that we revise paragraph (i) of the NPRM to allow not counting flight cycles in which cabin differential pressure is at 2.0 psi or less, when determining the number of flight cycles for compliance times. They state that this change would be consistent with the previous requirements for these inspections and is a continuance of the allowance for the upper deck floor beams given in paragraph (c) of AD 2004–03–11.

We do not agree. There have been several instances on other in-service reports where analytical rationales, similar to that of the commenter, have indicated that pressurization cycles less than 2.0 psi should not be counted. However, when fleet records have been examined, the airplanes engaging in such operations are having the same or greater occurrences of crack findings compared to those on which all pressurized flights are counted. As a result, we carefully consider such matters based on all available factors, including individual operator's specific maintenance programs, technical rationale, and fleet experience. We have found that such provisions are applicable only to a small number of operators that may not pressurize their airplanes above 2.0 psi in all their flights. We have determined that the best way to handle such circumstances is for operators to request an alternative method of compliance (AMOC) in accordance with paragraph (l) of this AD, rather than increasing the complexity of the AD by addressing each operator's unique situation.

Request To Give Credit to Previously Approved AMOC

Boeing also requests that we revise paragraph (k)(3) of the NPRM (re-identified as paragraph (l)(3) in this AD) to add provisions for previously approved AMOCs that require post-modification/repair inspections. They contend that previously approved AMOCs meet the intent of paragraph (h) of the NPRM. They state that this change will reduce the need for new AMOCs.

We agree and have added a reference to paragraph (h) in paragraph (l)(3) of this AD.

Request To Refer to Supplemental Structural Inspection Document (SSID) AD

Lastly, Boeing requests that additional language be added to the NPRM to address its impact on AD 2004–07–22, amendment 39–13566 (69 FR 18250, April 7, 2004), which mandated the SSID program for Boeing Model 747 airplanes. (One correction of that AD was published in the **Federal Register** on April 13, 2004 (69 FR 19618); another correction was published on May 3, 2004 (69 FR 24063).) They state that, if the AD is adopted as proposed, operators will be required to do the SSID inspections and the inspections specified in Boeing Alert Service Bulletin 747–53A2439, Revision 1, without an allowance of doing the inspections specified in the service bulletin as a substitute for the SSID inspections. They also state that the inspections in the service bulletin provide damage detection as good as or better than SSID items F–19C for stations 340 through 420 inclusive, and 500; and F–20A for stations 440 and 520. In addition, they prefer that operators do the inspections in accordance with the service bulletin, because of the level of detailed instructions.

We do not agree. We acknowledge that doing the inspections specified in Boeing Alert Service Bulletin 747–

53A2439, Revision 1, may be acceptable for compliance with certain requirements of AD 2004–07–22; however, no request for an AMOC to that AD has been submitted to us for approval in this regard. In addition, it is more appropriate to address AMOCs under the provisions of the applicable AD rather than a related AD. Under the provisions of paragraph (g) of AD 2004–07–22, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such action would provide an acceptable level of safety. We find that no change to this AD is necessary in this regard.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 78 airplanes of the affected design in the worldwide fleet. This AD will affect about 21 airplanes of U.S. registry.

The inspections that are required by AD 2004–03–11 and retained in this AD take about 29 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required inspections for U.S. airplanes is $39,585, or $1,885 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13455 (69 FR 5920, February 9, 2004) and by adding the following new airworthiness directive (AD):

2006–08–02 Boeing: Amendment 39–14556. Docket No. FAA–2005–22423; Directorate Identifier 2005–NM–068–AD.

Effective Date

(a) This AD becomes effective May 17, 2006.

Affected ADs

(b) This AD supersedes AD 2004–03–11.

Applicability

(c) This AD applies to Boeing Model 747–200C and –200F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

Unsafe Condition

(d) This AD results from new reports of cracks in the upper deck floor beams occurring at lower flight cycles. We are issuing this AD to find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and loss of controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2004–03–11, but With a New Reduced Threshold and Reduced Repetitive Intervals for Certain Floor Beams:

Initial Compliance Time at a New Reduced Threshold

(f) At the earliest of the times specified in paragraphs (f)(1) through (f)(3) of this AD, do the inspection required by paragraph (g) of this AD.

(1) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after March 15, 2004 (the effective date of AD 2004–03–11), whichever occurs later.

(2) For airplanes with 17,000 or more total flight cycles as of the effective date of this AD: Before the accumulation of 18,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later.

(3) For airplanes with fewer than 17,000 total flight cycles as of the effective date of this AD: Before the accumulation of 15,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

Inspections at Reduced Intervals for Certain Floor Beams and Repair

(g) Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the service bulletin, except as provided by paragraph (j) of this AD. Any combination of the applicable inspection methods specified in Parts 1 and 2 may be used, provided that the corresponding repetitive inspection interval is used.

(1) If any crack is found, before further flight, repair per Part 3 (Upper Chord Repair) of the Work Instructions of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the

certification basis of the airplane approved by an a Boeing Company Designated Engineering Representative (DER) or Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the Work Instructions of the service bulletin at the applicable time per Part 3 of the Work Instructions of the service bulletin, and repeat the applicable inspection at the applicable interval per Figure 1 of the service bulletin.

(2) If no crack is found, repeat the applicable inspection per paragraph (g) of this AD at the applicable time specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this AD. As an option to the repetitive inspections, accomplishment of paragraph (h)(1) or (h)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

(i) If the immediately preceding inspection was conducted using an open-hole HFEC inspection method: Conduct the next inspection of that area within 3,000 flight cycles of the last inspection.

(ii) If the immediately preceding inspection was conducted using a surface HFEC inspection method at stations 340 through 420 inclusive and station 500: Conduct the next inspection of that area within 750 flight cycles of the last inspection.

(iii) If the immediately preceding inspection was conducted using a surface HFEC inspection method at stations 440 and 520: Conduct the next inspection of that area at the earlier of the times specified in paragraphs (g)(2)(iii)(A) and (g)(2)(iii)(B) of this AD, and thereafter at intervals not to exceed 250 flight cycles.

(A) Within 750 flight cycles since the last surface HFEC inspection required by paragraph (g) of this AD.

(B) Within 250 flight cycles after the effective date of this AD.

Optional Repair/Modification

(h) For areas on which the inspection required by paragraph (g) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, or Revision 1, dated March 10, 2005; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (h)(1) or (h)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (g)(2) of this AD. For areas on which the inspection required by paragraph (g) of this AD is done per Part 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, or Revision 1, dated March 10, 2005; and on which no cracking is found: Accomplishment of the actions specified in paragraph (h)(1) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (g)(2) of this AD.

(1) Do the applicable repair per Part 3 of the Work Instructions of the service bulletin, except as provided by paragraph (j) of this AD. At the applicable time specified in Table 1 of Part 3 of the Work Instructions of the service bulletin, do the applicable inspection of the repaired area per Part 1 of the Work Instructions of the service bulletin. Repeat the inspection thereafter within the applicable interval of 3,000 flight cycles per Figure 1 of the service bulletin.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of the service bulletin, except as provided by paragraph (j) of this AD. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the Work Instructions of the service bulletin. Repeat the inspection thereafter within the applicable interval of 3,000 flight cycles per Figure 1 of the service bulletin.

New Requirements of This AD

Determining the Number of Flight Cycles for Compliance Time

(i) For the purposes of calculating the compliance threshold and repetitive intervals for actions required by paragraphs (f), (g), or (h) of this AD: As of the effective date of this AD, all flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane.

New Revision of Service Bulletin

(j) As of the effective date of this AD, use only the service bulletin specified in Table 1 of this AD.

TABLE 1.—SERVICE INFORMATION

Do—	In accordance with—
(1) The actions required by paragraph (g) of this AD.	Parts 1 and 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10,2005; as applicable.
(2) The applicable inspection of the repaired area required by paragraph (g)(1) of this AD.	Parts 1 and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable; at the applicable time per Table 1 of Part 3 of the Work Instructions of the service bulletin.
(3) The actions required by paragraph (h)(1) of this AD.	Parts 1, 3, and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.
(4) The actions required by paragraph (h)(2) of this AD.	Figure 5 and Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.

No Reporting Requirement

(k) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(3) AMOCs approved previously according to AD 2004–03–11 are approved as AMOCs for the corresponding provisions of paragraphs (f) through (h) of this AD.

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

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; or Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the **Federal Register** approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On March 15, 2004 (69 FR 5920, February 9, 2004), the Director of the **Federal Register** approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW.,

Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA).

For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3432 Filed 4–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9191]

RIN 1545–BD16

Time and Manner of Making Section 163(d)(4)(B) Election To Treat Qualified Dividend Income as Investment Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document contains a correction to a temporary regulation (TD 9191) that was published in the **Federal Register** on Friday, March 18, 2005 (70 FR 13100), relating to the time and manner of making section 163(d)94)(B) election to treat qualified dividend income as investment income.

DATES: This correction is effective March 18, 2005.

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 9191) that is the subject of this correction is under section 163 of the Internal Revenue Code.

Need for Correction

As published, TD 9191, contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

§ 1.163(d)–1T [Removed]

Section 1.163(d)–1T is removed.

Guy R. Traynor,

Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).

[FR Doc. 06–3473 Filed 4–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–021]

Drawbridge Operation Regulations; Hackensack River, Secaucus, NJ

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 NJTRO HX Bridge across the Hackensack River at mile 7.7, at Secaucus, New Jersey. Under this temporary deviation, the NJTRO HX Bridge need not open for the passage of vessel traffic from April 18, 2006 through April 27, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from April 18, 2006 through April 27, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The NJTRO HX Bridge, across the Hackensack River at mile 7.7, at Secaucus, New Jersey, has a vertical clearance in the closed position of 4 feet at mean high water and 9 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(e).

The owner of the bridge, New Jersey Transit (NJTRANSIT), requested a temporary deviation to facilitate bridge repairs, replacement of the gears, brakes, struts, and the installation of walkway railings at the bridge. The bridge will not be able to open during the above repairs because the operating machinery will be disassembled to replace the gears.

Under this temporary deviation, the NJTRO HX Bridge across the Hackensack River at mile 7.7, need not open for the passage of vessel traffic from April 18, 2006 through April 27, 2006.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 06–3510 Filed 4–11–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–026]

Drawbridge Operation Regulations; Raritan River, Arthur Kill and Their Tributaries, NJ

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 AK Railroad Bridge, at mile 11.6, across Arthur Kill, between Elizabeth, New Jersey, and Staten Island, New York. This deviation allows the bridge to remain in the closed position from 10 a.m. to 2 p.m. on April 15, 2006, from 10:30 a.m. to 2:30 p.m. on April 22, 2006, and from 10:42 a.m. to 2:44 p.m. on April 29, 2006. This deviation is necessary in order to facilitate railroad track maintenance.

DATES: This deviation is effective from April 15, 2006 through April 29, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb) First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The Commander (dpb), First Coast Guard District, maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

SUPPLEMENTARY INFORMATION: The AK Railroad Bridge has a vertical clearance in the closed position of 31 feet at mean high water and 35 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.747.

The owner of the bridge, New York Economic Development Corporation, requested a temporary deviation from the drawbridge operating regulations to facilitate the replacement of railroad ties on the bridge lift span. The bridge will not be able to open for vessel traffic during the performance of this vital maintenance. The Coast Guard is approving this deviation to assure the continued safe operation of the bridge and to prevent an unscheduled closure due to component failure that might occur in the absence of these repairs.

Under this temporary deviation the AK Railroad Bridge may remain in the closed position as follows:

On April 15, 2006, 10 a.m. to 2 p.m.

On April 22, 2006, 10:30 a.m. to 2:30 p.m.

On April 29, 2006, 10:42 a.m. to 2:44 p.m.

The bridge shall open on signal during any of the bridge closure periods upon a 30-minute notice from the U.S. Coast Guard.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 31, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 06–3513 Filed 4–11–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0227; FRL–8054–8]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions concern procedures for the calculation of sulfur emissions from copper smelters. We are approving a local rule that helps regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 12, 2006 without further notice, unless EPA receives adverse comments by May 12, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0227, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov.*
- Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *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: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that the amended rule became effective and was submitted by the ADEQ.

TABLE 1.—SUBMITTED RULE

Agency	Rule No.	Rule title	Amended effective	Submitted
ADEQ	R18–2–Appendix 8	Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions.	07/18/05	03/01/06

ADEQ submitted this amended rule (final but not yet codified) originally on January 18, 2006 together with public hearing and State rulemaking documentation. On February 22, 2006, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On March 1, 2006, ADEQ submitted the codified version of this final rule as a supplement to the original January 18, 2006 submittal.

B. Are There Other Versions of the Rule?

We approved a version of ADEQ Rule R18–2–Appendix 8 into the SIP on November 1, 2004 (69 FR 63321).

C. What Is the Purpose of the Submitted Rule Amendments?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, sulfur oxides, and other air pollutants which harm human health and the environment. This rule was developed as part of the ADEQ's program to control sulfur oxides.

Rule R18–2–appendix 8 was granted a limited approval and limited disapproval on November 1, 2004. The deficiencies in Rule R18–2–appendix 8 that conflict with section 110 and part D of the CAA and prevented full approval of the rule are summarized below in the brackets, which are followed by the amendments made to correct the deficiencies:

- [Sections A.8.1.2 and A.8.2 contain excessive Director's discretion by allowing the Director to approve an equivalent method to calculate the sulfur content without providing the criteria that will be used to determine approvability.] The amended rule corrects the deficiency by requiring the written approval by EPA in addition to the Director of alternative methods of obtaining sulfur content and removed sulfur.
- [Sections A.8.1.2.1.1, A.8.1.2.1.2, and A.8.1.2.1.3 should clarify how a representative sample should be taken from belt feeders, railcars, and trucks so that the sampling process is not biased. ADEQ may wish to investigate possible ASTM methods or other industry sampling methods.] This recommendation by EPA for further clarification was optional, and the methods as stated along with the sample preparation methods in section A8.1.2.2 will be accepted.
- [Sections A.8.1.2.3.1 and A.8.1.2.3.2 should provide specific test methods for the ''barium sulfate'' and ''potassium iodine'' procedures.] The amended rule corrects the deficiency by requiring specific test methods for barium sulfate and potassium iodide in section A8.4.3.
- [Section A.8.2.5.5 should provide a specific test method for ''chemical gravimetric means.'' Apparently it is intended to be the ''barium sulfate'' method from section A.8.1.2.3.1. Also the accuracy is stated as +50%, but it should be a ± number. The accuracy of a gravimetric procedure is normally about ±1%, not ±50%.] The amended rule corrects the deficiency by requiring the barium sulfate gravimetric method in section A8.4.3 and states the required accuracy to be +/−50% instead of +50%. The actual accuracy is normally much better than +/−50%, but the lesser accuracy required is not cause to disapprove the rule.
- [The reference in A8.3.1 should be changed from R18–2–715(C)(4) to R18–2–715.01(K)–(O). Also, the reference in A.8.3.2 should be changed from R18–2–715(c)(7)(v) to R18–2–715.01(Q).] The amended rule changes these references appropriately.

EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(1) and 193). There are no specific reasonably available control measures (RACM) or best available control measures (BACM) for administrative rules.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region IX (August 21, 2001). (The Little Bluebook)

B. Do the Rule Amendments Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, BACM, and RACM. We also believe that the submitted rule adequately addresses the deficiencies identified in our November 1, 2004 limited disapproval. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted ADEQ Rule R18–2–Appendix 8 because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by May 12, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 12, 2006. This will incorporate this rule into he federally enforceable SIP and permanently terminate all sanctions and FIP implications of our 2004 limited disapproval.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

(65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 22, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(130) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(130) An amended regulation was submitted on March 1, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) Rule R18–2–Appendix 8, adopted on December 22, 1976 and amended effective on July 18, 2005.

[FR Doc. 06–3405 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0227, FRL–8054–9]

Interim Final Determination To Stay and/or Defer Sanctions, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a direct final approval of a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern ADEQ Rule R18–2–Appendix 8.

DATES: This interim final determination is effective on April 12, 2006. However, comments will be accepted until May 12, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0227, by one of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov*. Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov*.
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

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

I. Background

On November 1, 2004 (69 FR 63321), we published a limited approval and limited disapproval of ADEQ Rule R18–2–Appendix 8 as amended effective on November 15, 1993 and submitted by the State on July 15, 1998. We based our limited disapproval action on deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after December 1, 2004 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

Effective on July 18, 2005, ADEQ amended Rule R18–2-Appendix 8 with the intention to correct the deficiencies identified in our limited disapproval action. On January 18, 2006, the State submitted these revisions to EPA. On March 1, 2006, the State resubmitted the amended Rule R18–2–Appendix 8 in codified form to supplement the January 18, 2006 submittal. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our November 1, 2004 disapproval action. Based on today's proposed approval, we are taking this direct final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our November 1, 2004 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised ADEQ Rule R18–2–Appendix 8, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with ADEQ Rule R18–2–Appendix 8 based on our concurrent proposal to approve the State's SIP revision as correcting a deficiency that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action 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.

The Administrator certifies that this action 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.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action 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 rule 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) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 12, 2006. 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: March 22, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 06–3406 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0056; FRL–7770–4]

Pendimethalin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pendimethalin, [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine], and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol in or on carrots; spearmint, tops; peppermint, tops; spearmint, oil; peppermint, oil; fruit, citrus, group 10, citrus, oil; almond, hulls; nut, tree group 14. Interregional Research Project Number 4 requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 12, 2006. Objections and requests for hearings must be received on or before June 12, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0056. All documents in the docket are listed on the www.regulations.gov web site, (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enchanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5805; e-mail address: *tompkins.jim@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.Follow the on-line instructions. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at*http://www.epa.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of September 1, 1999 (64 FR 47797) (FRL–6096–8), and March 19, 2001, (66 FR 15464) (FRL–6766–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 6E4603, PP 6E4787, PP 7E4878, and 0E6083 by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–390. The petitions requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the herbicide pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol, in or on carrots at 0.5 parts per million (ppm); (6E4603); peppermint and spearmint tops at 0.2 ppm; (7E4878); peppermint and spearmint oil at 1.0 ppm (7E4878); fruit, citrus, group 10 at 0.1 ppm (6E4787); citrus, oil at 0.5 ppm, (6E4787); almond, hulls at 0.4 ppm; (0E6083); and nut, tree group 14 at 0.1 ppm (0E6083). That notice included a summary of the petition prepared by IR-4, the registrant. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . ''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for pendimethalin and its metabolite in or on carrots at 0.5 ppm; peppermint and spearmint tops at 0.2 ppm; peppermint and speamint oil at 1.0 ppm; fruit, citrus, group 10 at 0.1 ppm; citrus, oil at 0.5 ppm; almond, hulls at 0.4 ppm; and nuts, tree group 14 at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by pendimethalin and its metabolite as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *www.fdms.gov.*

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or UFs may be used: ''Traditional UFs;'' the ''FQPA data safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional UFs,'' EPA is referring to those additional UFs used prior to FQPA passage to account for database deficiencies. These traditional UFs have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''FQPA data safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional UF or a FQPA data safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional UFs deemed appropriate (RfD = NOAEL/UF). Where a FQPA data safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the Level of Concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

The data base for pendimethalin does not indicate a potential for increased toxicological sensitivity from either prenatal or postnatal exposures. In the submitted rat and rabbit developmental studies, no adverse effects were observed at doses tested. These studies were considered adequate, and no additional developmental toxicity studies are required. There was no evidence of qualitative or quantitative susceptibility in a 2-generation reproduction study conducted in the rat. There was no neurotoxicity observed in the submitted studies, and no evidence of qualitative or quantitative susceptibility in the developmental and reproduction studies; therefore, a developmental neurototoxicity study has not been required, and the 10X Special FQPA factor has been reduced to 1X.

Hormonal changes (alterations in thyroid weights and histopathological lesions) were observed in several studies following oral administration of pendimethalin and it is likely that these changes may cause disruption in the endocrine system. There is concern that perturbation of thyroid homeostasis may lead to hypothyroidism, and possibly result in adverse effects on the developing nervous system. Consequently, the Agency has required that a developmental thyroid assay be conducted to evaluate the impact of pendimethalin on thyroid hormones, structure, and/or thyroid hormone homeostasis during development. Pending receipt of the study, the Agency has retained a 10X data base UF to provide adequate protection of infants and children from potential thyroid effects.

The standard 10X intraspecies uncertainty factor and a 3X interspecies factor are applicable to pendimethalin risk assessments. The interspecies uncertainty factor of 10X was reduced to 3X due to the greater sensitivity of the adult rat to thyroid effects compared to the adult humans. Because of toxicodynamic differences in adult thyroid function that result in greater sensitivity of the adult rat to hypothyroidism compared to adult humans, the 3X toxicodynamic part of the 10X can be removed leaving the 3X portion for toxicokinetic interspecies differences based on the Agency's Interim Guidance on Thyroid Disrupting Pesticides, dated November 1, 2005. Thus, the usual 100X UF for intraspecies and interspecies differences is reduced to 30X. A data base UF of 10X was retained for residential exposures pending receipt of the developmental thyroid study. The level of concern (target MOE) for residential exposure is 300X.

A summary of the toxicological endpoints for pendimethalin used for human risk assessment is shown in the following Table 1:

TABLE 1.—TOXICOLOGICAL DOSES AND ENDPOINTS FOR PENDIMETHALIN HUMAN HEALTH RISK ASSESSMENTS

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA data SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Dietary exposure			
Acute dietary (females 13–49) General US pop.)	NA	NA	No appropriate acute endpoint identified for these groups. There were no toxic effects attributable to a single dose
Chronic dietary (all populations)	NOAEL = 10 mg/kg/day UF = 10X (intraspecies) UF = 3X (interspecies) UF = 10X (data base) Total UF = 300X Chronic RfD= 0.03 mg/kg/day	FQPA SF = 1X cPAD = Chronic RfD FQPA SF cPAD = 0.03 mg/kg/day	92–day thyroid function study in rats; 56–day thyroid study in rats; 14–day intra thyroid metabolism study in rats LOAEL= 31 mg/kg/day based on hormonal and histopathological changes in the thyroid
Oral ingestion			
Incidental oral short-term (1–30 days) Intermediate-term (1–6 months)	NOAEL = 10 mg/kg/day UF = 10X (intraspecies) UF = 3X (interspecies) UF = 10X (data base) Total UF = 300X	FQPA SF = 1X Residential LOC = 300	92–day thyroid function study in rats; 56–ay thyroid study in rats; 14–ay intra thyroid metabolism study in rats LOAEL= 31 mg/kg/day based on hormonal and histopathological changes in the thyroid
Dermal exposure			
Dermal short-term (1–30 days) Intermediate-term (1–6 months) Long-term (>6 months)	NOAEL = 10 mg/kg/day UF = 10X (intraspecies) UF = 3X (interspecies) UF = 10X (data base) Total UF = 300X Dermal absorption = 3%	FQPA SF = 10X Residential LOC = 300 Occupational LOC = 30	92–day thyroid function study in rats; 56–day thyroid study in rats; 14–day intra thyroid metabolism study in rats LOAEL= 31 mg/kg/day based on hormonal and histopathological changes in the thyroid
Inhalation exposure			
Inhalation short-term (1–30 days) Intermediate-term (1–6 months) Long-term (>6 months)	NOAEL = 10 mg/kg/day UF = 10X (intraspecies) UF = 3X (interspecies) UF = 10X (data base) Total UF = 300X Inhalation absorption = 100%	FQPA SF = 1X Residential LOC = 300	92–day thyroid function study in rats; 56–day thyroid study in rats; 14–day intra thyroid metabolism study in rats LOAEL= 31 mg/kg/day based on hormonal and histopathological changes in the thyroid
Cancer			
Cancer (oral, dermal, inhalation)	Pendimethalin is considered to be a possible human carcinogen. The linear default risk methodology was not appropriate and non-linear, RfD approach was used	2–year chronic/carcinogenicity study in rats	

UF = uncertainty factor, FQPA SF = FQPA data safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable* Refer to discussion above

Pendimethalin is classified as a ''Group C'', possible human carcinogen, chemical based on a statistically significant increased trend and pair-wise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. A non-quantitative approach (i.e., non-linear, RfD approach) was used by the Agency since mode of action studies are available that demonstrate that the thyroid tumors are due to a thyroid-pituitary imbalance, and also since pendimethalin was shown to be non-mutagenic in mammalian somatic cells and germ cells. The cPAD from the 92–day thyroid function study in rats; 56–day thyroid study in rats; 14–day intra thyroid metabolism study in rats used for the chronic dietary assessment provide adequate MOE's for cancer.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.361), for the combined residues of pendimethalin in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from pendimethalin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for pendimethalin therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United State Department of Agriculture Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity (CSFII, 1994–1996, and 1998). Tolerance-level residues were assumed for all food commodities with current and proposed pendimethalin tolerances, and it was assumed that all of the crops included in the analysis were treated (i.e., 100% crop treated). These assumptions result in highly conservative estimates of dietary exposure and risk.

iii. *Cancer*. Pendimethalin is classified ''Group C'', possible human carcinogen, chemical based on a statistically significant increased trend and pair-wise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. The Agency used a non-quantitative approach (i.e., non-linear, RfD approach) since mode of action studies are available that demonstrate that the thyroid tumors are due to a thyroid-pituitary imbalance, and also since pendimethalin was shown to be non-mutagenic in mammalian somatic cells and germ.

2. *Dietary exposure from drinking water*. Pendimethalin dissipates in the environment by binding to soil, metabolizing by microbes, and by volatilizing into air. Persistence decreased with increased temperature, increased moisture and decreased soil organic carbon. Pendimethalin residues in laboratory and field studies are tightly bound to soil and sediment particles, which is consistent with the laboratory mobility studies.

The Agency estimated concentrations in drinking water using Tier II screening level surface water modeling (PRZM-EXAMS) for surface water and Tier I modeling screening concenteration for ground water (SCI-GROW^2). These Estimated Drinking Water Concentrations (EDWCs) may be used for acute, chronic (non-cancer), and chronic (cancer) exposure assessments. The PRZM-EXAMS concentrations to be used for drinking water ranged from 2.2 to 38.8 micrograms/liter (μ/L) for peak values, 0.1 to 4.8 μ/L for chronic (non-cancer), and 0.1 to 3.8 μ/L for chronic (cancer) exposures.

The I in 10–year annual peak (acute), 1 in 10–year annual mean (non-cancer chronic), and 36–year annual mean concentrations (cancer chronic) were derived from modeling pendimethalin on the Pennsylvania apple scenario.

Based on SCI-GROW modeling, the acute and chronic pendimethalin concentrations are not expected to exceed 0.024 μ/L parts per billion (ppb) from one application of 4 lbs active ingredient/A (ai/A). The estimated concentrations of up to 0.024 μ/L were actually lower than the detected concentrations in ground water, ranging from 0.2 to 0.9 ppb. However, the Agency does not consider pendimethalin to be a likely ground water contaminant in most environments based on its environmental fate property of tight sorption to soil.

Parent pendimethalin is the only significant non-volatile residue, therefore, the EDWCs were calculated for parent pendimethalin only.

3. *From non-dietary exposure*.The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pendimethalin is currently registered for use on the following residential non-dietary sites: Landscape, grounds plantings, ornamental crops, turf grass, and lawns. Residential handler exposure estimates of applying pendimethalin to residential turf were previously assessed in the 1996 re-registration eligibility decision document for pendimethalin. Since that time registered labels for use of pendimethalin on turf have been revised. Turf (ornamental, landscape, golf course, non-cropland) in commercial areas can be treated at a rate of 3 pounds of ai/A Treatment of turf at residential sites is limited to a rate of 2 pounds of ai/A.

There are two types of potential post-application risks: Dermal and incidental oral exposure. Chemical-specific WDG turf transferable residue (TTR) data have been submitted to the Agency and reviewed in support of assessing dermal exposure to adults and children.

Ingestion of pendimethalin granules is also a potential source of exposure because children can eat them if they are found in treated lawns or gardens. This scenario is considered to be episodic, and therefore, acute oral endpoints would be used to estimate the risk. A risk assessment for this exposure scenario for children was not conducted since an acute oral toxicological endpoint of concern was not identified for pendimethalin.

In evaluating the residential uses of pendimethalin, the Agency has combined all non-dietary sources of postapplication exposure to obtain an estimate of potential aggregate exposure. These scenarios are short-term in duration and consist of dermal (adults and children) and oral (hand-to-mouth, object-to-mouth and soil ingestion - children only) exposure. The Agency combines risk values resulting from separate exposure scenarios when it is likely they can occur simultaneously based on the use-pattern and the behavior associated with the exposed population.

A Tier I aggregate exposure estimate for adults (consisting of dermal exposure only) was conducted using the TTR from California test site and 3% dermal absorption factor. Since the California test site resulted in the lowest dermal margin of exposure (MOE), it was determined to represent the worst case scenario. In assessing the aggregate residential exposure for children, The Agency also used the California TTR data, hand press data and 3% dermal absorption factor for determining dermal exposure to children.

The LOC for non-occupational dermal exposure is 300. Using the TTR data for the Pendulum WDG formulation, children's short-term dermal MOEs calculated at a rate of 3.0 lb ai/A ranged from 440 to 910. For adults, short-term dermal MOEs ranged from 740 to 1,500. All dermal short-term MOEs were greater than 300 and therefore, did not exceed the Agency;s LOC.

All oral (hand-to-mouth, object-to-mouth, and soil ingestion) exposures were greater than 300 and therefore, did not exceed the Agency's LOC. The MOEs calculated for hand-to-mouth exposures using the rate of 2.0 lb ai/A resulted in an MOE of 7,700. The MOEs for object-to-mouth and soil ingestion exposure were 130,000 and 100,000 respectively. MOEs calculated for hand-to-mouth exposures using the rate of 3.0 lb ai/A resulted in an MOE of 5,300. The MOEs for object-to-mouth and soil ingestion exposure were 85,000 and 67,000 respectively.

A Tier I aggregate exposure estimate for adults (consisting of dermal exposure only) resulted in a total MOE of 740 which is greater than the level of concern of 300 and therefore not of concern. The adult total MOE of 740 was based on using the TTR from California test site and 3% dermal absorption factor. Since the California test site resulted in the lowest dermal MOE, it was determined to represent the worst case scenario. In assessing the aggregate residential exposure for children, The Agency also used the California TTR data, hand press data and 3% dermal absorption factor for determining dermal exposure to children. This resulted in a total MOE (dermal + oral) of 410 for an application rate of 2 lb ai/acre and 400 for an application rate of 3 lb ai/acre, both of which are greater than 300 and therefore not of concern.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pendimethalin and any other substances and pendimethalin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pendimethalin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

In general, section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UF (safety) in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or FQPA data safety factors, as appropriate.

The data base for pendimethalin does not indicate a potential for increased toxicological sensitivity from either prenatal or postnatal exposures. No developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there evidence in the two-generation reproduction study of developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. There was no neurotoxicity observed in the submitted toxicity studies, and therefore a developmental neurotoxicity (DNT) study is not required.

Available data show the thyroid is a target organ for pendimethalin. The endpoints and doses selected for risk assessment were based on the most sensitive effect, thyroid toxicity, which was well-characterized in both chronic and subchronic toxicity studies on the basis of clear NOAELs and LOAELs. In addition, the exposure data used to evaluate risks for the general U.S. population and infants and children are conservative, and therefore, the calculated risks are considered to be protective. Since thyroid toxicity parameters were not measured in the developmental toxicity studies, the Agency has required additional data on comparative thyroid toxicity in young and adult rats. The Agency has retained a data base UF for the lack of the study, to be applied in determining residential and aggregate risks. The Agency has removed the Special FQPA Safety Factor (i.e., reduced it to 1X) because there was no evidence of qualitative or quantitative susceptibility in the submitted data, and because the endpoints and doses selected for risk assessment were based on thyroid effects. There is a concern that perturbation of thyroid homeostatis may lead to hypothyroidism, and possibly result in adverse effects on the developing nervous system. The Agency has requested a developmental thyroid assay be conducted to evaluate the impact of pendimethalin on thyroid hormones, structure, and/or thyroid hormone homeostasis during development.

E. Aggregate Risks and Determination of Safety

1. *Acute aggregate risk.* No toxic effects attributable to a single dose were identified for pendimethalin. Therefore, an acute risk is not anticipated for this chemical.

2. *Short-term Aagregate risk.* In estimating short-term aggregate risk, the chronic dietary (food) exposure estimate and the total non-dietary (residential) exposure estimate have been combined for adults and children. The chronic dietary exposure estimate reflects average dietary exposure and serves as an estimate of dietary exposure that co-occurs with potential short-term non-dietary exposure to adults and children. The short-term aggregate exposures for adults and children at application rates of 3 and 2 lbs ai/acre were greater than the EDWC for ground water or surface water and therefore, were not of concern. Short-term aggregate risk estimates for pendimethalin are summarized in the following Table 2.

TABLE 2.—SHORT-TERM AGGREGATE RISK AND DWLOC CALCULATIONS

Population	Average Food Exposure mg/kg/day	Residential Exposure[1] mg/kg/day	Aggregate MOE (food and residential)[2]	Max Water Exposure[3] mg/kg/day	Ground Water EDWC (ppb)	Surface Water EDWC (ppb)	Short-Term DWLOC[4] (μ/L)
Adult male (U.S. population)	0.000710	0.014	699	0.013600	0.024	5	476
Adult Female (Females 13+)	0.000473	0.016	607	0.016000	0.024	5	480
Child (1-2 years) 21b rate	0.001787	0.024	383	0.024300	0.024	5	243
Child (1-2 years) 31b rate		0.025	370	0.006300	0.024	5	95

Target MOE = 300 based on a total UF of 100 (10X intraspecies, 3X interspecies).
Maximum Exposure (mg/kg/day) = NOAEL(10 mg/kg/day)/Target MOE (300)
[1]Residential Exposure = [Oral exposure + Dermal exposure + Inhalation Exposure]
[2]Aggregate MOE = [NOAEL ÷ (Avg Food Exposure + Residential Exposure)]
[3]Maximum Water Exposure (mg/kg/day) = Target Maximum Exposure - (Food Exposure + Residential Exposure)
[4]DWLOC(μ/L) = [maximum water exposure (mg/kg/day) x body weight (kg)]/ [water consumption (L) x 10^{-3} (microgram)]
Body Weight = 70 kg for adults, 10 Kg for children; Water consumption = 2L for adults, 1L for children.

3. *Intermediate-term aggregate risk*. Based on the currently requested uses, there are no scenarios that are likely to result in intermediate-term exposure (30 to 180 days, continuous). Therefore, an intermediate-term risk assessment for pendimethalin has not been conducted.

4. *Long-term aggregate risk*. The dietary exposure pathway is the only source of exposure to pendimethalin that is expected to be long-term (180 to 365 days). Therefore, the long term aggregate exposure estimates are equivalent to the chronic dietary exposure estimates discussed in the previous section. The chronic aggregate exposure is provided in Table 3 for convenience. The most highly exposed population subgroup from exposure to pendimethalin in food was children 1 to 2 years old. The chronic exposure estimate of approximately 0.002 mg/kg/day corresponds to 6% of cPAD. Risks for the general U.S. population (2.4% cPAD) and all other population subgroups were lower. For all population subgroups, the chronic DWLOC is greater than the chronic ground and surface water EDWC; therefore, aggregate chronic exposure to pendimethalin is not expected to exceed the level of concern.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PENDIMETHALIN.

Population Subgroup	Chronic Scenario	cPAD mg/kg/day	Chronic Food Exposure mg/kg/day	Max Chronic Water Exposure mg/kg/day[1]	Ground Water EDWC (ppb)[2]	Surface Water EDWC (ppb)[2]
U.S. population	0.03	0.000710	0.02929	0.024	4.8	1025
All Infants (<1 year old)		0.0001295	0.02987			448
Children 1-2 years		0.001787	0.028213			423
Children 3-5 years		0.001608	0.0284			426
Children 6–12		0.001105	0.028895			433
Youth 13–19		0.000742	0.02926			1024
Adults 20–49		0.000558	0.029442			1030
Females 13+		0.000473	0.0295			885
Adults 50+ years		0.000556	0.0294			1029

[1]Maximum chronic water exposure (mg/kg/day) = [chronic PAD (mg/kg/day) - chronic dietary exposure (mg/kg/day)]
[2] See section 2 for estimated surface water and ground water concentrations
[3]Chronic DWLOC(μ/L) = [maximum chronic water exposure (mg/kg/day) x body weight (kg)]/[water consumption (L) x 10^{-3} mg/μ]

Body weights (70 kg adult male; 60 kg adult female; 10 kg child)

5. *Cancer aggregate risk*. As discussed above the Agency determined that the 0.10 mg/kg/day RfD for chronic risks, is protective of both the chronic, non-carcinogenic effects as well as the carcinogenic effect seen in the rat. Accordingly, based on the risk estimates for chronic risk above, EPA concludes that aggregate chronic exposure to pendimethalin is not expected to pose a cancer risk of concern.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pendimethalin and its metabolite residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for data collection and tolerance enforcement for existing and proposed uses of pendimethalin. Methods I through IV in the Pesticide Analytical Manuel (PAM) Vol. II are gas chromatography/electron capture (GC/ECD) methods. Methods used for data collection are essentially the same as the PAM Vol. II methods, and have been adequately validated.

The Food and Drug Administration's PESTDATA data base (PAM Volume I, Appendix I) indicates that pendimethalin is completely recovered (>80%) by Multiresidue Methods Section 302 (Luke method; Protocol D) and 303 (Mills, Onley, Gaither method; Protocol E, nonfatty), and partially recovered (50–80%) by Multiresidue Method Section 304 (Mills fatty food method; Protocol E, fatty).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex Maxium Residue Levels (MRLs) for pendimethalin residues. Therefore, there are no questions of compatibility with respect to Codex MRLs and U.S. tolerances.

V. Conclusion

Therefore, the tolerance is established for combined residues of pendimethalin, [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenyzl alcohol, in or on carrots at 0.5 ppm; peppermint, tops and spearmint, tops at 0.2 ppm; peppermint, oil and spearmint, oil at 1.0 ppm; fruit, citrus, group 10 at 0.1 ppm; citrus, oil at 0.5 ppm; almond, hulls at 0.4 ppm; and nuts, tree, group 14 at 0.1 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0056 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 12, 2006.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0056, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.361 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.361 Pendimethalin, Tolerance for Residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	0.4
* * * *	*
Carrots	0.5
* * * *	*
Citrus, oil	0.5
* * * *	*
Fruit, citrus, group 10	0.1
* * * *	*
Nut, tree, group 14	0.1
* * * *	*
Peppermint, oil	1.0
Peppermint, tops	0.2
* * * *	*
Spearmint, oil	1.0
Spearmint, tops	0.2

* * * * *

[FR Doc. 06–3460 Filed 4–11–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0486; FRL–7765–1]

FD&C Blue No. 1 PEG Derivatives; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes two exemptions from the requirement of a tolerance for residues of FD&C Blue No. 1 Polyethylene Glycol (PEG) Derivative and FD&C Blue No. 1, Methyl-PEG Derivative when used as inert ingredients (dye or coloring agent) in a seed-treatment pesticide product. Milliken submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of FD&C Blue No. 1, PEG Derivative and FD&C Blue No. 1, Methyl-PEG Derivative.

DATES: This regulation is effective April 12, 2006. Objections and requests for hearings must be received on or before June 12, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0486. All documents in the docket are listed on the *www.regulations.gov* website. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 29, 1997 (62 FR 45804) (FRL–5738–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 5E4597) by Milliken and Company, Box 1927, Spartanburg, SC 29304–1927. That notice included a summary of the petition prepared by the petitioner.

The petition requested that 40 CFR 180.1001(c) now redesignated as 40 CFR 180.910 be amended by establishing exemptions from the requirement of a tolerance for residues of three PEG-modified dyes to impart color to pesticidally-treated seeds. The two dyes subject to this final rule are poly(ethylene glycol) modified FD&C Blue No. 1 and methyl-poly(ethylene glycol) modified FD&C Blue No. 1. The third dye has been withdrawn by the petitioner. In the **Federal Register** of October 8, 1997 (62 FR 52563) (FRL–5746–7), EPA issued a notice of correction to specify that the concentration of the dyes in a formulated pesticide product would not ''exceed 1 to 5% of the final formulation.''

Methyl-polyethylene glycol modified FD&C Blue No. 1 is also known as FD&C Blue No. 1 methyl-PEG derivative or poly(oxy-1,2-ethanediyl), α, α′, α″, α‴-[[2-sulfophenyl)methyliumylidene]bis[(3-methyl-4,1-phenylene)nitrolodi-2, 1-ethanediyl]]tetrakis[.omega.-hydroxy-, chloride, monosodium salt. (CAS Reg. No. 9079–34–9).

Polyethylene glycol modified FD&C Blue No. 1 is also known as FD&C Blue No. 1 PEG derivative or poly(oxy-1,2-ethanediyl), α, α′, α″, α‴-[[2-sulfophenyl)methyliumylidene]bis[(4,1-phenylene)nitrolodi-2, 1-ethanediyl]]tetrakis[.omega.-hydroxy-, chloride, monosodium salt. (CAS Reg. No. 9079–33–8).

There were no comments received in response to the notice of filing or the notice of correction.

Most pesticide products that are applied to field crops do not contain a dye or coloring agent. Dyes or colorants that are incorporated into pesticide products used on field crops are often used as alerting agents. For example, a dormancy breaker pesticide product may be colored so that the applicator can see which branches have been sprayed and which have not. Another use of dyes in a pesticide product is to color pesticidally-treated seeds. Under 40 CFR 153.155 seed-treatment pesticide products must contain a dye ''to impart an unnatural color to the seed'' so that the treated seed is not confused with food or feed stocks. The use pattern requested by the petitioner is very limited, that of seed-treatment and at a concentration in the pesticide product that is not to exceed 5%. The Agency has determined to establish this tolerance exemption in 40 CFR 180.920 (pre-harvest uses only), as this is a more appropriate placement for a chemical that is only to be used as a seed-treatment.

Both of the FD&C Blue No. 1 derivatives are manufactured via the attachment of varying lengths of polyethylene glycol side-chains to FD&C Blue No. 1. This process results in a polymeric-type of matrix.

For use in pesticide products, the Agency has determined that the molecular weight of these PEG derivatives of FD&C Blue No. 1 must be greater than 1,000 amu. It is possible for

a polyethylene glycol chain to act as a surfactant, but only if the chain is shortened. If the PEG side chains that are attached to the FD&C Blue No. 1 are too short, then there is the possibility that these dyes could begin to act as a surfactant. The Agency has considered the use of these chemicals only as dyes or coloring agents, and does not intend for their use as surfactants. The Agency believes that the molecular weight limitation of greater than 1,000 amu will assure that the side-chains are of adequate length.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by FD&C Blue No. 1 PEG derivative and FD&C Blue No. 1 methyl-PEG derivative are discussed in this unit.

The two chemicals considered today in this final rule are derived from FD&C Blue No. 1 via the attachment of side-chains which are composed of multiple (repeating) units of ethylene glycol. For this action FD&C Blue No. 1 is used as surrogate data for these PEG derivative chemicals. Both of the derivatives of FD&C Blue No. 1 are considered to be no more toxic and as explained below are likely to be even less toxic than that of FD&C Blue No. 1, *per se*.

A. Toxicity of FD&C Blue No. 1

FD&C Blue No. 1 (CAS Reg. No. 3844–45–9) is also known as CI Acid Blue 9, disodium salt; CI No. 42090; and Brillant Blue FCF. FD&C Blue No. 1 has been extensively studied over a number of years in different toxicity studies using different routes of exposure. A search of the open literature was conducted for EPA by the Department of Energy's Oakridge National Laboratory (ORNL). ORNL prepared summaries of that information which served as the basis for the Agency's December 2005 assessment of FD&C Blue No. 1 for the purpose of tolerance reassessment.

The petitioner for this action submitted to the Agency two FDA memos dated January 12, 1968 and May 10, 1982 which contain the results of FDA's review and analysis of the data which were used to support the 1982 Acceptable Daily Intake (ADI). Comparison of these memos to the information from the open literature indicate that the database used by EPA for the purposes of tolerance reassessment and the database used by FDA are much the same.

Table 1 summarizes various oral toxicity studies reviewed and evaluated by the Food and Drug Administration (FDA), BIBRA, and the World Health Organization, as well as summaries taken from open literature. The two FDA memos, FDA's final rule on FD&C Blue No. 1 published in the **Federal Register** of September 28, 1982 (47 FR 42563), and EPA's Tolerance Reassessment Document are all placed in the docket for this action. (see *http://www.regulations.gov*).

TABLE 1.—FD&C BLUE NO. 1 TOXICITY STUDIES

Study Type	Results
2–year (oral) rat	Test animals received 0.0, 0.5, 1.0, 2.0, or 5.0% of FD&C Blue No. 1 in the diet. The 5% FD&C Blue No. 1 was a ''no effect level'' Note that 5% (50,000 ppm) in the diet is approximately equivalent to 2.5 g/kg/day. This study served as the basis for the WHO ADI.
75–week (oral) rat	Test animals received 0.0, 0.03, 0.3, or 3.0% of Brillant Blue FCF in the diet. The color had no adverse effect on food consumption, food efficiency, and growth
1–year (oral) dog	FD&C Blue was fed in the diet at levels of 0, 1, or 2%. The 2% FD&C Blue No. 1 was a ''no effect'' level. Note that 2% (20,000 ppm) in the diet, is approximately equivalent to 500 mg/kg/day.

TABLE 1.—FD&C BLUE NO. 1 TOXICITY STUDIES—Continued

Study Type	Results
Metabolism (oral) rat	Adult rats were given 200 mg/kg FD&C Blue No. 1. Urine and feces were collected for 36 hours. ''The color was almost completely excreted unchanged in the feces, an average of 96 +/−2.16% having been recovered. None of the color was found in the urine.''
3–generation reproductive (oral) rat	No adverse effects observed with dietary doses of up to about 1 g/kg/day
Developmental (stomach tube) rat	Pregnant rats were given 0.2, 0.6, or 2 g/kg/day on gestation days 6 to 15. No convincing signs of maternal or fetal toxicity
2–year chronic (with*in-utero* phase) (oral) rat	Test animals received 0, 0.1, 1.0, or 2.0% Brillant Blue FCF in the diet. There were no significant differences in reproduction/fertility data between control and treated animals A no-effect level of 2% (1,200 mg/kg/day) was determined. FDA determined that FD&C Blue No. 1 is not carcinogenic in the rat after lifetime dietary exposures of 2.0%. This study served as the basis for the FDA ADI
2–year (oral) mouse	Test animals received 0, 0.5, 1.5, or 5.0% Brilliant Blue FCF in the diet. There were no statistically significant effects observed in any of the parameters examined. The no-effect level is 5.0% (7,354 mg/kg/day (male) and 8,966 mg/kg/day (female). FDA determined that FD&C Blue No. 1 is not carcinogenic in the mouse after lifetime dietary exposures of 5.0%.

B. Toxicity of the PEG Derivatives of FD&C Blue No. 1

The petitioner also submitted several toxicity studies conducted using the PEG FD&C Blue No. 1 Derivatives as the test substance. The results of these studies are in Table 2:

TABLE 2.—FD&C BLUE NO. 1 PEG-DERIVATIVE TOXICITY STUDIES

Acute Oral Toxicity in the Rat	The estimated acute oral LD_{50} for FD&C Blue No. 1 methyl-PEG Derivative is greater than 5,000 mg/kg.
Dermal Irritation in the Rabbit	No erythema, edema, or other dermal effects were noted at any of the test sites during the study.
Mutagenicity—*in Vitro* Transformation of Balb/3T3 Cells Assay	The FD&C Blue No. 1 PEG Derivative ''did not induce the appearance of a significant number of transformed foci over the concentration range of 7.2 to 5.38 µL/mL. This concentration range corresponded to approximately 85% to near 10% survival in the preliminary cytotoxicity test.''
Mutagenicity—Mouse Lymphoma Forward Mutation Assay	The FD&C Blue No. 1 PEG Derivative ''did not induce significant increases in the mutant frequency at the TK locus in L5178Y mouse lymphoma cells. The test material was assayed up to 10 µL/mL without inducing significant increases in the background.''
Mutagenicity - *Salmonella*/Mammalian-Microsome Reverse Mutation Assay (Ames Test)	Under the conditions of this study, FD&C Blue No. 1 methyl-PEG derivative, ''did not cause a positive increase in the number of histidine revertants per plate of any of the tester strains either in the presence or absence of'' S9 activation.

C. Toxicity of Polyethylene Glycol (PEG) Side Chains

As previously discussed, the side-chains of the PEG derivatives of FD&C Blue No. 1 are composed of multiple (repeating) units of ethylene glycol. A group of ethylene glycol chemicals represented by the generic structure, HO(CH2CH2O)nH where n = 1-5 has been reviewed and evaluated by the Organization for Economic Cooperation and Development (OECD). The agreed upon conclusions and recommendations of OECD's Screening Information Dataset Initial Assessment Profile (SIAP) are available via the internet (see *http://cs3-hq.oecd.org/scripts/hpv/Home.asp using ethylene glycols as the search term*). The SIAP contains summarized results of OECD's review of various toxicity studies performed using ethylene glycol or a chain of ethylene glycol varying from 2 to 5 units. According to the SIAP, ''[a]vailable data and modeling confirm that as the molecular weight increases, the potential for systemic, reproductive, and developmental toxicity decreases''. Thus, pentaethylene glycol (5 units) would be the least toxic of all the ethylene glycol chemicals evaluated by OECD in this group of chemicals. It is of importance to note that the SIAP also indicated that larger (n= 6-8) ethylene glycol chemicals were deliberately excluded from this category of

chemicals, because at . ''n=6-8, absorption from ingestion decreases.'' Thus, the larger the ethylene glycol chain, the less the toxicity. The Agency believes that the molecular weight limitation of greater than 1,000 amu will assure that the side-chains are of adequate length.

D. Conclusions

In its Tolerance Reassessment Document, EPA discusses the low toxicity of FD&C Blue No1. This finding was based on the toxicity profile which indicated that via the oral route of exposure that FD&C Blue No. 1 demonstrated no adverse effects in developmental, reproductive, or chronic/carcinogenicity studies. The available information also indicates that FD&C Blue No. 1 is not metabolized in the mammalian body and that almost 100% of the ingested chemical is excreted within 36 hours. The molecular weight of FD&C Blue No. 1 is almost 800 amu. Generally, larger molecules are less well absorbed. Since both of these derivatives of FD&C Blue No. 1 are, in fact, larger than FD&C Blue No. 1, with molecular weights greater than 1,000 amu, and displaying characteristics of a polymeric/matrix nature, it is likely that the derivatives are even less well-absorbed. Therefore, based on their relationship to FD&C Blue No. 1, these PEG derivatives are likely to be even less toxic.

The Agency also notes that these derivatives of FD&C Blue No. 1 contain PEG or methyl-PEG side chains. The Agency has no definitive information on the role of these side-chains in the metabolism of the two chemicals considered today. However, the available information in the SIAP suggests that the PEG side-chains are not readily metabolized.

Given the data in Table 2, FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative are of low oral and dermal acute toxicity. These two chemicals are not mutagenic. Given the available toxicity information on FD&C Blue No. 1 and on chains of polyethylene glycol, the Agency believes that FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative of molecular weight greater than 1,000 amu are not well-absorbed in the mammalian body and therefore are not likely to be carcinogenic, or to cause adverse developmental or reproductive effects.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* As part of its review and analysis of FD&C Blue No. 1, FDA not only evaluated various toxicity studies (Table 1), but also estimated ADIs. In 1968, the ADI was estimated as 300 mg/person/day or 5 mg/kg/day. In 1982, as a result of its review of additional toxicity studies, the ADI was re-estimated as 717.6 mg/day or 12 mg/kg/day.

There is the potential for exposures through food and drinking water resulting from the use of FD&C Blue No. 1 PEG derivative and FD&C Blue No. 1 methyl-PEG derivative in a pesticide product. Given the Agency's experience with its generic inert ingredient modeling, as evidenced by the discussion in the FD&C Blue No. 1 Tolerance Reassessment Document, and in light of the low percents in the formulation for dyes that are used in pesticide products, the Agency believes that potential dietary exposures through food would be much less than FDA's ADI for FD&C Blue No. 1.

2. *Drinking water exposure.*Since the PEG-derivatives of FD&C Blue No. 1 are only to be used in seed treatment products, exposures will occur via applications to ground (both surface and subsurface) and subsequent leaching from the seed into the surrounding soil. Transport to ground water via leaching and to surface water via the dissolved and sorbed phase will then occur. The extent to which the substance is available for leaching and runoff will be controlled by the rate of leaching from the seed. It is important to note that the formulation of dyes, such as FD&C Blue No. 1 into a polyethylene glycol matrix is to minimize ''bleeding'' of the dye into the surrounding area.

The environmental fate of FD&C Blue No. 1 PEG derivative and FD&C Blue No. 1 methyl-PEG derivative is highly uncertain because of the polymeric type of matrix, and the varying lengths of the chains of polyethylene glycol incorporated into the matrix. No physical-chemical properties and no environmental transformation and/or occurrence data were located in the readily available open literature. Therefore, the Agency's assessment is based on projected physical/chemical properties, and two modified Zahn-Wellens Ready Biodegradability tests supplied by the petitioner. The results of these two studies indicate that these derivatives of FD&C Blue No. 1 are not expected to rapidly biodegrade in the environment; the studies indicated very little degradation, approximately 20 percent over a 42 day test period. Degradation reached a plateau at about day 28 of the study. Therefore, primary degradation is likely to occur on the order of months and ultimate degradation (mineralization) on the order of many months. Both of these PEG derivatives of FD&C Blue No. 1 are classified as not readily biodegradable.

Because of the difficulties in ascertaining a representative molecular structure, the estimated fate and potential exposures are deemed uncertain; however, the Agency has used a bounding approach that should not under-estimate the potential exposures to the two PEG derivatives of FD&C Blue No. 1. The PEG derivatives of FD&C Blue No. 1 are likely to be dispersible in water, nonvolatile, and not very mobile. Leaching to ground water is not expected to be appreciable. The Agency believes that the likelihood of these two chemicals reaching surface water is limited, and the likelihood of reaching ground water and bioaccumulating in the environment is even more limited.

B. Other Non-Occupational Exposure

As part of its evaluation, FDA also estimated a maximum (conservative) daily intake of 35.4 mg/person/day (or 0.59 mg/kg/day) for exposure via food, dietary supplements, drugs, and cosmetics for FD&C Blue No. 1.

The available information indicates that neither of these PEG derivatives of FD&C Blue No. 1 are as widely used in consumer products as FD&C Blue No. 1. Therefore, the exposures that could occur from the use of these PEG derivatives in either residential pesticidal or consumer non-pesticidal products is expected to be much less than that estimated for FD&C Blue No. 1.

VI. Cumulative Effects

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding for FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative. These chemicals are structurally-related to FD&C Blue No. 1, which is considered over-all to be a chemical of lower toxicity. EPA has assessed exposure and risk to FD&C Blue No. 1 generally. These chemicals do not appear to produce any toxic metabolite produced by other substances. For the

purposes of this tolerance action, therefore, EPA has not assumed that FD&C Blue No. 1, FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA concluded that a different margin of safety will be safe for infants and children.

Using the available data on FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative and the surrogate data on FD&C Blue No. 1, these chemicals over-all present as chemicals of lower toxicity. In a FD&C Blue No. 1 reproductive toxicity study reviewed and evaluated by FDA, there were no ''significant differences in reproduction/fertility data between control and treated animals.'' The exposure pattern considered in this final rule is that of seed-treatment only and at a low percent in the formulation. Due to the expected low oral toxicity, and considering the low potential for exposure, a safety factor analysis has not been used to assess the risk of FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative. For the same reasons, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VIII. Determination of Safety for U.S. Population, and Infants and Children

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Based on the available toxicity data, EPA believes that FD&C Blue No. 1, PEG derivative and FD&C Blue No. 1, methyl-PEG derivative are chemicals of lower oral toxicity, and that exposure to residues from these pesticide chemicals under reasonably forseeable circumstances will pose no appreciable risk to human health. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of FD&C Blue No. 1, PEG derivative (CAS Reg. No. 9079–33–8) and FD&C Blue No. 1, methyl-PEG derivative (CAS Reg. No. 9079–34–9). EPA finds that establishing exemptions from the requirement of a tolerance for FD&C Blue No. 1, PEG derivative (CAS Reg. No. 9079–33–8) and FD&C Blue No. 1, methyl-PEG derivative (CAS Reg. No. 9079–34–9) will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect * * * '' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing FD&C Blue No. 1, PEG derivative (CAS Reg. No. 9079–33–8) and FD&C Blue No. 1, methyl-PEG derivative (CAS Reg. No. 9079–34–9) for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing tolerances or tolerance exemptions for FD&C Blue No. 1, PEG derivative (CAS Reg. No. 9079–33–8) and FD&C Blue No. 1, methyl-PEG derivative (CAS Reg. No. 9079–34–9)

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for FD&C Blue No. 1, PEG derivative (CAS Reg. No. 9079–33–8) and FD&C Blue No. 1, methyl-PEG derivative (CAS Reg. No. 9079–34–9) nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Accordingly, two exemptions from the requirement for a tolerance are established for FD&C Blue No. 1, polyethylene glycol derivative (CAS Reg. No. 9079–33–8) and FD&C Blue No. 1, methyl-polyethylene glycol derivative (CAS Reg. No. 9079–34–9). These exemptions are limited to seed treatment only, the concentration is not to exceed 5% of the formulated pesticide product, and number average molecular weight must be greater than 1,000 amu.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0486 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or

delivered to the Hearing Clerk on or before June 12, 2006.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0486, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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 rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
FD&C Blue No. 1, methyl-polyethylene glycol derivative (CAS Reg. No. 9079–34–9).	For seed treatment use only; Number average molecular weight (in amu) is greater than 1,000; Not to exceed 5% of the formulated pesticide product.	Dye, coloring agent
FD&C Blue No. 1, polyethylene glycol derivative (CAS Reg. No. 9079–33–8).	For seed treatment use only; Number average molecular weight (in amu) is greater than 1,000; Not to exceed 5% of the formulated pesticide product.	Dye, coloring agent
* * *	* *	* *

[FR Doc. 06–3307 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0212; FRL–7765–4]

Emamectin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of emamectin and its metabolites in or on pome fruit (crop group 11). It also revises the combined residues of emamectin and its metabolites in or on various livestock commodities. Syngenta Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 12, 2006. Objections and requests for hearings must be received on or before June 12, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0212. All documents in the docket are listed on the *www.regulations.gov* website. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Thomas Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9423; e-mail address: *harris.thomas@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of August 24, 2005 (70 FR 49607) (FRL–7728–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6574) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The original petition requested that 40 CFR 180.505 be amended by establishing a tolerance for combined residues of the insecticide emamectin benzoate, 4′-epi-methylamino- 4′-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and a maximum of 10% 4′-epi-methlyamino-4′-deoxyavermectin B_{1b} benzoate), and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide, in or on the raw agricultural commodities pome fruit (crop group 11) at 0.02 parts per million (ppm). That notice included a summary of the petition prepared by Syngenta Crop Protection, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based on the EPA analysis of the residue chemistry and toxicological databases, the petition was subsequently revised to establish:

1. Permanent tolerances for the combined residues of emamectin (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and maximum of 10% 4′-epi-methylamino-4′-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4′-deoxy-4′-epi-amino-avermectin B_{1a} and 4′-deoxy-4′-epi-amino-avermectin B_{1b}; 4′-deoxy-4′-epi-amino avermectin B_{1a} (AB_{1a}); 4′-deoxy-4′-epi-(N-formyl-N-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(N-formyl)amino-avermectin B_{1a} (FAB_{1a}) in or on the following commodities: Fruit, pome, group 11 at 0.025 ppm and apple, wet pomace at 0.075 ppm; and

2. Permanent tolerances for the combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in/on the following commodities: Cattle, fat at 0.010 ppm; cattle, liver at 0.050 ppm; cattle, meat at 0.003 ppm; cattle, meat byproducts, except liver at 0.020 ppm; milk at 0.003 ppm; goat, fat at 0.010 ppm; goat, liver at 0.050 ppm; goat, meat at 0.003 ppm; goat, meat byproducts, except liver at 0.020 ppm; horse, fat at 0.010 ppm; horse, liver at 0.050 ppm; horse, meat at 0.003 ppm; horse, meat byproducts, except liver at 0.020 ppm; sheep, fat at 0.010 ppm; sheep, liver at 0.050 ppm; sheep, meat at 0.003 ppm; and sheep, meat byproducts, except liver at 0.020 ppm. With the previous emamectin tolerance final rule, published in the **Federal Register** of July 9, 2003 (68 FR 40791) (FRL–7316–6), the livestock tolerances were mistakenly placed in paragraph (d) of 40 CFR 180.505 for inadvertent residues. In this action, the livestock tolerances are being moved to paragraph (a)(2) of 40 CFR 180.505 which contains general tolerances.

In addition, the following established tolerances will be deleted from 40 CFR 180.505 since a tolerance for ''milk'' will be established: Cattle, milk at 0.003 ppm; goats, milk at 0.003 ppm; hogs, milk at 0.003 ppm; horses, milk at 0.003 ppm; sheep, milk at 0.003 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for:

1. Permanent tolerances for the combined residues of emamectin (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and maximum of 10% 4′-epi-methylamino-4′-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4′-deoxy-4′-epi-amino-avermectin B_{1a} and 4′-deoxy-4′-epi-amino-avermectin B_{1b}; 4′-deoxy-4′-epi-amino avermectin B_{1a} (AB_{1a}); 4′-deoxy-4′-epi-(N-formyl-N-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(N-formyl)amino-avermectin B_{1a} (FAB_{1a}) in or on the following commodities: Fruit, pome, group 11 at 0.025 ppm and apple, wet pomace at 0.075 ppm; and

2. Permanent tolerances for the combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in/on the following commodities: Cattle, fat at 0.010 ppm; cattle, liver at 0.050 ppm; cattle, meat at 0.003 ppm; cattle, meat byproducts, except liver at 0.020 ppm; milk at 0.003 ppm; goat, fat at 0.010 ppm; goat, liver at 0.050 ppm; goat, meat at 0.003 ppm; goat, meat byproducts, except liver at 0.020 ppm; horse, fat at 0.010 ppm; horse, liver at 0.050 ppm; horse, meat at 0.003 ppm; horse, meat byproducts, except liver at 0.020 ppm; sheep, fat at 0.010 ppm; sheep, liver at 0.050 ppm; sheep, meat at 0.003 ppm; and sheep, meat byproducts, except liver at 0.020 ppm.

EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by emamectin as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found in Unit III of the final rule published in the **Federal Register** of July 9, 2003 (68 FR 40791).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm*.

A summary of the toxicological endpoints for emamectin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 9, 2003 (68 FR 40791).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.505) for the combined residues of emamectin, in or on a variety of raw agricultural commodities and livestock. Tolerances range from 0.002 to 0.150 ppm. Risk assessments were conducted by EPA to assess dietary exposures from emamectin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A highly refined, Tier 3, acute dietary exposure assessment was conducted for the general U.S. population and various other population subgroups. This was a probabilistic assessment using anticipated residue estimates as well as EPA percent crop treated (PCT) estimates for a number of commodities. For acute assessments, maximum (rather than average) PCT estimates were used, specifically: Apples 73%, pears 60%, broccoli 20%, cabbage 15%, celery 25%, cauliflower 30%, cotton commodities 2.5%, lettuce 20%, peppers 2.5%, spinach 2.5%, and tomatoes 2.5%. For crops not listed 100% PCT was used. Anticipated residues were used for pome fruit based on average field trial data. The recommended tolerance level residues were used for all other crops and meat products. Additionally, default DEEM™ (version 7.87) concentration factors were used for all commodities except apple juice, for which a concentration factor was based on a processing study.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A refined chronic dietary (food only) exposure assessment was conducted for the general U.S. population and various other population subgroups. The proposed and registered food uses of emamectin were represented by a single point estimate of anticipated emamectin residues in food. For chronic assessments, average (rather than maximum) PCT estimates were used, specifically: Apples 14%, pears 15%, broccoli 10%, cabbage 5%, celery 10%, cauliflower 10%, cotton commodities 1%, lettuce 10%, peppers 1%, spinach 1%, and tomatoes 1%. For crops not listed 100% PCT was used. Anticipated residues were used for pome fruit based on average field trial. The recommended tolerance level residues were used for all other crops and meat products. Additionally, default DEEM™ (version 7.87) concentration factors were used for all commodities except apple juice, for which a concentration factor was based on a processing study.

iii. *Cancer.* Emamectin is classified as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in male and female rats or male and female mice at doses that were judged to be adequate to assess the carcinogenic potential of the chemical.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as detailed above under Units III.C.1.i and III.C.1.ii. Different PCTs were used for the acute versus the chronic dietary risk from food and feed uses as explained in these sections.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of 5 percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available Federal, State, and private market survey data on the existing use, across all years. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

EPA projects PCT for a new pesticide use by assuming that the PCT for the pesticide's initial 5 years will not exceed the average PCT of the dominant pesticide (the one with the largest PCT) within its type over 3 latest available years. The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is non-proprietary and directly available without computation. When a specific site is not covered in USDA/NASS, EPA uses proprietary data, which may require computation. This method of projecting PCT for a new pesticide, with or without regard to specific pest(s), produces an upper-end projection that is unlikely, in most cases, to be exceeded in actuality in the next 5 years because one or more of the following conditions will likely apply: The dominant pesticide is better established and accepted by farmers than the new pesticide, the dominant pesticide is more efficacious than the new pesticide, the dominant pesticide controls a broader spectrum and/or more important pests than the new pesticide, the dominant pesticide is more cost-effective than the new pesticide, and other conditions. These factors have been considered for this pesticide's new use, and they indicate that it is unlikely that actual PCT for this new use will exceed the PCT for the dominant pesticide in the next 5 years.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for emamectin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of emamectin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of emamectin for acute exposures are estimated to be 0.57 parts per billion (ppb) for surface water and 2.7×10^{-4} ppb for ground water. The EDWCs for chronic exposures are estimated to be 0.22 ppb for surface water and 2.7×10^{-4} ppb for ground water.

Modeled EDWCs were directly entered into the dietary exposure model (DEEM-FCID). For the acute dietary risk assessment, the full distribution of estimated residues in surface water generated by the PRZM-EXAMS model was input into the model. For chronic dietary risk assessment, the annual average concentration of 0.22 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Emamectin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to emamectin and any other substances and emamectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that emamectin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. Emamectin causes increased sensitivity of offspring relative to adults (as seen in the rat reproductive toxicity study and the rat developmental neurotoxicity study). EPA determined that the concern is low as to the qualitative sensitivity seen in the reproduction study because:

i. There was a clear NOAEL for offspring toxicity;

ii. Effects unique to offspring (decreased fertility in F_1 adults, and clinical signs tremors and hind limb extensions during and following lactation) were seen at the same dose that caused parental systemic toxicity (decreased body weight gain and histopathological lesions in the brain and spinal cord), and

iii. The decreased fertility seen in F_1 adults may have been due to histopathological lesions in the brain

and central nervous system (seen in both F_0 and F_1 generations), rather than due to a direct effect on the reproductive system.

As to the increased qualitative and quantitative susceptibility in the rat developmental neurotoxicity study, EPA determined that the concern is low because:

- Although multiple offspring effects (including decreased pup body weight, head and body tremors, hindlimb extension and splay, changes in motor activity and auditory startle) were seen at the highest dose, and no maternal effects were seen at any dose, there was a clear NOAEL for offspring toxicity at the low dose, and
- The offspring LOAEL (at the mid dose) is based on a single effect seen on only one day (decreased motor activity on PND 17) and no other offspring toxicity was seen at the LOAEL. Additionally, concern is lessened because the dose selected for overall risk assessment (based on a 15–day study in adult mice) is lower than the doses that caused offspring toxicity in reproduction and developmental neurotoxicity studies in rats; the endpoint selected is the most sensitive end point (neurotoxicity) in the most sensitive species (mice) and thus would address the concerns for any potential toxicity in the offspring.

3. *Conclusion*. Although there is a complete toxicity database for emamectin, exposure is estimated based on data that reasonably accounts for potential exposures, and increased sensitivity in the young is addressed by selection of a protective endpoint, EPA has retained a 10X FQPA safety factor for chronic/long-term and intermediate-term assessments due to the steepness of the dose-response curve, severity of effects at the LOAEL (death and neuropathology), and the use of a short-term study for long-term risk assessment. The steepness of the dose-response curve and the severity of the effects at the LOAEL also are the basis for EPA retaining a 3X FQPA safety factor for acute assessments. A 3X FQPA factor was judged to be adequate (as opposed to a 10X) because:

i. A NOAEL was established in this study;

ii. Although the effects of concern are seen after repeated dosing, the NOAEL here is used for a single exposure risk assessment; and

iii. The most sensitive endpoint in the most sensitive species is selected.

The exposure estimate was judged to reasonably account for exposure based on:

- The acute dietary food exposure assessment utilizes anticipated residue estimates based on carefully reviewed field trial data and PCT data for several commodities (100 PCT was assumed for remaining commodities). By using the 99.9th percentile exposure values for comparison to the aPAD, actual risks are not likely to be underestimated.
- The chronic dietary food exposure assessment utilizes tolerance level residue estimates and PCT data for several commodities (100 PCT was assumed for remaining commodities). This assessment is somewhat refined and based on reliable data that is not likely to underestimate exposure/risk.
- The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.
- There are no proposed or existing residential uses for emamectin.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated environmental concentrations (EECs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure milligram/kilogram/day (mg/kg/day) = CPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L) / 70 kg (adult male), 2L / 60 kg (adult female), and 1L / 10 kg (child). Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concluded with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposures for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. When new uses are added EPA reassesses the potential impacts of residues of the pesticide in drinking water as a part of the aggregate assessment process.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk*. The acute aggregate risk assessment takes into account exposure estimates from dietary (food + drinking water) consumption of emamectin. A highly refined, Tier 3, acute assessment was conducted for all supported food uses and drinking water. The Tier 3 assessment was a probabilistic assessment using anticipated residue estimates from the current and previously submitted field trial data, PCT/projected market share estimates for a number of commodities (100% for the rest), and default DEEM™ 7.87 processing factors for all commodities except apple juice, for which a concentration factor was based on a processing study. The assessment was conducted using the full distribution of estimated residues in surface water generated by the PRZM-EXAMS model using the pome fruit crop group scenario for drinking water.

The acute aggregate risk estimates for emamectin are below EPA's LOC (<100% aPAD) at the 99.9th percentile for the general U.S. population (at 41% of the aPAD) and various other population subgroups. The most highly exposed population subgroup was all infants (<1 year old) at 77% of the aPAD. Results are shown in the following Table.

2. *Chronic risk*. The chronic aggregate risk assessment takes into account average exposure estimates from dietary consumption of emamectin (food and drinking water).

The chronic aggregate risk estimates for emamectin are below EPA's LOC for all population subgroups (8% of the cPAD for the U.S. population and 23% of the cPAD for all infants (<1 year old), the most highly exposed subgroup). Results are shown in the following Table.

TABLE—SUMMARY OF DIETARY (FOOD + DRINKING WATER) EXPOSURE AND RISK ESTIMATES FOR EMAMECTIN USING DEEM™-FCID

Population Subgroup	Acute Dietary[1]		Chronic Dietary[2]		Cancer Dietary
	Exposure (mg/kg/day)	% aPAD at 99.9th percentile	Exposure (mg/kg/day)	% cPAD	
General U.S. Population	0.000103	41	0.000006	8	NA[3]
All Infants (< 1 year old)	0.000193	77*	0.000017	23*	NA[3]
Children 1–2 years old	0.000172	69	0.000011	15	NA[3]
Children 3–5 years old	0.000149	59	0.000010	13	NA[3]
Children 6–12 years old	0.000105	42	0.000006	9	NA[3]
Youth 13–19 years old	0.000094	38	0.000004	6	NA[3]
Adults 20–49 years old	0.000058	23	0.000005	7	NA[3]
Adults 50+ years old	0.000052	21	0.000005	7	NA[3]
Females 13–49 years old	0.000060	24	0.000005	7	NA[3]

* The value for the highest exposed population.
[1] Acute dietary endpoint of 0.00025 mg/kg/day applies to the general U.S. population and all population subgroups.
[2] Chronic dietary endpoint of 0.000075 mg/kg/day applies to the general U.S. population and all population subgroups.
[3] NA = not applicable. Emamectin is classified as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in male and female rats or male and female mice at doses that were judged to be adequate to assess the carcinogenic potential of the chemical.

3. *Short- and intermeditate-term risk*. Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no residential uses proposed for emamectin, short- and intermediate-term aggregate risk assessments based on exposure from oral, inhalation, and dermal routes were not performed. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. EPA has classified emamectin as a ''not likely'' human carcinogen. This classification was based on the lack of evidence of carcinogenicity in male and female rats or male and female mice at doses that were judged to be adequate to assess the carcinogenic potential of the chemical. Therefore, exposure to emamectin is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to emamectin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Enforcement method for plant commodities*. A high performance liquid chromatography method with fluorescence detection (HPLC/FLD Method 244–92–3) is available for the enforcement of established tolerances for residues of emamectin and its metabolites in/on plants.

Method 244–92–3, Revision 1, is a similar HPLC/FLD method which is available for enforcement of the tolerances on pome fruit. Method 244–92–3, Revision 1, determines residues of B_{1a} isomers (total emamectin B_{1a} and 8,9-ZB_{1a}), B_{1b} isomers (emamectin B_{1b} + 8,9-ZB_{1b}), and the photodegradates AB_1 (L649), and MFB_1 + FAB_1 (L599 + L831) in/on apple and pear and in apple processed commodities. The LOQ is 0.005 ppm for each analyte in each matrix.

2. *Enforcement method for livestock commodities*. An analytical method (Method 244–95–1) is available for enforcement of tolerances for residues of emamectin (MAB_{1a} and MAB_{1b}) and the 8,9-Z isomers in/on ruminant commodities. The LOQs are 0.0005 ppm for each analyte (MAB_{1a} + 8,9-ZB_{1a} and MAB_{1b} + 8,9-ZB_{1b}) in whole and skim milk and 0.002 ppm for each analyte (MAB_{1a} + 8,9-ZB_{1a} and MAB_{1b} + 8,9-ZB_{1b}) in fat, liver, kidney, and meat.

3. *Multiresidue methods testing*. Data previously submitted show that residues of emamectin are not likely to be recovered by the Food and Drug Administration (FDA) multiresidue methods. The petitioner submitted data pertaining to the multiresidue methods testing of emamectin (B_{1a} and B_{1b} components), AB_{1a}, FAB_{1a}, MFB_{1a} and the 8,9-Z isomer (B_{1a} component).

Adequate enforcement methodology is available to enforce the tolerance expression. The above methods have been forwarded to the Food and Drug Administration for inclusion in PAM I or II. Alternately, methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican maximum residue limits or tolerances on emamectin or its metabolites.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances stating that only a zero residue should be allowed. She objected to utilizing a 1994 database since America has changed a great deal since 1994 thus making the database outdated. She further stated that testing conducted on mice and other animals has absolutely no relevance to toxic effects on humans.

B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to emamectin including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA does update the analysis inputs when new information becomes available. For example, the risk assessment for this final rule utilized dietary information from the USDA's CSFII from 1994–1996 and 1998. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. (See the **Federal Register** of January 7, 2005 (70 FR 1349, 1354) (FRL–7691–4) and the **Federal Register** of October 29, 2004 (69 FR 63083, 63096) (FRL–7681–9).

V. Conclusion

Therefore, the tolerances are established for combined residues of 1) emamectin (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and maximum of 10% 4′-epi-methylamino-4′-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4′-deoxy-4′-epi-amino-avermectin B_{1a} and 4′-deoxy-4′-epi-amino-avermectin B_{1b}; 4′-deoxy-4′-epi-amino avermectin B_{1a} (AB_{1a}); 4′-deoxy-4′-epi-(N-formyl-N-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(N-formyl)amino-avermectin B_{1a} (FAB_{1a}) in or on the following commodities: Fruit, pome, group 11 at 0.025 ppm and Apple, wet pomace at 0.075 ppm; and 2) for the combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-ZB_{1b}) in/on the following commodities: Cattle, fat at 0.010 ppm; cattle, liver at 0.050 ppm; cattle, meat at 0.003 ppm; cattle, meat byproducts, except liver at 0.020 ppm; milk at 0.003 ppm; goat, fat at 0.010 ppm; goat, liver at 0.050 ppm; goat, meat at 0.003 ppm; goat, meat byproducts, except liver at 0.020 ppm; horse, fat at 0.010 ppm; horse, liver at 0.050 ppm; horse, meat at 0.003 ppm; horse, meat byproducts, except liver at 0.020 ppm; sheep, fat at 0.010 ppm; sheep, liver at 0.050 ppm; sheep, meat at 0.003 ppm; and sheep, meat byproducts, except liver at 0.020 ppm. In addition, the following established tolerances will be deleted from 40 CFR 180.505 since a tolerance for ''milk'' will be established: Cattle, milk at 0.003 ppm; goats, milk at 0.003 ppm; hogs, milk at 0.003 ppm; horses, milk at 0.003 ppm; sheep, milk at 0.003 ppm. With the previous emamectin tolerance final rule, published in the **Federal Register** of July 9, 2003 (68 FR 40791) the livestock tolerances were mistakenly placed in paragraph (d) of 40 CFR 180.505 for inadvertent residues. In this action, the livestock tolerances are being moved to paragraph (a)(2) of 40 CFR 180.505 which contains general tolerances.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0212 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 12, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0212, to: Public Information and Records Integrity Branch, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the

requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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 rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.505 is revised to read as follows:

§ 180.505 Emamectin; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of emamectin (a mixture of a minimum of 90% 4′-epi-methylamino-4′-deoxyavermectin B_{1a} and maximum of 10% 4′-epi-methylamino-4′-deoxyavermectin B_{1b}) and its metabolites 8,9-isomer of the B_{1a} and B_{1b} component of the parent (8,9-ZMA), or 4′-deoxy-4′-epi-amino-avermectin B_{1a} and 4′-deoxy-4′-epi-amino-avermectin B_{1b}; 4′-deoxy-4′-epi-amino avermectin B_{1a} (AB_{1a}); 4′-deoxy-4′-epi-(N-formyl-N-methyl)amino-avermectin (MFB_{1a}); and 4′-deoxy-4′-epi-(N-formyl)amino-avermectin B_{1a} (FAB_{1a}) in or on the following commodities:

Commodity	Parts per million
Apple, wet pomace	0.075
Cotton, gin byproduct	0.050
Cotton, undelinted seed	0.025
Fruit, pome, group 11	0.025
Tomato, paste	0.150
Turnip, greens	0.050
Vegetable, Brassica, leafy, group 5	0.050
Vegetable, fruiting (except Cucurbits), group 8	0.020
Vegetable, leafy, except Brassica, group 4	0.100

(2) Tolerances are also established for combined residues of emamectin (MAB_{1a} + MAB_{1b} isomers) and the associated 8,9-Z isomers (8,9-ZB_{1a} + 8,9-

ZB_{1b}) in/on the following commodities when present therein as a result of the application of emamectin to crops listed in the table in paragraph (a)(1) of this section:

Commodity	Parts per million
Cattle, fat	0.010
Cattle, liver	0.050
Cattle, meat	0.003
Cattle, meat byproducts, except liver	0.020
Goat, fat	0.010
Goat, liver	0.050
Goat, meat	0.003
Goat, meat byproducts, except liver	0.020
Horse, fat	0.010
Horse, liver	0.050
Horse, meat	0.003
Horse, meat byproducts, except liver	0.020
Milk	0.003
Sheep, fat	0.010
Sheep, liver	0.050
Sheep, meat	0.003
Sheep, meat byproducts, except liver	0.020

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Reserved]

(d) Indirect and inadvertant residues. [Reserved]

[FR Doc. 06–3308 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2003–0006; FRL–7751–7]

RIN 2070–AD42

Revocation of TSCA Section 4 Testing Requirements for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the final test rule, ''*In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration,'' promulgated under section 4 of the Toxic Substances Control Act (TSCA). This amendment removes dimethyl sulfate (DMS) from the list of chemical substances regulated under the test rule and also removes the requirement that testing be conducted to determine a permeability constant (Kp) for methyl isoamyl ketone (MIAK) and dipropylene glycol methyl ether (DPGME). However, the requirement to conduct testing to measure short-term dermal absorption rates remains for MIAK and DPGME. EPA is basing its decisions to take these actions on information it received since publication of the final rule. Also, upon the effective date of the revocation of the TSCA section 4 testing requirements for DMS, persons who export or intend to export DMS will no longer be subject to the TSCA section 12(b) export notification requirements to the extent that they were triggered by the testing requirements being revoked by this action.

DATES: This direct final rule is effective June 12, 2006 without further notice, unless EPA receives adverse comment in writing, or a request to present comment orally, on or before May 12, 2006. If EPA receives adverse comment, or a written request for an opportunity to present oral comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule, or relevant portions of this direct final rule, will not take effect. If you write EPA to request an opportunity to present oral comments on or before May 12, 2006, EPA will hold a public meeting on this direct final rule in Washington, DC. The announcement of such a meeting would be published in the **Federal Register**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0006, by one of the following methods:

- *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, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2003–0006. 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–2003–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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/docket.htm*.

Docket: All documents in the docket are listed in the 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 at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket 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 OPPT Docket is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, 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: John Schaeffer or Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8173 or (202) 564–8172; e-mail address: *schaeffer.john@epa.gov* or *roman.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who manufacture (defined by statute to include import) or process DMS, DPGME, or MIAK. Also, persons that export or intend to export DMS may have an interest in this action, as, upon the effective date of the revocation of the TSCA section 4 testing requirements for DMS, persons who export or intend to export DMS will no longer be subject to the TSCA section 12(b) export notification requirements to the extent that they were triggered by the testing requirements being revoked by this action. Because other persons may also be interested, the Agency has not attempted to describe all the specific persons that may be affected by this action. If you have any questions regarding the applicability of this action to a particular person, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit CBI to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Requesting an opportunity to present oral comments to the Agency*. When you submit a request for an opportunity to present oral comments, this request must be in writing. If such a request is received on or before May 12, 2006, EPA will hold a public meeting on this direct final rule in Washington, DC. This written request must be submitted to the Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent **Federal Register** document. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments and data at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

3. *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 Action is the Agency Taking?

Pursuant to section 4 of TSCA, EPA promulgated and published in the **Federal Register** a test rule on April 26, 2004 (OSHA dermal test rule) requiring that manufactures (including importers) and processors of 34 chemical substances of interest to the Occupational Safety and Health Administration (OSHA) conduct *in vitro* dermal absorption rate testing (Ref. 1). OSHA intends to use the data from these studies to evaluate the need to develop ''skin designations'' for these chemicals. Skin designations are used by OSHA to alert industrial hygienists, employers, and workers to the potentially significant contribution of a particular chemical to an individual's total workplace exposure to chemicals which can occur by the cutaneous route. Skin designations encourage employers to consider whether changes should be made to processes involving such chemical substances in order to reduce the potential for systemic toxicity from dermal absorption of these chemicals.

EPA recently received dermal absorption data on 3 of the 34 chemical substances listed in the final rule. These data have persuaded EPA to fully withdraw the testing requirements set forth in the final rule for dimethyl sulfate (DMS; Chemical Abstracts Service Number (CAS No.): 77–78–1, Chemical Abstracts (CA) Index Name: Sulfuric acid, dimethyl ester), and to partially withdraw such requirements for methyl isoamyl ketone (MIAK; CAS No.: 110–12–3, CA Index Name: 2-Hexanone, 5-methoxy-) and dipropylene glycol methyl ether (DPGME; CAS No.: 34590–94–8, CA Index Name: Propanol, 1(or 2)-(2-methoxymethylethoxy)-).

On November 2, 2004, DuPont Chemical Solutions Enterprise (DCSE) submitted results of an exploratory skin absorption study entitled *Dimethyl Sulfate: An In Vitro Assay for Assessment of Dermal Corrosivity Using Transcutaneous Electrical Impedance* (Refs. 2 and 3). This study clearly showed that DMS is corrosive (Ref. 3). While the test rule requires that if a chemical ''damages the skin when applied neat, it must be dissolved in water'' (40 CFR 799.5115(h)(5)(vi)), DMS is also rapidly hydrolyzed in water, and would not be available as the test substance, even for the required short-term testing (Refs. 1, 2, and 4). These factors, considered together, render the *in vitro* dermal absorption testing of DMS which is required in the test rule technically infeasible (Ref. 5). Furthermore, EPA neither has, nor knows of, any test standard which could successfully obtain the dermal absorption testing data for DMS as described in the OSHA dermal test rule. Therefore, for the dermal absorption testing requirements for DMS, EPA can no longer meet the TSCA requirement under section 4(b)(1)(B) of TSCA regarding the inclusion of standards for development of test data. Therefore, EPA, in this direct final rule, is revoking the testing requirements for DMS by removing it from the list of chemical substances in 40 CFR 799.5115(j) for which *in vitro* dermal absorption rate testing is required (Ref. 1).

EPA also received dermal absorption studies on MIAK and DPGME, which

were conducted prior to issuance of the final test rule. On June 22, 2005, the Eastman Chemical Company submitted a study entitled *Methyl Isoamyl Ketone: Measurement of the In Vitro Rate of Percutaneous Absorption through Human Skin* (Refs. 6 and 7). The study determined an absorption rate for MIAK of 0.215 ± 0.15 milligrams/centimeter squared/hour (mg/cm²/h) yielding a Kp (permeability constant) of 0.000261 cm/h (Ref. 7). On September 29, 2004, EPA received a request from the American Chemistry Council to review a recently published study by Venier, et al. (2004) on the dermal absorption of five glycol ethers, including DPGME (Ref. 8). This study determined an absorption rate for DPGME of 0.106 ± 0.038 mg/cm²/h yielding a Kp of 0.00011 cm/h (Ref. 9).

EPA and OSHA have reviewed the studies submitted for MIAK and DPGME and have concluded that the studies are reliable and provide sufficient data for EPA to reasonably determine the Kp for these two chemical substances (Refs. 10, 11, and 12). Therefore, this direct final rule revokes the requirement to conduct testing to determine the Kp for MIAK and DPGME. However, the test data provided did not include a determination of short-term dermal absorption rates. Therefore, EPA is not revoking the short-term testing requirement for MIAK and DPGME. EPA has already granted an extension of the testing deadline for the short-term testing for these two substances to allow for the completion of this testing, which was suspended by the test sponsors pending review by EPA and OSHA of the submitted studies (Refs. 11 and 12).

B. What is the Agency's Authority for Taking this Action?

The final rule requiring *in vitro* dermal absorption rate testing for DMS, DPGME, and MIAK (Ref. 1) was promulgated under section 4 of TSCA (15 U.S.C. 2603), which mandates that EPA require that manufacturers and/or processors of chemical substances and mixtures conduct testing if certain findings are made by EPA (see section 4(a) of TSCA). Section 4(b)(5) of TSCA authorizes EPA to amend or repeal test rules issued under section 4(a) of TSCA. One of the findings that EPA made in promulgating the OSHA dermal test rule was a determination that testing was necessary in order to determine both a Kp and short-term absorption rates for all of the chemicals included in the rule (see section 4(a)(1)(B)(iii) of TSCA; see also Ref. 1).

In this direct final rule, EPA is withdrawing the testing required by the final test rule for DMS, and partially withdrawing the testing required for DPGME and MIAK. The test rule requirements for DMS are being withdrawn because the extreme corrosiveness of DMS and its rapid rate of hydrolysis preclude obtaining a relevant rate of absorption, and thus make it infeasible to conduct *in vitro* dermal absorption rate testing for this chemical. The test requirement to determine a Kp for DPGME and MIAK is being withdrawn because EPA has concluded the data recently submitted to EPA on June 22, 2005, and September 29, 2004, are sufficient to determine this value for these chemicals for the purposes identified in the test rule. Therefore, EPA finds that testing to determine a Kp for DPGME and MIAK is no longer necessary.

III. Economic Analysis

In the economic analysis conducted for the final rule, the Agency estimated the total cost of the testing to be $1.16 million for all 34 chemicals, or $33,987 per chemical (Ref. 13). This total included an average $10,425 per chemical for the short-term dermal absorption rate testing, $16,765 for the Kp testing, and an additional 25% ($6,797) in administrative costs. This direct final rule would have the effect of reducing the total testing cost by an estimated $75,899, or approximately 7%, by eliminating the Kp testing for three chemicals and the short-term dermal absorption rate testing for one chemical. In addition, the 25% administrative cost would be eliminated for those tests. The new total cost of the testing is estimated to be $1.08 million (i.e., $1.16 million minus $75,899). The annualized cost per chemical calculated in the economic analysis, based on a 15–year amortization period and a 7% discount rate, was $3,732. For DPGME and MIAK, which will no longer be required to undergo the Kp testing, the annualized cost is estimated to be reduced to $2,301 as a result of the direct final rule.

IV. Export Notification

Upon the effective date of the revocation of the TSCA section 4 testing requirements for DMS, persons who export or intend to export DMS will no longer be subject to the TSCA section 12(b) export notification requirements to the extent that they were triggered by the testing requirements being revoked by this action. For all of the other chemicals, including MIAK and DPGME, listed as subject to the requirements of the OSHA dermal test rule (Ref. 1), the export notification requirements remain the same.

V. Direct Final Rule Procedures

EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as this action simply revokes testing for which EPA already has adequate data or for which such testing is not feasible. This direct final rule is effective June 12, 2006 without further notice, unless EPA receives adverse comment or a written request for an opportunity to present oral comments on or before May 12, 2006. If EPA receives adverse comment or a request for an opportunity to present oral comments on one or more distinct amendments, paragraphs, or sections of this direcct final rule, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of this direct final rule for which the Agency does not receive adverse comment or a request for an opportunity to present oral comments will become effective June 12, 2006, notwithstanding any adverse comment or request on any other distinct amendment, paragraph, or section of this direct final rule. For any distinct amendment, paragraph, or section of this direct final rule that is withdrawn due to adverse comment or a request for an opportunity to present oral comments, EPA will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. The Agency will address the comment or request for an opportunity to present oral comments on any such distinct amendment, paragraph, or section as part of that notice of proposed rulemaking.

VI. References

1. EPA. Final Test Rule for *In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration. **Federal Register** (69 FR 22402, April 26, 2004) (FRL–7312–2). Available on-line at: *http://www.epa.gov/fedrgstr/EPA-TOX/2004/April/Day-26/t9409.htm*.

2. DCSE. Letter from Robert W. Freerksen, PhD to EPA Re: *In Vitro* Dermal Absorption Test rule (69 FR 22402 (4/26/04; OPPT–2003–0006)) 40 CFR 799.5115 Dimethyl Sulfate (CAS No.77–78–1) Request for Modification of Test Standard. November 2, 2004.

3. Fasano, W.J. Dimethyl Sulfate: An *In Vitro* Assay for Assessment of Dermal Corrosivity Using Transcutaneous Electrical Impedance. E.I. du Pont de

Nemours and Company. Haskell Laboratory for Health and Environmental Sciences. October 15, 2004.

4. EPA. E-mail from Andrew Mamantov, PhD to Greg Schweer Re: Hydrolysis rate for Dimethyl Sulfate. March 9, 2005.

5. EPA. Note from Leonard Keifer to Greg Schweer Re: Technical Feasibility of Performing an *In Vitro Dermal* Absorption Study with Dimethyl Sulfate. March 10, 2005.

6. Eastman Chemical Company. Letter from Marc G. Schurger to Catherine Roman Re: *In vitro* dermal absorption testing on methyl isoamyl ketone (CAS No. 110–12–3) under TSCA Section 4 Test Rule (OPPT–2003–0006). June 22, 2004.

7. Hill, T.S. and Taylor, L. Methyl isoamyl ketone: measurement of the *in vitro* rate of percutaneous absorption through human skin. Final Report: Toxicological Sciences Laboratory, Health and Environment Laboratories, Eastman Kodak Company. January 29, 2001.

8. ACC. Communication (e-mail) from Susan Lewis to Catherine Roman. Directing EPA's attention to a recent publication (2004) on dermal absorption of dipropylene glycol methyl ether (DPGME). September 29, 2004.

9. Venier, M., Adami, G., Larese, F., and Renzi, N. Percutaneous absorption of 5 glycol ethers through human skin *in vitro. Toxicology In Vitro* 18:665–671. 2004.

10. OSHA, Department of Labor. Letter from William G. Perry, CIH to Catherine Roman dated January 26, 2005.

11. EPA. Letter from Charles M. Auer to Marc G. Shurger Re: USEPA and OSHA review of the dermal absorption rate study sponsored by the Eastman Chemical Company and conducted by Toxicological Sciences Laboratory. May 26, 2005. (OPPT–2003–0006–0270).

12. EPA. Letter from Charles M. Auer to Susan Anderson Lewis, Ph.D. Re: USEPA review of a recently published dermal absorption rate study on dipropylene glycol methyl ether. May 26, 2005. (OPPT–2003–0006–0272).

13. EPA. Economic Impact Analysis and Small Entity Impact Analysis for the TSCA Section 4(a) Test Rule for 34 Chemicals Targeted for *In Vitro* Dermal Absorption Rate Testing. Prepared by OPPT/Economics, Exposure, and Technology Division (EETD)/Economic and Policy Analysis Branch (EPAB). Washington, DC. February 3, 2004.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This direct final rule implements changes to 40 CFR 799.5115 resulting in a burden and cost reduction. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*.

C. Regulatory Flexibility Act

Because this direct final rule eliminates reporting requirements, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this revocation of certain requirements under section 4 of TSCA will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132: Federalism

This direct final rule has no federalism implications, because it will not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

This direct final rule has no tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, nor on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

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

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children.

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

This direct final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 3, 2006.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 799—AMENDED

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 2. Amend §799.5115 by revising the first sentence of paragraph (h)(5)(vii)(A) in § 799.5115 to read as follows and by removing the entry ''CAS No. 77–78–1 Dimethyl sulfate'' in Table 2 of paragraph (j) in § 799.5115.

§ 799.5115 Chemical testing requirements for certain chemicals of interest to the Occupational Safety and Health Administration.

* * * * *

(h) * * *

(5) * * *

(vii) * * *

(A) *Kp.* A Kp must be determined for each test chemical, except for methyl isoamyl ketone (MIAK; CAS No.: 110–12–3, Chemical Abstracts (CA) Index Name: 2-Hexanone, 5-methoxy-) and dipropylene glycol methyl ether (DPGME; CAS No.: 34590–94–8, CA Index Name: Propanol, 1(or 2)-(2-methoxymethylethoxy)-). * * *

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[FR Doc. 06–3491 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1531–IFC]

RIN 0938–AO35

Medicare Program; Medicare Graduate Medical Education Affiliation Provisions for Teaching Hospitals in Certain Emergency Situations

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period will modify the current Graduate Medical Education (GME) regulations as they apply to Medicare GME affiliations to provide for greater flexibility during times of disaster. Specifically, this rule will implement the emergency Medicare GME affiliated group provisions that will address issues that may be faced by certain teaching hospitals in the event that residents who would otherwise have trained at a hospital in an emergency area (as that term is defined in section 1135(g) of the Social Security Act (the Act)) are relocated to alternate training sites.

DATES: This interim final rule is effective as of August 29, 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 12, 2006.

ADDRESSES: In commenting, please refer to file code CMS–1531–IFC. 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–1531–IFC, P.O. Box 8011, Baltimore, MD 21244–8011.

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–1531–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Elizabeth Truong, (410) 786–6005. Renate Rockwell, (410) 786–4645.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1531–IFC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately three 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

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

A. Legislative Authority

The stated purpose of section 1135 of the Act is to enable the Secretary to ensure, to the maximum extent feasible, in any emergency area and during an emergency period, that sufficient health care items and services are available to meet the needs of enrollees in Medicare, Medicaid, and the State Children's Health Insurance Program (SCHIP). Section 1135 of the Act authorizes the Secretary, to the extent necessary to accomplish the statutory purpose, to temporarily waive or modify the application of certain types of statutory and regulatory provisions (such as conditions of participation or other certification requirements, program participation or similar requirements, or pre-approval requirements) with respect to health care items and services furnished by health care provider(s) in an emergency area during an emergency period.

The Secretary's authority under section 1135 of the Act arises in the event there is an ''emergency area'' and continues during an ''emergency period'' as those terms are defined in the statute. Under section 1135(g) of the Act, an emergency area is a geographic area in which there exists an emergency or disaster that is declared by the President according to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and a public health emergency declared by the Secretary according to section 319 of the Public Health Service Act. (Section 319 of the Public Health Service Act authorizes the Secretary to declare a public health emergency and take the appropriate action to respond to the emergency, consistent with existing authorities.) Throughout the remainder of this discussion, we will refer to such emergency areas and emergency periods as ''section 1135'' emergency areas and emergency periods.

Section 1871(e)(1)(A) of the Act, as amended by section 903(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), generally prohibits the Secretary from making retroactive substantive changes in policy unless retroactive application of the change is necessary to comply with statutory requirements, or failure to apply the change retroactively would be contrary to the public interest. Due to the infrastructure damage and disruption of operations experienced by medical facilities, and the consequent disruption in residency training, caused by Hurricanes Katrina and Rita in 2005, there is urgent need for the regulation changes provided in this interim final rule with comment period to be applied retroactively. Existing regulations do not adequately address the issues faced by hospitals that are located in the emergency areas addressed in this rule, or hospitals that assisted by training displaced residents from the emergency area. We believe failure to apply the regulatory changes retroactively would be contrary to the public interest because hospitals affected by Hurricanes Katrina and Rita could otherwise face dramatic financial hardship and impede the recovery of graduate medical education programs in the emergency area.

Specifically, the training programs at many teaching hospitals in New Orleans and surrounding areas were temporarily closed in the aftermath of the hurricanes, and the displaced residents were transferred to other hospitals to continue their training programs in other parts of the country. While many residents will likely be able to return to the hurricane-affected hospitals after some period of time, others may need to remain where they have been transferred for an extended period of time. A regulatory change is required so that Medicare graduate medical education (GME) funding can be maintained while there are displaced residents training at various hospitals outside of the emergency area even as the hurricane-affected hospitals incrementally bring residents back in the process of rebuilding their training programs.

Under section 1886(h) of the Act, as amended by section 9202 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272), the Secretary is authorized to make payments to hospitals for the direct costs of approved GME programs. Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved GME program receive an additional payment for a Medicare discharge to reflect the higher patient care costs of teaching hospitals, that is, the indirect graduate medical education (IME) costs. Sections 1886(h)(4)(F) and 1886(d)(5)(B)(v) of the Act established limits on the number of allopathic and osteopathic residents that hospitals may count for purposes of calculating direct GME payments and the IME adjustment, respectively, thereby establishing hospital-specific direct GME and IME full-time equivalent (FTE) resident caps. However, under the authority granted by section 1886(h)(4)(H)(ii) of the Act, the Secretary may issue rules to allow institutions that are members of the same affiliated group to apply their direct GME and IME FTE resident caps on an aggregate basis through a Medicare GME affiliation agreement. The Secretary's regulations permit hospitals, through a Medicare GME affiliation agreement, to adjust IME and direct GME FTE resident caps to reflect the rotation of residents among affiliated hospitals. The current regulation at § 413.75(b), implementing Medicare GME affiliations, specifies that hospitals may only form a Medicare GME affiliated group with other hospitals if they are in the same or contiguous urban or rural areas, if they are under common ownership, or if they are jointly listed as program sponsors or major participating institutions in the same program. The existing regulations do not provide for hospitals whose residency programs have been disrupted in an emergency area to enter into valid Medicare GME affiliation agreements with host hospitals where the hospitals may not meet the regulatory requirements for Medicare GME affiliations. Therefore, through this interim final rule with comment period, we are supplementing the regulations at § 413.75(b) and § 413.79(f) with provisions for emergency Medicare GME affiliated groups to provide relief to hospitals with disrupted residency programs in an emergency area. These provisions are being made effective retroactive to August 29, 2005.

B. Overview of Medicare Direct GME and IME

As we discussed in the previous section, the Medicare program makes payments to teaching hospitals to account for two types of costs, the direct costs (direct GME) and the indirect costs (IME) of a hospital's graduate medical education program. Direct GME payments represent the direct costs of training residents (for example, resident salaries, fringe benefits, and teaching physician costs associated with an approved GME program) and generally are calculated by determining the product of the Medicare patient load (that is, the percentage of the hospital's Medicare inpatient days), the hospital's per resident payment amount, and the weighted number of FTE residents training at the hospital during the cost reporting period.

The IME adjustment is made to teaching hospitals for the additional indirect patient care costs attributable to teaching activities. For example, teaching hospitals typically offer more technologically advanced treatments to their patients, and therefore, patients who are sicker and need more sophisticated treatment are more likely

to go to teaching hospitals. Furthermore, there are additional costs related to the presence of inefficiencies associated with teaching residents resulting from the additional tests or procedures ordered by residents and the demands put on physicians who supervise, and staff who support, the residents. IME payments are made as a percentage add-on adjustment to the per discharge Hospital Inpatient Prospective Payment System (IPPS) payment, and are calculated based on the hospital's ratio of FTE residents to available beds as defined at § 412.105(b). The statutory formula for calculating the IME adjustment is: $c \times [(1 + r)^{.405} - 1]$, where ''r'' represents the hospital's ratio of FTE residents to beds, and ''c'' represents an IME multiplier, which is set by the Congress.

The amount of IME payment a hospital receives for a particular discharge is dependent upon the number of FTE residents the hospital trains, the hospital's number of available beds, the current level of the statutory IME multiplier, and the per discharge IPPS payment. Sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) of the Act established hospital specific limits (that is, caps) on the number of allopathic and osteopathic FTE residents that hospitals may count for purposes of calculating indirect and direct GME payments, respectively.

C. Effect of Existing Regulations

As explained above, the Secretary's authority under section 1135 of the Act is prompted by the occurrence of an emergency or disaster that leads to designation of a section 1135 emergency area, and continues throughout a section 1135 emergency period. For example, when Hurricane Katrina occurred on August 29, 2005, disrupting health care operations and medical residency training programs at teaching hospitals in New Orleans and the surrounding area, the conditions were met for an emergency area and emergency period under section 1135(g) of the Act. Under section 1135 of the Act, the Secretary was then authorized to waive a number of provisions to ensure that sufficient services would be available in the section 1135 emergency area to meet the needs of Medicare, Medicaid, and SCHIP patients. Shortly after Hurricane Katrina occurred, we were informed by hospitals in New Orleans that the training programs at many teaching hospitals in the city were closed as a result of the disaster and that the displaced residents were being transferred to training programs at host hospitals in other parts of the country. For purpose of discussion in this rule, a host hospital is a hospital that trains residents displaced from a training program in a section 1135 emergency area. A home hospital is a hospital that meets all of the following: (1) Is located in a section 1135 emergency area (2) had its inpatient bed occupancy decreased by 20 percent or more due to the disaster so that it is unable to train the number of residents it originally intended to train in that academic year, and (3) needs to send the displaced residents to train at a host hospital.

Immediately after Hurricane Katrina, home and host hospitals petitioned CMS for a mechanism to allow host hospitals to count the displaced FTE residents they would be training for direct GME and IME payment purposes. In response to the petitions, we immediately issued a Question and Answer (Q&A), which cited provisions in existing regulations at § 413.79(h). Section 413.79(h) allows home hospitals that closed, or closed one or more residency training programs, to temporarily transfer FTE residents to host hospitals and allows host hospitals that were already training residents at or above their FTE resident caps to count those displaced residents for direct GME and IME payment (see the CMS Q&A's Web site: *http://questions.cms.hhs.gov* (the Web site link is located at ID 5696)).

As specified at § 413.79(h), Medicare considers a program at a hospital to be closed if ''* * * the hospital ceases to offer training for residents in a particular approved medical residency training program.'' Section 413.79(h) also defines closure of a hospital as when a hospital ''* * * terminates its Medicare agreement under the provisions of § 489.52 * * *.'' The regulations at § 413.79(h) allow a host hospital that accepts residents from the closed program to receive a temporary increase in its IME and direct GME resident caps for those residents as long as the home hospital agrees to a corresponding temporary reduction to its own caps. The host hospital under the closed program provisions would receive temporary FTE resident cap adjustments only as long as the specific resident(s) is displaced (and only as long as the home hospital or home hospital's program remains closed). Therefore, once the resident(s) completes training in the program that he or she was training in when the program closed, or he or she returns to train at the home hospital, no additional FTE resident cap adjustments for the host hospital are permitted under § 413.79(h). Furthermore, § 413.79(h) specifies that a host hospital can receive a temporary increase in its FTE resident caps in order to count displaced FTE residents only if the proper documentation is submitted to the fiscal intermediaries (FIs) by both the home and host hospital no later than 60 days after the host hospital begins to train the displaced resident(s).

In accordance with the authority granted to the Secretary under section 1135 of the Act, as stated in our Q&A posted on the CMS Web site, we extended the regulatory 60-day deadline for submitting documentation to CMS as required by § 413.79(h) and thus allowed hospitals to submit the documentation by the earlier of the end of the section 1135 emergency period granted for Hurricanes Katrina and Rita or by June 30, 2006. The section 1135 emergency period ended on January 31, 2006. We believe the existing regulation at § 413.79(h) addressed the issue of finding host hospitals for residents displaced from home hospitals in the immediate aftermath of Hurricanes Katrina and Rita. However, teaching hospitals in section 1135 emergency areas have since made us aware of several issues that are not addressed (or not addressed adequately) under current regulations. For instance, some of the hurricane-affected programs in New Orleans and elsewhere did not in fact close entirely. In many cases, a reduced number of residents continued to train in the hospitals' outpatient departments. Therefore, those programs at the home hospitals did not actually close, and neither the home or host hospitals will be able to use the regulatory provisions at § 413.79(h) to enable host hospitals that are at or above their FTE resident caps to count displaced residents from home hospitals for Medicare direct GME and IME purposes. We understand that even hospitals that had originally completely closed their programs have been in the process of gradually reopening their programs (that is, residents are being brought back to the home hospitals in stages). Therefore, even where a home hospital temporarily closed a program following the disaster, once it begins training any residents (even a fraction of an FTE resident) in that program again, the program is no longer closed and any adjustments made to the host hospital's cap under the closed program regulation would no longer be allowed. Therefore, we believe that, in order to remove the disincentive faced by hospitals that are at or above their FTE resident caps to continue training displaced residents, some kind of regulatory relief is necessary.

II. Meeting the Needs of Teaching Hospitals Affected by a Disaster

[If you choose to comment on issues in this section, please include the

caption ''TEACHING HOSPITALS AFFECTED BY A DISASTER'' at the beginning of your comments.]

This interim final rule with comment period will amend the Medicare GME affiliation regulations to address the needs and incentives of home and host hospitals in the event of an emergency or disaster. In developing a policy to provide home and host hospitals flexibility in response to a disaster, we address two priorities. First, we believe that in disaster situations, to the extent that the statute permits, the policy should facilitate the continuity of GME, minimizing the disruption of residency training. Second, the policy should take into account that the training programs at home hospitals have been severely disrupted by a disaster and that home hospitals will usually want to rebuild their GME programs as soon as possible.

A. Overview of the Closed Programs Provisions

As we noted in our Q&A (posted on the CMS Web site), issued in response to inquiries from hospitals affected by Hurricane Katrina, the regulations at § 413.79(h) offer a payment policy option that could be applied in limited situations occurring after a disaster. Thus, a host hospital would be allowed to make temporary adjustments to its IME and direct GME caps (limited by the home hospital's IME and direct GME caps) in order to count displaced residents for direct GME and IME payment purposes. However, due to the complexity of training programs where residents train at multiple hospitals (this is a common training model used throughout the country), there are many potential difficulties that can arise in applying this policy to address disaster situations.

Typically, residents in a program spend time training during the year at multiple hospitals, some of which may have been affected by the disaster, while others may not have been affected. For example, a first year resident in a family practice program may spend one third of the year training at a hospital in New Orleans, and the remaining two-thirds of the year at other hospitals in Baton Rouge. When the New Orleans hospital closed due to the hurricane, this resident may have been training at one of the Baton Rouge hospitals. Therefore, although the resident was not immediately displaced by the hurricane, since the resident would have rotated to the New Orleans hospital later in the year, the resident will ultimately be affected. Conversely, a resident that was training in New Orleans at the time of the hurricane was immediately displaced, so even if the resident was transferred to a host hospital in Texas to continue training, that resident may be able to continue to train at the unaffected Baton Rouge hospital after completing a rotation at the host hospital.

Additional complexity can arise through the interaction of the home and host hospital's FTE resident caps. Each one of the home hospitals involved in the previous example could be training residents above their respective IME and direct GME FTE resident caps. Since the closed program provisions are resident-specific, that is, the host hospital's cap adjustment is tied to the specific resident who was displaced, as specified at § 413.79(h), documentation would be required to account for each resident's FTE time spent training at each of the home and host hospitals. Additionally, because the policy under § 413.79(h) is resident-specific, the host hospital would only receive a temporary cap adjustment for as long as the specific residents are displaced. Therefore, home and host hospitals would need to provide a very detailed accounting of each resident's training as required at § 413.79(h).

Hospitals in New Orleans have notified us that in light of the damage they suffered from the hurricane, documenting the specific residents, their rotations at the various home and host hospitals (and the FTEs associated with each rotation) and where the displaced residents were sent after the hurricane constitutes a major documentation burden. We note that although CMS extended the documentation deadline to January 31, 2006, under the authority of section 1135 of the Act, giving hospitals 5 months from the time of the hurricane to submit this type of documentation, we are aware of no hospitals that complied with all of the documentation requirements listed at § 413.79(h) by the due date. Therefore, due to the challenges and complexities mentioned above, we believe that the existing closed program regulations do not adequately address the issues associated with Medicare direct GME and IME payment policies that are faced by residency training programs affected by a disaster.

B. Overview of the Medicare GME Affiliation Provisions

Accordingly, we are revising § 413.75(b) to include definitions of emergency Medicare GME affiliated group, home hospital, host hospital, section 1135 emergency area, and section 1135 emergency period. We are also revising § 413.79(f) to set forth the requirements of an emergency Medicare GME affiliation agreement.

The existing definition of Medicare GME affiliated group at § 413.75(b) specifies that hospitals may only form a Medicare GME affiliated group with other hospitals if they are in the same or contiguous urban or rural areas, if they are under common ownership, or if they are jointly listed as program sponsors or major participating institutions in the same program. The existing Medicare GME affiliation provisions at § 413.79(f) permit participating teaching hospitals to aggregate and ''share'' FTE caps during a specified academic year. The Medicare GME affiliation regulations allow hospitals that need to either decrease or increase their FTE resident counts to reflect the normal movement of residents among affiliated hospitals to do so for the agreed-upon training years.

Hospitals that affiliate must submit a Medicare GME affiliation agreement, as specified at § 413.75(b), to their Medicare FIs and to CMS no later than July 1 of the relevant academic year. Each hospital in the Medicare GME affiliated group must have a shared rotational arrangement with at least one other hospital within the Medicare GME affiliated group, and all of the hospitals within the Medicare GME affiliated group must be connected by a series of shared rotational arrangements. The net effect of the adjustments to hospitals' FTE resident caps, whether positive or negative on a hospital-specific basis, in the aggregate must not exceed zero. While additional hospitals may not be added to the Medicare GME affiliated group after July 1 of a year, amendments to the affiliation agreement to adjust the distribution of the number of FTE residents in the original Medicare GME affiliation among the hospitals that are part of the Medicare GME affiliated group can be made through June 30 of the academic year for which they are effective.

C. Overview of the Emergency Medicare GME Affiliated Group Provision

[If you choose to comment on issues in this section, please include the caption ''OVERVIEW OF THE EMERGENCY MEDICARE GME AFFILIATED GROUP PROVISION'' at the beginning of your comments.]

Based on what we have learned about the impact of a disaster on teaching hospitals, we believe it is necessary to provide hospitals with greater flexibility to distribute FTE resident caps within a group of home and host hospitals if there is an emergency at a home hospital that has resulted in the designation of a section 1135 emergency

area. We believe that a modified Medicare GME affiliation policy would allow affected hospitals the maximum degree of flexibility following the disaster so that residents displaced by the disaster can continue their residency training at other hospitals, while the home hospitals can remain committed to reopening their programs.

While there may be hospitals in the section 1135 emergency area that do not experience a disruption in residency training due to the disaster, the provisions in this rule are only intended to help home hospitals, that is, hospitals that have been directly affected by the disaster to the extent that their inpatient bed occupancy is diminished, limiting the hospital's ability to train residents. In determining whether a hospital in a section 1135 emergency area qualifies as a home hospital, we believe it is appropriate to compare the inpatient bed occupancy of the hospital one week before the earlier of the date the section 1135 emergency period begins, or the date on which the hospital began any evacuation efforts in anticipation of an event that results in the declaration of a section 1135 emergency area, to the inpatient bed occupancy of the hospital one week after the section 1135 emergency period begins. If the inpatient bed occupancy decreases by 20 percent or more between these two comparison timeframes, we believe that the significant drop in occupancy can be assumed to be the result of the event that led to the declaration of a section 1135 emergency period. We believe a hospital that experiences such a drop in occupancy may not have enough patients to continue to provide for adequate residency training, and therefore, may need to send residents to host hospitals. The emergency Medicare GME regulations are applicable to these home hospitals. These emergency Medicare GME affiliated group provisions in § 413.79(f)(6) are effective as of the date of the first day of a section 1135 emergency period (for example, in the case of Hurricane Katrina, they are effective on August 29, 2005). The duration of these emergency Medicare GME affiliation agreements is limited to the remainder of the academic year during which the section 1135 emergency period began, plus two additional academic years. Thus, an emergency Medicare GME affiliation agreement is permitted to remain in effect for no more than 3 training years, beginning with the first day of the section 1135 emergency period. (An emergency Medicare GME affiliation agreement could remain in effect for three full academic years only if the first day of a section 1135 emergency period occurred on July 1.)

For example, in the case of Hurricane Katrina, an emergency Medicare GME affiliation could be effective from August 29, 2005, to June 30, 2006 (we refer to this as the first effective year); the affiliation could also be effective for two subsequent academic years: the second effective year of the emergency Medicare GME affiliation would be from July 1, 2006 to June 30, 2007, and the third effective year would be from July 1, 2007 to June 30, 2008. At the conclusion of the allowable effective period for an emergency Medicare GME affiliated group, the emergency provisions at § 413.79(f)(6) cease to apply, and the existing provisions for Medicare GME affiliation agreements at § 413.79(f)(1) through (5) would apply.

We believe that the limits on the allowable effective period for emergency Medicare GME affiliated group serve to maintain GME funding over a sufficient period to allow home hospitals to rebuild their GME programs, while also supporting the continuity of residency training. We welcome public comments on whether the allowable effective period is sufficient time to accommodate rebuilding of residency programs at home hospitals.

D. Emergency Medicare GME Affiliated Group Provisions

1. Affiliation Agreement

To provide home hospitals with more flexibility to train displaced residents at various sites, and to allow host hospitals to count displaced residents for IME and direct GME, home hospitals may enter into emergency Medicare GME affiliation agreements effective retroactive to the date of the first day of the section 1135 emergency period.

The emergency Medicare GME affiliated group may include hospitals that would not meet the requirements for a Medicare GME affiliated group as specified as § 413.75(b). Specifically, for these emergency Medicare GME affiliated groups, home hospitals may affiliate with host hospitals anywhere in the country because we recognize that immediately following a disaster, home hospitals need flexibility to assign displaced residents to any available program. As home hospitals recover the ability to train residents after a disaster, the emergency Medicare GME affiliated group provisions allow home hospitals to return residents to their training sites, thereby giving home hospitals the opportunity to rebuild their programs incrementally.

For the year during which the section 1135 emergency was declared, each hospital participating in the emergency affiliation must submit a copy of the emergency Medicare GME affiliation agreement, as specified under § 413.79(f)(6), to CMS and the CMS FI servicing each hospital in the agreement by the later of 180 days after the section 1135 emergency period begins or by June 30 of the relevant training year. Emergency Medicare GME affiliation agreements for the subsequent 2 academic years must be submitted by the later of 180 days after the section 1135 emergency period begins or by July 1 of each of the years. Amendments to the emergency Medicare GME affiliation agreement to adjust the distribution of the number of FTE residents in the original emergency Medicare GME affiliation among the hospitals that are part of the emergency Medicare GME affiliated group can be made through June 30 of the academic year for which they are effective. The emergency Medicare GME affiliation agreement must be written, signed, and dated by responsible representatives of each participating hospital and must: (1) List each participating hospital and its provider number, and specify whether the hospital is a home or host hospital; (2) specify the effective period of the emergency Medicare GME affiliation agreement; (3) list each participating hospital's IME and direct GME FTE caps in effect for the current academic year before the emergency Medicare GME affiliation (that is, if the hospital was already a member of a regular Medicare GME affiliated group before entering into the emergency Medicare GME affiliation, the emergency Medicare GME affiliation must be premised on the FTE caps of the hospital as adjusted per the regular Medicare GME affiliation agreement, and not include any slots gained under section 422 of the MMA); and (4) specify the total adjustment to each hospital's FTE caps in each year that the emergency Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to the host hospital's direct and indirect FTE caps that is offset by a negative adjustment to the home hospital's (or hospitals') direct and indirect FTE caps of at least the same amount. The sum total of adjustments to all the participating hospitals' FTE caps under the emergency Medicare GME affiliation agreement may not exceed the aggregate adjusted caps of the hospitals participating in the emergency Medicare GME affiliated group. A home hospital's IME and direct GME FTE cap reductions under an emergency Medicare GME affiliation agreement are limited to the

home hospital's IME and direct GME FTE resident caps in effect for the academic year in accordance with regulations at § 413.79(c)(1) through (c)(3) or § 413.75(b), that is, the hospital's base year FTE resident caps as adjusted by any and all existing affiliation agreements.

In addition to meeting the requirements for an emergency Medicare GME affiliation agreement, a host hospital will be required to document that any FTE residents counted pursuant to the emergency Medicare GME affiliation agreement are, in fact, displaced residents from a program located in the emergency area. That is, the host hospital will need to provide the FI with a list of resident names and social security numbers, and the name of the original sponsor of the program located at the home hospital in the emergency area for each displaced resident. We note that the hospital is already required, as specified at § 413.75(d), to provide much of this information in order to include any resident in its FTE count for a particular cost reporting period. We are adding the requirement that a host hospital document the original program sponsor of each displaced resident it is training in order to document that any additional FTE residents counted pursuant to the emergency Medicare GME affiliation agreement are indeed due to training of displaced residents. Providing appropriate and sufficient documentation permits the FI to properly reconcile the correct FTE resident count for each hospital.

2. Multiple Affiliations

In many cases, home hospitals will already have Medicare GME affiliation agreements in effect before the section 1135 emergency period, and may be entering into emergency Medicare GME affiliation agreements with host hospitals that will already have regular Medicare GME affiliation agreements in effect. Therefore, such situations will lead to multiple layers of Medicare GME affiliations. It is critical that the emergency Medicare GME affiliation agreements accurately state the appropriate caps for each hospital in the affiliated group in order for the FIs to pay the hospitals correctly. The hospitals must attach copies of all existing Medicare GME affiliation agreements (that is, a hospital's regular or other emergency Medicare GME affiliations already in place for the year) when submitting the emergency Medicare GME affiliation agreement to the FI so that the FI can verify and reconcile the cap adjustments. For example, if a home hospital has a direct GME cap of 100 but has an existing affiliation agreement before the disaster in which it reduced its cap by 40 FTEs, then, for purposes of entering into the emergency Medicare GME affiliation agreement, it has an adjusted direct GME cap of 60 with which to affiliate under the emergency affiliation provisions. The emergency Medicare GME affiliation provisions are different from the regular Medicare GME affiliation provisions in that regular Medicare GME affiliations are based upon the hospitals' FTE resident caps before any adjustments resulting from Medicare GME affiliation agreements. Because they are likely to occur during an academic year, and cannot be anticipated before the beginning of the year, emergency Medicare GME affiliations are based upon hospitals' FTE resident caps as they are already modified by any existing Medicare GME affiliation agreement(s).

In order to provide each hospital with its correct payment, the CMS FIs involved need to be aware of both regular Medicare GME affiliation agreements and any emergency Medicare GME affiliation agreements in which a hospital is participating. Without the correct information on each hospital's Medicare GME affiliation agreements (whether regular or emergency affiliations), hospitals could be paid improperly for direct GME and IME based on application of incorrect FTE resident caps that do not reflect all Medicare GME affiliation agreements in effect (that is, regular and emergency affiliations).

Furthermore, to determine direct GME and IME payments under an emergency Medicare GME affiliation, the normal FTE-counting rules as specified at § 413.78 will apply. For example, residents beyond the initial residency period are counted at .5 FTE for direct GME purposes. The existing IME FTE-counting rules as specified at § 412.105(f) apply in determining the IME adjustment. Therefore, when the CMS FI settles a cost report for a hospital in which an emergency Medicare GME affiliation agreement is reflected, each participating hospital would be held to its adjusted IME and adjusted direct GME caps as agreed to and specified in the emergency Medicare GME affiliation agreement.

We note that in the IPPS final rule published in the **Federal Register** on August 11, 2004 (69 FR 49142), we state "* * * hospitals that receive section 422 cap increases from CMS and participate in a Medicare GME affiliation agreement under § 413.79(f) on or after July 1, 2005 may only affiliate for the purposes of adjusting their 1996 FTE caps (adjusted for new programs and any other reductions under section 1886(h)(7)(A) of the Act) for direct GME and IME. The additional slots that a hospital receives under section 422 of the MMA may not be aggregated and applied to the FTE resident caps of any other hospitals." Similarly, we are providing that any slots gained under section 422 of the MMA may not be used in any emergency Medicare GME affiliation agreement.

We are providing examples below of the emergency Medicare GME affiliation agreements and discussing the ramifications of the provisions.

Example I

For the training year beginning on July 1, 2005, Hospital A and Hospital B have a regular Medicare GME affiliation agreement in which Hospital A (which has IME and direct GME caps of 20 FTEs) agrees to transfer 10 FTEs to Hospital B (which has IME and direct GME caps of 15 FTEs). Under the regular affiliation agreement, Hospital B now has adjusted caps of 25 FTEs and Hospital A has adjusted caps of 10 FTEs for both IME and direct GME. As a result of Hurricane Zeta on November 1, 2005, Hospital A sustained damage to its inpatient facilities (reducing its occupancy by 20 percent or more) and has displaced residents that it needs to send to other hospitals for training. Hospital A is located in a section 1135 emergency area, and the first day of the section 1135 emergency period is November 1, 2005. In this case, Hospital A is a home hospital as defined under § 413.75(b), and is permitted to enter into an emergency Medicare GME affiliation agreement as specified at § 413.79(f)(6).

In Example I above, Hospital B was not affected by the hurricane (that is, Hospital B was able to continue training residents at the same level it was before the hurricane, and is training the maximum number of residents under its FTE caps as adjusted by the existing Medicare GME affiliation agreement with Hospital A). We note that Hospitals A and B may modify their regular Medicare GME affiliation agreement, if necessary, no later than June 30, 2006, under the requirements as specified at § 413.79(f)(5). In this case, Hospital B does not qualify as a home hospital since its inpatient occupancy was not reduced by 20 percent or more even though it was located in the area covered by the section 1135 waiver. Hospital A elects to enter into an emergency Medicare GME affiliation agreement with host Hospitals C and D in two other States because those

hospitals are well-situated to provide residents displaced from Hospital A with an appropriate training experience.

Accordingly, all of the hospitals (A, C, and D) in the emergency Medicare GME affiliated group must submit copies of the emergency Medicare GME affiliation agreement to CMS and to the CMS FIs servicing the hospitals participating in the emergency Medicare GME affiliation agreement by June 30, 2006 (in this case, June 30, 2006 is the later of 180 days after the section 1135 emergency period begins (November 1, 2005) or by June 30 of the relevant training year). In Table I below, we list the FTE resident cap information that the emergency Medicare GME affiliation agreement, included for the first effective period, which was submitted to CMS and the CMS FI on June 30, 2006.

TABLE I.—EMERGENCY MEDICARE GME AFFILIATION AGREEMENT DUE TO HURRICANE ZETA FOR EFFECTIVE PERIOD—NOVEMBER 1, 2005 TO JUNE 30, 2006

Hospital name	Provider No.	IME cap before emergency affiliation	Direct GME cap before emergency affiliation	Adjusted IME cap under the emergency affiliation	Adjusted Direct GME cap under the emergency affiliation
Hospital A	19–9999	10	10	1 (−9)	1 (−9)
Hospital C	45–9999	10	10	14 (+4)	14 (+4)
Hospital D	33–9999	10	10	15 (+5)	15 (+5)

As indicated in Example I above, Hospital B was not affected by the hurricane, and therefore did not participate in an emergency Medicare GME affiliated group. However, Hospital A is required to attach a copy of the existing Medicare GME affiliation agreement it has with Hospital B to the emergency Medicare GME affiliation agreement submitted to CMS and its FI to document its adjusted cap of 10 FTEs. Hospitals C and D are similarly required to attach copies of all existing Medicare GME affiliation agreements that they may be participating in as of July 1, 2005, (including any regular or emergency affiliation agreements) in order to document their caps.

To further illustrate this policy continuing with the above example, Hospital C, which has an adjusted direct GME cap under the emergency Medicare GME affiliation of 14 FTEs, could count up to four displaced FTE residents during the first effective year assuming that Hospital C can document that these FTEs are from programs in the section 1135 emergency area. However, upon cost report settlement, the CMS FI determined that Hospital C has actually trained a total of 16 FTEs during the cost reporting period. Since each participating hospital will be held to their adjusted IME and adjusted direct GME caps as agreed to and specified in the emergency Medicare GME affiliation agreement, the CMS FI would only allow four of the six additional FTEs Hospital C trained pursuant to the emergency Medicare GME affiliation agreement.

Example II

Alternatively, assume that both Hospitals A and B from Example I above are affected by the same hurricane, both qualify as a home hospital, and both need to participate in an emergency Medicare GME affiliation with host Hospitals C and D in the other States.

We note that while Hospitals A and B may modify their existing Medicare GME affiliation agreement on or before June 30, 2006, Hospitals A and B may find it easier to reflect the changes in training (and the resultant shift of FTE resident caps) due to Hurricane Zeta through the emergency Medicare GME affiliation agreement. In this scenario, Hospitals A and B may execute an emergency Medicare GME affiliation agreement in which the emergency Medicare GME affiliated group includes Hospitals A, B, C, and D. In Table II below, we list the FTE cap information that the emergency Medicare GME affiliation agreement included for the first effective period, which was submitted to CMS and the CMS FI on June 30, 2006.

TABLE II.—EMERGENCY MEDICARE GME AFFILIATION AGREEMENT DUE TO HURRICANE ZETA FOR EFFECTIVE PERIOD—NOVEMBER 1, 2005 TO JUNE 30, 2006

Hospital name	Provider No.	IME cap before emergency affiliation	Direct GME cap before emergency affiliation	Adjusted IME cap under the emergency affiliation	Adjusted Direct GME cap under the emergency affiliation
Hospital A	19–9999	10	10	1 (−9)	1 (−9)
Hospital B	19–8999	25	25	10 (−15)	10 (−15)
Hospital C	45–9999	10	10	19 (+9)	19 (+9)
Hospital D	33–9999	10	10	25 (+15)	25 (+15)

We note that the pre-existing regular Medicare GME affiliation agreement between Hospitals A and B which pre-dated the disaster is still in effect according to existing affiliation agreement rules; therefore Hospitals A and B must account for any FTE resident cap transfers specified in the regular affiliation agreement when they enter into the emergency Medicare GME affiliation agreement with host Hospitals C and D. In addition, a copy of Hospital A and B's regular Medicare GME affiliation agreement must be attached to the emergency Medicare GME affiliation agreement that is submitted to CMS and the hospitals' CMS FIs.

3. Submission Process

Submissions of emergency Medicare GME affiliation agreements should be sent to:

Centers for Medicare & Medicaid Services, Division of Acute Care, Attention: Elizabeth Truong or Renate Rockwell, Mailstop C4–08–06, 7500

Security Boulevard, Baltimore, MD 21244.

''Emergency Medicare GME Affiliation Agreement'' should be clearly labeled on the outside envelope.

4. Application of Existing Rules

[If you choose to comment on issues in this section, please include the caption ''APPLICATION OF EXISTING RULES'' at the beginning of your comments.]

a. New Teaching Hospitals

Immediately after a disaster, home hospitals are in the best position to determine where their residents should be sent to continue with their residency training. Although home hospitals may send their residents to train at existing teaching hospitals, in some cases, hospitals affected by a disaster may need to send residents to non-teaching hospitals (that is, hospitals that have not included any residents training in approved medical residency training programs on a previous Medicare cost report) to continue their training.

The following discussion is intended to inform hospitals of how CMS will determine the GME payments to the host hospital in the case where home hospitals choose to send displaced residents to host hospitals that were previously non-teaching hospitals. These host hospitals will become new teaching hospitals once they begin to train residents from the home hospitals as part of an approved medical residency training program. As a new teaching hospital, such a hospital initially will have IME and direct GME FTE resident caps of zero (based on the number of residents training in the 1996 base year for FTE resident caps). However, the new teaching hospital, by participating in an emergency Medicare GME affiliation agreement, can receive a temporary cap increase in order to count the displaced FTE residents for purposes of IME and direct GME payments.

As a new teaching hospital, the hospital will not have an existing per resident amount for direct GME payment purposes. The per resident amounts for these hospitals will be established as specified at § 413.77(e) (just as any other new teaching hospital would have its per resident amount established). The new teaching hospital's per resident amount is established based on the lower of the hospital's direct GME costs per resident in its base year, or the updated weighted mean value of the per resident amounts of all hospitals located in the same geographic wage area as specified at § 413.77. Therefore, it is very important for a new teaching host hospital to incur direct GME costs in its base year and to document all of the direct GME costs it incurs (for example, the residents' salaries, fringe benefits, any portion of the teaching physician salaries attributable to GME, and other direct GME costs) for the displaced residents it is training; otherwise the host hospital risks being assigned a very low per resident amount in accordance with our regulations. If the host, new teaching hospital incurs no GME costs in the relevant base year, its per resident amount would be zero dollars. We advise hospitals to refer to the provisions at § 413.77(e) for the rules concerning the establishment of a new teaching hospital's per resident amount. In accordance with section 1886(h) of the Act and our regulations at § 413.77, once the base year per resident amount is established, it is fixed and not subject to adjustment to reflect costs incurred in years subsequent to the base year that might be associated with new programs or additional residents.

b. Shared Rotational Requirements

As specified at § 413.79(f)(2), each hospital in a regular Medicare GME affiliated group must have a shared rotational arrangement with at least one other hospital participating in the Medicare GME affiliation agreement. All of the hospitals within the Medicare GME affiliated group would therefore be connected by a series of shared rotational arrangements. As defined at § 413.75(b), a shared rotational arrangement ''means a residency training program under which a resident(s) participates in training at two or more hospitals in that program.'' We are specifying at § 413.79(f)(6) that hospitals that are members of an emergency Medicare GME affiliated group are not required to participate in a shared rotational arrangement with the other hospitals participating in the emergency Medicare GME affiliation agreement. We are implementing this provision because we recognize that members of an emergency Medicare GME affiliated group may be geographically dispersed across the country, which would make it difficult for residents to participate in shared rotational arrangements. Additionally, after a disaster, affected hospitals may not have the resources available to participate in shared rotational arrangements with host hospitals situated around the country. For example, hospitals may not have the financial capability to continuously transport residents between States. Therefore, we are exempting participants in emergency Medicare GME affiliations from the shared rotational requirements.

c. Weighted FTE Counts (''3-Year Rolling Average'')

As specified at § 412.105(f)(1)(v) and § 413.79(d), a ''3-year rolling average'' is applied to a hospital's count of FTE residents to calculate IME and direct GME payments for a cost reporting period (that is, the number of FTEs used to calculate payments is the average of the number of FTE residents reported for the current year, the prior year, and the penultimate year). For example, if the hospital trained 115 FTE residents (for IME) in the current cost reporting period, 100 FTEs in the prior cost reporting period, and 100 FTEs in the penultimate cost reporting period, then the IME payment would not be based solely on the 115 residents trained in the current year. Rather, the IME payment in the current year would be based on the 3-year rolling average FTE count (that is, (115 + 100 + 100) / 3 which equals 105 FTEs).

Thus, if a hospital increases its number of FTE residents, as a result of the 3-year rolling average rule, the hospital would be able to count only one third of the additional FTE residents in that year, two-thirds of the additional FTEs for the next year, and the full number in the third year (assuming there are no other changes in the number of FTE residents training in subsequent years). Conversely, if a hospital decreases its number of FTE residents in the current year, then the 3-year rolling average minimizes the effect of the reduced GME payments based on the reduced level of training over the next 3 years. Home hospitals that have reduced the number of FTE residents training at their hospitals would benefit under this provision since only one-third of the FTE resident reduction will apply in the first cost reporting year in which an emergency period is declared. The 3-year rolling average provision, as specified at § 412.105 and § 413.79(d), will be applied to all hospitals in the emergency Medicare GME affiliation, and their associated FTE resident counts while the agreement is in effect. This provision is the same as applied under existing regulations in which hospitals participating in a Medicare GME affiliation agreement(s) are subject to the 3-year rolling average.

However, there is an exception to the application of the 3-year rolling average rules for closed program and closed hospital regulations as specified at § 413.79(d)(6). In the case of host hospitals that participate in emergency Medicare GME affiliated groups relating to the section 1135 emergency declared

following Hurricanes Katrina and Rita, which occurred in 2005, we understand that, based on the Q&A we posted on the CMS Web site discussing application of the closed program and closed hospital regulations to these hospitals, there was an expectation among host hospitals that the displaced FTE residents they accepted for training would be exempt from application of the 3-year rolling average, and that the host hospitals would immediately be permitted to include all of those residents in their FTE resident counts. Many host hospitals, believing that the existing regulations regarding closed hospitals and closed programs would be applied, took in displaced residents with the reasonable expectation that they would be able to count those additional residents as FTEs not subject to the 3-year rolling average rules specified at § 412.105 and § 413.79(d). In recognition of this expectation, we are providing for a time-limited exception to the 3-year rolling average rules so that a host hospital participating in an emergency Medicare GME affiliation agreement relating to Hurricanes Katrina and Rita and training residents in excess of its cap, consistent with the rolling average provisions applicable for closed programs as specified at § 413.79(d)(6), will exclude from the 3-year rolling average FTE residents associated with displaced residents from August 29, 2005, to June 30, 2006. All host hospitals in an emergency Medicare GME affiliated group will be subject to the existing 3-year rolling average requirements beginning on July 1, 2006.

Accordingly, we revised § 413.79(f) by adding a new paragraph (6) to provide for more flexibility in Medicare GME affiliations for home hospitals located in section 1135 emergency areas to allow the home hospitals to efficiently find training sites for displaced residents. Under the flexibility provided by the emergency Medicare GME affiliated group provisions as specified at § 413.79(f)(6), decisions regarding the transfer of FTE resident cap slots, including how to address situations where the home hospital was training a number of residents in excess of its cap before the disaster, and the tracking of those FTE resident slots, would be left to the home and host hospitals to work out among themselves. The home and host hospitals are, however, required to include much of this information in their emergency Medicare GME affiliation agreements as specified under § 413.79(f)(6). Furthermore, since hospitals may amend the emergency Medicare GME affiliation agreement (on or before June 30 of the relevant academic year) to reflect the actual training situation among the hospitals participating in the emergency Medicare GME affiliated group, hospitals are provided with greater flexibility to accommodate any changing residency training circumstances within the emergency Medicare GME affiliated group. We note that the emergency Medicare GME affiliated group provisions promulgated herein are intended for the purpose of providing for continued training of residents displaced from a section 1135 emergency area, and not to enable hospitals to merely shift and change FTE resident caps with other hospitals in the country (for instance, in order to maximize Medicare IME and direct GME payments).

III. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS OF THE INTERIM FINAL RULE'' at the beginning of your comments.]

We are revising the Medicare GME regulations at § 412.105, § 413.75(b), and § 413.79(f) to implement an emergency Medicare GME affiliated group policy that will only apply to certain home hospitals in a section 1135 emergency area and host hospitals that accept displaced residents from a home hospital.

Section 412.105 Special Treatment: Hospitals That Incur Indirect Costs for Graduate Medical Education Programs

In § 412.105, we revised paragraph (a)(1)(i) to specify that special treatment for hospitals that incur indirect costs for GME programs also applies to the emergency Medicare GME affiliated groups.

In addition, we revised paragraph (f)(1)(vi) to specify that hospitals that are part of the same Medicare GME affiliated group or emergency Medicare GME affiliate group may elect to apply the limit at paragraph (f)(1)(iv) of this section on an aggregate basis, as specified in § 413.97(f).

Section 413.75 Direct GME Payments: General Requirements

In § 413.75(b), we added the definition of an ''Emergency Medicare GME affiliated group,'' and within this definition, we specify the meaning of ''Home hospital'' and ''Host hospital,'' and we define ''Section 1135 emergency area or section 1135 emergency period.''

Section 413.79 Direct GME Payments: Determination of the Weighted Number of FTE Residents

In § 413.79(f), we revised the introductory text to specify that a hospital may receive a temporary adjustment to its FTE cap, which, except as provided in subsection (6)(iv), is subject to the averaging rules at § 413.79(d), to reflect residents added or subtracted because the hospital is participating in a Medicare GME affiliated group or an emergency Medicare GME affiliated group as defined at § 413.75(b).

In § 413.79(f)(6), we set forth the requirements for emergency Medicare GME affiliated group.

In paragraph (f)(6)(i), we specify the requirements for the emergency Medicare GME affiliation agreement that each hospital participating in the emergency Medicare GME affiliated group must submit. Specifically, each participating hospital must submit an emergency Medicare GME affiliation agreement that is written, signed, and dated by responsible representatives of each participating hospital, and the emergency Medicare GME affiliation agreement must include the following:

- Specify the effective period of the emergency Medicare GME affiliation agreement (which must, in any event, terminate at the conclusion of two academic years following the academic year in which the section 1135 emergency period began).
- List each participating hospital's IME and direct GME FTE caps in effect before the emergency Medicare GME affiliation agreement (including any adjustments to those caps in effect as a result of other Medicare GME affiliation agreements but not including any slots gained under § 413.79(c)(4)).
- Specify the total adjustment to each participating hospital's FTE caps in each academic year that the emergency Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to the host hospital's direct and indirect FTE caps that is offset by a negative adjustment to the home hospital's (or hospitals') direct and indirect FTE caps of at least the same amount. The sum total of adjustments to all the participating hospitals' FTE caps under the emergency Medicare GME affiliation agreement may not exceed the aggregate adjusted FTE caps of the hospitals participating in the emergency Medicare GME affiliated group. A home hospital's IME and direct GME FTE cap reductions in an emergency Medicare GME affiliation agreement are limited to the home hospital's IME and direct GME

FTE resident caps at § 413.79(c)(1) through (c)(3) or § 413.75(b), that is, as adjusted by any and all existing affiliation agreements as applicable.

• Attach copies of all existing Medicare GME affiliation agreements and emergency Medicare GME affiliation agreements in which the hospital is participating at the time the emergency Medicare GME affiliation agreement is executed.

In paragraph (f)(6)(ii), we specify that each participating hospital must submit the emergency Medicare GME affiliation agreement to CMS and submit a copy to the CMS FI. Specifically, an emergency Medicare GME affiliation agreement must be submitted to CMS with a copy to the CMS FI by the later of 180 days after the section 1135 emergency period begins or by July 1 of the academic year in which the emergency Medicare GME affiliation agreement is effective.

In paragraph (f)(6)(iii), we specify that during the effective period of the emergency Medicare GME affiliation agreement, hospitals in the emergency Medicare GME affiliated group are not required to participate in a shared rotational arrangement as defined at § 413.75(b).

In paragraph (f)(6)(iv), we specify the host hospital exception from the rolling average for the period from August 29, 2005 to June 30, 2006. We also specify how to determine the FTE resident count for a host hospital that is counting a number of displaced residents in excess of its cap for the period from August 29, 2005, through June 30, 2006.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Effective Date and Waiver of Proposed Rulemaking

[If you choose to comment on issues in this section, please include the caption ''EFFECTIVE DATE AND WAIVER OF PROPOSED RULEMAKING'' at the beginning of your comments.]

The Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a final rule. This delay may be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the rule issued. The Secretary is subject to a similar requirement pursuant to section 1871(e)(1)(A)(ii) of the Act. Further, under section 1871(e)(1)(A) of the Act, the Secretary is prohibited from applying substantive changes in policy retroactively unless the Secretary determines that retroactive application is necessary to comply with statutory requirements, or that the failure to apply the change retroactively would be contrary to the public interest.

We find that good cause exists to waive the 30-day delay in effective date because it would be contrary to the public interest to delay the effective date of this interim final rule with comment period. We find further that failure to apply the provisions of this interim final rule with comment period retroactively to August 29, 2005, which is the first date on which there was an emergency area and emergency period under section 1135 of the Act resulting from the impact of Hurricane Katrina, would be contrary to the public interest. Due to the infrastructure damage and disruption of operations experienced by medical facilities, and the consequent disruption in residency training, caused by Hurricanes Katrina and Rita in August of 2005, there is urgent need for the regulation changes provided in this interim final rule with comment period to be applied retroactively. Existing regulations do not adequately address the issues relating to Medicare GME payment policy faced by hospitals that are located in the emergency areas addressed in this rule, or those faced by hospitals that assisted the storm-impacted hospitals with their residency programs. We believe failure to apply the regulatory changes retroactively would be contrary to the public interest because hospitals affected by Hurricanes Katrina and Rita could otherwise face dramatic disruptions in their Medicare GME funding, with possible dire effects on their GME programs and financial stability.

Specifically, the training programs at many teaching hospitals in New Orleans and surrounding areas were temporarily closed or significantly reduced in the aftermath of the hurricanes, and the displaced residents were transferred to other hospitals to continue their training programs in other parts of the country. While some residents may eventually return to the hurricane-affected hospitals, others may need to remain where they were transferred for an extended period of time. Immediate regulatory changes are required in order to maintain Medicare GME funding relating to displaced residents training at various hospitals outside of the emergency area, and at the same time, to enable the hurricane-affected hospitals to rebuild incrementally their GME programs. Existing regulations relating to closed hospitals and closed residency training programs, and relating to Medicare GME affiliation agreements, contain certain limitations, explained more fully in section II.A above, that render them inapplicable or ineffective to address the issues faced by hospitals as a result of disruptions caused by Hurricanes Katrina and Rita.

We also ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary or contrary to the public interest and incorporates a statement of the finding and supporting reasons in the rule issued. We find that good cause exists to waive the requirement for publication of a notice of proposed rulemaking and public comment prior to the effective date of this rule because such a procedure would be impracticable and contrary to the public interest. In order to respond to the urgent needs of the hospitals and GME programs affected by Hurricanes Katrina and Rita, as described more fully above, it is necessary for these regulations to take effect retroactively to August 29, 2005. The ordinary notice-and-comment procedures would serve to delay (or, in some cases, preclude) hurricane-affected hospitals and GME programs from responding effectively to their circumstances by availing themselves of the flexibility permitted under this interim final rule effective as of August 29, 2005.

VI. Collection of Information Requirement

[If you choose to comment on issues in this section, please include the caption ''COLLECTION OF INFORMATION REQUIREMENT'' at the beginning of your comments.]

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection

should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Section 413.79 Direct GME payments: Determination of the weighted number of FTE residents

Section 413.79(f)(6)(ii) states that each hospital in the emergency Medicare GME affiliated group must submit an emergency Medicare GME agreement in the manner specified in paragraph (iv) and include the following information:

(A) Each participating hospital and its provider number.

(B) Specify the effective period of the emergency Medicare GME affiliation agreement.

(C) List each participating hospital's IME and direct GME FTE caps in effect before the emergency Medicare GME affiliation agreement. If the hospital was already a member of a Medicare GME affiliated group as defined at § 413.75(b) before entering into the emergency Medicare GME affiliation agreement, the emergency Medicare GME affiliation agreement must be premised on the FTE caps of the hospital as adjusted per the Medicare GME affiliation agreement.

(D) Specify the total adjustment to each hospital's FTE caps in each year that the emergency Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount. The sum total of adjustments to all the participating hospital's FTE caps under the emergency Medicare GME affiliation agreement may not exceed the aggregate adjusted caps of the affiliated group.

(E) Attach copies of all existing Medicare GME affiliation agreements and emergency Medicare GME affiliation agreements the hospital is participating in at the time the emergency Medicare GME affiliation agreement is executed.

The burden associated with this requirement is the time and effort it would take for the GME affiliated hospital to develop and submit the emergency Medicare GME affiliation agreement. It is difficult for us to determine estimated annual burden because we do not know how many hospitals will be affected in any given disaster. It would depend on what resources are available to the affected hospitals after sustaining damage from the disaster. This could take a few hours per hospital or much longer depending on if they keep records available and current. Hospitals also have to coordinate with other hospitals to draw up an affiliation agreement which may take more time if the hospitals have to negotiate.

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–1531–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: Carolyn Lovett, CMS Desk Officer, CMS–1531–IFC, *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

VII. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''REGULATORY IMPACT ANALYSIS'' at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule is not a major rule since we anticipate that the cost to the Medicare program will be $32.3 million for the 10-month period between August 29, 2005 and June 30, 2006.

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 (for details, see the Small Business Administration's regulation that set forth size standards for health care industries at (65 FR 69432)). We believe that the impact on the affected hospitals will not be significant and will not affect a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule is not anticipated to have a significant effect on small rural hospitals since the provisions of this rule will most likely be used by large teaching hospitals that have established residency programs and the capacity to train a larger complement of displaced residents. The majority of this type of teaching hospital is located in non-rural areas.

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 not have an effect on State, local, or tribal governments in the aggregate and the private sector costs will be less than the $120 million threshold.

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.

This rule will not have a substantial effect on State or local governments.

B. Anticipated Effects

This interim final rule with comment period modifies the current GME regulations as they apply to Medicare GME affiliated groups to provide for greater flexibility in training residents in approved residency programs during times of disaster. Specifically, this rule implements provisions for ''emergency Medicare GME affiliated groups'' to address the needs of teaching hospitals that are forced to find alternate training sites for residents that were displaced by a disaster.

We believe that there are limited effects to modifying the existing Medicare GME affiliations to allow for emergency affiliation agreements. We note that we are not allowing hospitals to count for Medicare IME or direct GME payment purposes additional FTE residents that had not been counted by Medicare before a qualifying emergency. Hospitals participating in emergency Medicare GME affiliated groups are held to their respective FTE resident caps as specified by the emergency affiliation agreement. IME and direct GME payments to the hospitals under this provision will not be based upon any FTE residents in excess of the caps specified under the emergency Medicare GME affiliation agreements. However, Medicare spending may be affected by differences in the per resident amounts, resident to bed ratios, and Medicare utilization rates of host hospitals and home hospitals.

For purposes of comparing the existing closed program or closed hospital provisions to the emergency Medicare GME affiliation provisions, we have calculated a financial impact of the time-limited exception to the 3-year rolling average provision for the 10-month period between August 29, 2005, and June 30, 2006. This impact is premised on the fact that for 10 months, host hospitals would be permitted to count an additional two-thirds of displaced FTE residents, rather than only one-third of the displaced FTEs that they could count if the displaced FTEs would be included in the 3-year rolling average.

In estimating the impact of the 10-month exception, we estimated the cost based on the FY 2006 projected national average per resident amount and the average Medicare utilization rate for direct GME purposes, and the average resident to bed ratio for IME purposes. In addition, we estimate that approximately 293 FTE residents will be affected. Accordingly, we believe that the impact on combined direct GME, operating IME and capital IME payments will be approximately $32.3 million for the 10-month period between August 29, 2005 and June 30, 2006.

C. Alternatives Considered

We considered amending the closed program regulations, at § 413.79(h), to apply to partially closed programs. However, due to the complexity of training programs where residents train at multiple hospitals, there are many potential difficulties that can arise in applying this policy to address disaster situations. Typically, residents in a program spend time training during the year at multiple hospitals, some of which may have been affected by the disaster, while others may not have been affected. Additional complexity can arise through the interaction of the home and host hospital's FTE resident caps. Each one of the home hospitals involved could be training a number of FTE residents above their respective IME and direct GME FTE resident caps. Since the closed program provisions are resident-specific, that is, the host hospital's cap adjustment is tied to the specific resident who was displaced, as specified at § 413.79(h), documentation would be required to account for each resident's FTE time spent training at each of the home and host hospitals. Additionally, because the policy under § 413.79(h) is ''resident-specific'', the host hospital would only receive a temporary cap adjustment for as long as the specific residents are displaced. Therefore, home and host hospitals would need to provide a very detailed accounting of each resident's training as required at § 413.79(h)). The documentation that would be required if the change in policy was to amend the closed program regulations would prove to be too burdensome for many hospitals.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

List of Subjects

42 CFR Part 412

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney disease, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Sec. 124 of Pub. L. 106–113, 113 Stat. 1515, and Sec. 405 of Pub. L. 108–173117, Stat. 2266.

Subpart G—Special treatment of certain facilities under the prospective payment system for inpatient operating costs

■ 2. Section 412.105 is amended by—
■ A. Republishing the introductory text.
■ B. Revising paragraph (a)(1)(i).
■ C. Republishing paragraph (f) introductory text.
■ D. Revising paragraph (f)(1)(vi).
The revisions read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

CMS makes an additional payment to hospitals for indirect medical education costs using the following procedures:

(a) * * *

(1) * * *

(i) Except for the special circumstances for Medicare GME affiliated groups, emergency Medicare GME affiliated groups, and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section for cost reporting periods beginning on or after October 1, 1997, and for the special circumstances for closed hospitals or closed programs described in paragraph (f)(1)(ix) of this section for cost reporting periods beginning on or after October 1, 2002, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period after accounting for the cap on the number of allopathic and osteopathic full-time equivalent residents as described in paragraph (f)(1)(iv) of this section, and adding to the capped numerator any dental and podiatric full-time equivalent residents.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.*

* * * * *

(vi) Hospitals that are part of the same Medicare GME affiliated group or emergency Medicare GME affiliated group (as defined in § 413.75(b) of this subchapter) may elect to apply the limit as paragraph (f)(1)(iv) of this section on an aggregate basis, as specified in § 413.79(f) of this subchapter.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES: PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 3. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861 (v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww) Sec 124 of Pub. L. 106–113, 113 Stat. 1515.

Subpart F—Specific categories of costs

■ 4. In § 413.75, paragraph (b) introductory text is republished, and the definition for ''Emergency Medicare GME affiliated group'' is added in alphabetical order to read as follows:

§ 413.75 Direct GME payments: General requirements.

* * * * *

(b) *Definitions.* For purposes of this section and § 413.76 through § 413.83, the following definitions apply:

* * * * *

Emergency Medicare GME affiliated group means at least one home hospital and one or more host hospitals, as those terms are defined below, that meet the requirements at § 413.79(f)(6). For purposes of an emergency Medicare GME affiliated group, the following definitions apply:

(1) *Home hospital* means a hospital that—

(i) is located in section 1135 emergency area;

(ii) had its inpatient bed occupancy decreased by 20 percent or more as the result of a section 1135 emergency period so that it is unable to train the number of residents it originally intended to train in that academic year; and

(iii) needs to send the displaced residents to train at a host hospital.

(2) *Host hospital* means a hospital training residents displaced from a home hospital.

(3) *Section 1135 emergency area or section 1135 emergency period* mean, respectively, a geographic area in which, or a period during which, there exists—

(i) An emergency or disaster declared by the President pursuant to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

(ii) A public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act.

* * * * *

■ 5. Section 413.79 is amended as follows:

■ A. Revising paragraph (f) introductory text.

■ B. Adding a new paragraph (f)(6).

The revisions and additions read as follows:

§ 413.79 Direct GME payments: Determination of the weighted number of FTE residents.

* * * * *

(f) *Medicare GME affiliated group.* A hospital may receive a temporary adjustment to its FTE cap, which, except as provided in paragraph (f)(6)(iv) below, is subject to the averaging rules at § 413.79(d), to reflect residents added or subtracted because the hospital is participating in a Medicare GME affiliated group or an emergency Medicare GME affiliated group (as defined at § 413.75(b)). Under this provision—

* * * * *

(6) *Emergency Medicare GME affiliated group.*

Effective on or after August 29, 2005, home and host hospitals as defined at § 413.75(b) may form an emergency Medicare GME affiliated group by meeting the requirements provided in this section. The emergency Medicare GME affiliation agreement may be made effective beginning on or after the first day of a section 1135 emergency period, and terminates no later than at the conclusion of two academic years following the academic year during which the section 1135 emergency period began.

(i) *Each hospital in the emergency Medicare GME affiliated group* must submit an emergency Medicare GME affiliation agreement that is written, signed, and dated by responsible representatives of each participating hospital in the manner specified in paragraph (ii) and includes the following information:

(A) List each participating hospital and its provider number; and indicate whether each hospital is a home or host hospital.

(B) Specify the effective period of the emergency Medicare GME affiliation agreement (which must, in any event, terminate at the conclusion of two academic years following the academic year in which the section 1135 emergency period began).

(C) List each participating hospital's IME and direct GME FTE caps in effect before the emergency Medicare GME affiliation agreement (including any adjustments to those caps in effect as a result of other Medicare GME affiliation agreements but not including any slots gained under § 413.79(c)(4)).

(D) Specify the total adjustment to each participating hospital's FTE caps in each academic year that the emergency Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to the host hospital's direct and indirect FTE caps that is offset by a negative adjustment to the home hospital's (or hospitals') direct and indirect FTE caps of at least the same amount. The sum total of adjustments to all the participating hospitals' FTE caps under the emergency Medicare GME affiliation agreement may not exceed the aggregate adjusted FTE caps of the hospitals participating in the emergency Medicare GME affiliated group. A home hospital's IME and direct GME FTE cap reductions in an emergency Medicare GME affiliation agreement are limited to the home hospital's IME and direct GME FTE resident caps at § 413.79(c) or § 413.79(f)(1) through (f)(5), that is, as adjusted by any and all existing affiliation agreements as applicable.

(E) Attach copies of all existing Medicare GME affiliation agreements and emergency Medicare GME affiliation agreements in which the hospital is participating at the time the emergency Medicare GME affiliation agreement is executed.

(ii) *Time for submission of the emergency Medicare GME affiliation agreement.* For the year during which the section 1135 emergency was declared, each participating hospital must submit an emergency Medicare GME affiliation agreement to CMS and submit a copy to the CMS fiscal intermediary by the later of 180 days after the section 1135 emergency period begins or by June 30 of the academic year in which the emergency Medicare GME affiliation agreement is effective. Emergency Medicare GME affiliation agreements for the subsequent 2 academic years must be submitted by the later of 180 days after the section

1135 emergency period begins or by July 1 of each year.

(iii) *Exemption from the Shared Rotational Arrangement Requirement.* During the effective period of the emergency Medicare GME affiliation agreement, hospitals in the emergency Medicare GME affiliated group are not required to participate in a shared rotational arrangement as defined at § 413.75(b).

(iv) *Host Hospital Exception from the Rolling Average for the Period from August 29, 2005 to June 30, 2006.* To determine the FTE resident count for a host hospital that is training residents in excess of its cap, a two step process will be applied. First, subject to the limit at paragraph (f)(6)(i)(D) of this section, a host hospital is to exclude the displaced FTE residents that are counted by a host hospital in excess of the hospital's cap pursuant to an emergency Medicare GME affiliation agreement from August 29, 2005, to June 30, 2006, from the current year's FTE resident count before applying the three-year rolling averaging rules under § 413.75 (d) to calculate the average FTE resident count. Second, the displaced FTE residents that are counted by the host hospital in excess of the host hospital's cap pursuant to an emergency Medicare GME affiliation agreement from August 29, 2005, to June 30, 2006, are added to the hospital's 3-year rolling average FTE resident count to determine the host hospital's FTE resident count for payment purposes.

* * * * *

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

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 31, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 4, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–3492 Filed 4–7–06; 3 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 63 and 64

[IB Docket No. 04–226; FCC 05–91]

Mandatory Electronic Filing for International Telecommunications Services and Other International Filings

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: This document announces the effective date of the rules published in the **Federal Register** on July 6, 2005. The rules eliminate paper filings and require applicants to file electronically all applications and other filings related to international telecommunications services that can be filed through the International Bureau Filing System (IBFS).

DATES: The amendments to 47 CFR 63.19(d), 63.21(a), 63.21(h), 63.21(i), 63.25(b), 63.25(c), 63.25(e), 63.53(a)(1), 63.53(a)(2), 63.701 introductory text and (j); 64.1001(a), 64.1001(f), 64.1002(c) and 64.1002(e) published at 70 FR 38795, July 6, 2005 are effective April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel or JoAnn Ekblad, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: On May 11, 2005 the Commission released a Report and Order, a summary of which was published in the **Federal Register**. *See* 70 FR 38795 (July 6, 2005). We stated that the rules were effective on August 5, 2005 except for 47 CFR 63.19(d), 63.21(a), 63.21(h), 63.21(i), 63.25(b), 63.25(c), 63.25(e), 63.53(a)(1), 63.53(a)(2), 63.701 introductory text and (j); 64.1001(a), 64.1001(f), 64.1002(c) and 64.1002(e) which required approval by the Office of Management and Budget (OMB). The information collection requirements were approved by OMB. (See OMB Nos. 3060–0357, 3060–0454, 3060–0686, 3060–0944, 3060–1028, 3060–1029.) This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–3506 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

[DFARS Case 2003–D106]

Defense Federal Acquisition Regulation Supplement; Transition of Weapons-Related Prototype Projects to Follow-On Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2004. Section 847 authorizes DoD to carry out a pilot program that permits the use of streamlined contracting procedures for the production of items or processes begun as prototype projects under other transaction agreements.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D106.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 69 FR 63329 on November 1, 2004, to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 847 authorizes DoD to carry out a pilot program for follow-on contracting for the production of items or processes begun as prototype projects under other transaction agreements. Contracts and subcontracts awarded under the program may be treated as those for the acquisition of commercial items; and items or processes acquired under the program may be treated as developed in part with Federal funds and in part at private expense for purposes of negotiating rights in technical data.

One association submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment: Definition of nontraditional defense contractor.* The respondent noted that the definition in the rule is consistent with the statutory definition at 10 U.S.C. 2173, but stated

that the term ''performed on'' in paragraph (2) of the definition could be interpreted to include commercial subcontractors that ''performed on'' traditional defense contractors' prime contracts; this would inappropriately exclude those contractors from the pilot program. The respondent recommended revising paragraph (2)(ii) of the definition to clarify that only contracts with Federal agencies subject to the FAR for both prototype projects and basic, applied, or advanced research projects will be considered in the determination of a nontraditional defense contractor, because the current language could be interpreted to include contracts not subject to the FAR.

DoD Response: The definition in the DFARS rule is consistent with the definition provided in the statute, and the terminology referenced by the respondent (i.e., ''performed on'') is identical to terminology used by DoD in related longstanding policy and guidance (e.g., DoD's audit policy for prototype projects that use other transaction authority (32 CFR part 3) and DoD's Other Transactions Guide for Prototype Projects). DoD is unaware of any issues with its interpretation and believes that revising the definition could cause unnecessary confusion. If a contractor has entered into another transaction agreement and has not, for a period of at least 1 year prior to the date of the other transaction agreement, been a direct party to a contract (prime or subcontract) that was subject to full cost accounting standards coverage or one that exceeded $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency that is subject to the FAR, the contractor qualifies as a nontraditional defense contractor.

2. *Comment: Qualifying subcontracts.* The respondent stated that the interim rule incorrectly interprets the statute to mean that both the prime contract and the subcontract must qualify in order for the subcontract to be treated as a subcontract for a commercial item.

DoD Response: The statute does not require that the prime contract also qualify; it only requires that the prime contract be a contract for the prototype items or processes, which means a prime contract that includes the prototype item or process, rather than one that is only for the prototype items or processes. DoD has amended the rule to be consistent with the statute.

3. *Comment: Guidance on using fixed-price contracts.* The respondent stated that the use of firm-fixed-price contracts or fixed-price contracts with economic price adjustment, as required by the statute, can be very difficult for the first production contract and recommended providing high level guidance for (i) adequately defining performance, including addressing difficult-to-quantify risks expressly; (ii) using interim fixed-price milestones and considering allowing later milestones to be priced during performance as more knowledge is gained; and (iii) ensuring that payments, including incentives, are linked to achieving clearly defined cost and technical performance objectives.

DoD Response: Issues related to contract type are not unique to the application of this statutory authority and are outside the scope of this case.

4. *Comment: Treating intellectual property flexibly.* The respondent stated that the final rule should expressly state that the statute reconfirms the existing authority at DFARS 227.7103–5(d) and 227.7103–1(a), since contracting officers already have the authority to negotiate the minimum rights needed to satisfy the agency's needs. The respondent also stated that the final rule should expressly state that contractors are not required to change their accounting practices if the Government uses this authority to agree to deem the funding mixed, since the fact that the contractor allocates no private funding to a ''deemed'' mixed funding project should not be grounds to question costs or the ''deemed'' mixed funding status.

DoD Response. DoD does not believe it is necessary to expressly reconfirm this policy. However, DoD has amended the rule to add cross-references to the appropriate sections. Adding these cross-references introduced some potential confusion regarding the distinction between delivery requirements and license rights. To clarify this distinction, the text on delivery requirements (at 212.7003(d) of the interim rule) has been relocated to 212.7003(a), including cross-references; and the text on license rights in 212.7003 has been included in a new paragraph (b). To further clarify that 212.7003 covers both delivery requirements and license rights, additional changes were made to the heading and introductory text of 212.7003, and to the cross-references in 212.7002–1(b) and 212.7002–2(b).

It is unnecessary to expressly state that contractors are not required to change their accounting practices when the Government uses this statutory authority, and the statute does not mandate that these technologies will be ''deemed'' as mixed funding in all cases. However, the comment highlights potential confusion created by the interim rule using the statute's permissive statement that data/software acquired under contracts awarded using this authority ''may be treated'' as mixed funding (former 212.7003 introductory text), combined with imperative language that directs negotiation of special license rights ''* * * in view of the parties'' relative contributions to the development of the items or processes'' (former 212.7003(d)). To clarify the intent of the rule, the introductory text at 212.7003 has been revised to state that there shall be a rebuttable presumption of mixed funding, and 212.7003(b)(4) has been revised to specify when special license rights should be negotiated, with cross-references to the existing DFARS policy regarding such negotiations. This approach preserves many of the efficiencies of the ''normal'' procedures for acquiring commercial technologies (e.g., a rebuttable presumption regarding the most likely funding profiles and their associated license rights), while preserving the parties' ability to establish more appropriate license rights when the presumption is not accurate or equitable (e.g., by negotiating special license rights, or by using the validation of restrictive marking procedures).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to implement Section 847 of the National Defense Authorization Act for Fiscal Year 2004. Section 847 authorizes DoD to carry out a pilot program for follow-on contracting for the production of items or processes begun as prototype projects under other transaction agreements. Contracts and subcontracts awarded under the program may be treated as those for the acquisition of commercial items; and items or processes acquired under the program may be treated as developed in part with Federal funds and in part at private expense for purposes of negotiating rights in technical data.

DoD received no public comments with regard to the impact of the rule on small entities. As a result of comments received on other aspects of the interim rule, the final rule contains changes that clarify the types of subcontracts that may be treated as ''commercial'' under the pilot program, and contains changes that clarify the distinction between delivery requirements and license rights for technical data and computer

software for items or processes acquired under the program.

The commercial procedures authorized by the rule are intended to ease the transition of nontraditional defense contractors from other transactions agreements to standard DoD contracts and, therefore, are expected to improve opportunities for such entities to receive DoD contract awards. In fiscal year 2005, DoD awarded 78 other transaction agreements totaling $150 million in value. Of these, 22 were awarded to small business concerns, totaling approximately $40 million in value.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 212, which was published at 69 FR 63329 on November 1, 2004, is adopted as a final rule with the following changes:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 212.7002–1 is amended by revising paragraph (b) to read as follows:

212.7002–1 Contracts under the program.

* * * * *

(b) See 212.7003 for special procedures pertaining to technical data and computer software.

■ 3. Sections 212.7002–2 and 212.7003 are revised to read as follows:

212.7002–2 Subcontracts under the program.

(a) A subcontract for an item or process that does not meet the definition of ''commercial item'' may be treated as a subcontract for a commercial item, if the subcontract—

(1) Is for the production of an item or process begun as a prototype project under an other transaction agreement;

(2) Does not exceed $50,000,000;

(3) Is awarded on or before September 30, 2008;

(4) Is awarded to a nontraditional defense contractor; and

(5) Is either—

(i) A firm-fixed-price subcontract; or

(ii) A fixed-price subcontract with economic price adjustment.

(b) See 212.7003 for special procedures pertaining to technical data and computer software.

212.7003 Technical data and computer software.

For purposes of establishing delivery requirements and license rights for technical data under 227.7102 and for computer software under 227.7202, there shall be a rebuttable presumption that items or processes acquired under a contract or subcontract awarded in accordance with 212.7002 were developed in part with Federal funds and in part at private expense (i.e., mixed funding).

(a) *Delivery requirements.* Acquire only the technical data and computer software that are necessary to satisfy agency needs. Follow the requirements at 227.7103–1 and 227.7103–2 for technical data, and 227.7203–1 and 227.7203–2 for computer software.

(b) *License rights.* Acquire only the license rights in technical data and computer software that are necessary to satisfy agency needs.

(1) For technical data, use the clauses at 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7037, Validation of Restrictive Markings on Technical Data.

(2) For computer software, use the clauses at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, and 252.227–7019, Validation of Asserted Restrictions—Computer Software.

(3) Require the contractor to include the clauses prescribed by paragraphs (b)(1) and (2) of this section in subcontracts awarded in accordance with 212.7002–2.

(4) When the standard license rights for items or processes developed with mixed funding do not provide the minimum rights necessary to satisfy agency needs, negotiate for special license rights in accordance with 227.7103–5(d) and 227.7203–5(d).

[FR Doc. 06–3455 Filed 4–11–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 222

[DFARS Case 2003–D019]

Defense Federal Acquisition Regulation Supplement; Labor Laws

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text regarding the application of labor laws to Government contracts. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003-D019.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This final rule is a result of the DFARS Transformation initiative. The DFARS changes—

- Update text addressing labor requirements and labor relations matters that affect DoD contracts; and
- Delete text addressing procedures for referral of labor relations matters to the appropriate authorities; for reporting labor disputes and the impact of those disputes on DoD requirements; for

conducting investigations of suspected violations of labor standards; and for preparation of notices and waiver requests relating to certain labor requirements. Text on these subjects has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

DoD published a proposed rule at 70 FR 39978 on July 12, 2005. DoD received no comments on the proposed rule. DoD has adopted the proposed rule as a final rule, with an additional relocation of internal DoD reporting requirements, from DFARS 222.101–3 to PGI.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates and streamlines DFARS text, but makes no significant change to DoD contracting policy or the application of labor laws to DoD contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 222

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 222 is amended as follows:

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 1. The authority citation for 48 CFR part 222 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 222.101–1 is revised to read as follows:

222.101–1 General.

Follow the procedures at PGI 222.101–1 for referral of labor relations matters to the appropriate authorities.

■ 3. Section 222.101–3 is revised to read as follows:

222.101–3 General.

Follow the procedures at PGI 222.101–3 for reporting labor disputes.

■ 4. Section 222.101–3–70 is revised to read as follows:

222.101–3–70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. For guidance on determining the degree of impact, see PGI 222.101–3–70(a).

(b) Each contracting activity shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining that the impact of the labor dispute is significant, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor in accordance with departmental procedures. This reporting requirement is assigned Report Control Symbol DD–AT&L(AR)1153 and must include the information specified at PGI 222.101–3–70(b).

■ 5. Section 222.101–4 is amended by revising paragraph (a)(ii) to read as follows:

222.101–4 Removal of items from contractors' facilities affected by work stoppages.

(a) * * *

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include in the request the information specified at PGI 222.101–4(a)(ii).

* * * * *

■ 6. Section 222.102–1 is revised to read as follows:

222.102–1 Policy.

(1) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the Department of Labor.

(2) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(3) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor. Any requests for variances or alternative means of compliance with OSHA requirements must be approved by the Occupational Safety and Health Administration of the Department of Labor.

222.404–2 through 222.404–11 [Removed]

■ 7. Sections 222.404–2 through 222.404–11 are removed.

■ 8. Section 222.406–8 is amended by revising paragraph (a), the heading of paragraph (c), and paragraph (d) to read as follows:

222.406–8 Investigations.

(a) Before beginning an investigation, the investigator shall inform the contractor of the general scope of the investigation, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at PGI 222.406–8(a).

(c) *Contractor notification.*

* * * * *

(d) *Contracting officer's report.* Forward a detailed enforcement report or summary report to the agency head in accordance with agency procedures. Include in the report, as a minimum, the information specified at PGI 222.406–8(d).

222.407 [Removed]

■ 9. Section 222.407 is removed.

222.804 through 222.805 [Removed]

■ 10. Sections 222.804 through 222.805 are removed.

■ 11. Section 222.807 is revised to read as follows:

222.807 Exemptions.

(c) Follow the procedures at PGI 222.807(c) when submitting a request for an exemption.

222.1003–7 [Removed]

■ 12. Section 222.1003–7 is removed.

■ 13. Section 222.1008–2 is revised to read as follows:

222.1008–2 Preparation of SF 98a.

Follow the procedures at PGI 222.1008–2 regarding use of the Service Contract Act Directory of Occupations when preparing the SF 98a.

■ 14. Section 222.1014 is revised to read as follows:

222.1014 Delay of acquisition dates over 60 days.

Follow the procedures at PGI 222.1014 for submission of update requests to the Wage and Hour Division.

■ 15. Subpart 222.13 is revised to read as follows:

Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Sec.

222.1305 Waivers.
222.1308 Complaint procedures.
222.1310 Solicitation provision and contract clauses.

Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

222.1305 Waivers.

(c) Follow the procedures at PGI 222.1305(c) for submission of waiver requests.

222.1308 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1308; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

222.1310 Solicitation provision and contract clauses.

(a)(1) Use of the clause at FAR 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410k.

■ 16. Section 222.1406 is revised to read as follows:

222.1406 Complaint procedures.

The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

222.7100 and 222.7200 [Removed]

■ 17. Sections 222.7100 and 222.7200 are removed.

[FR Doc. 06–3456 Filed 4–11–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225, 229, and 252

[DFARS Case 2004–D012]

Defense Federal Acquisition Regulation Supplement; Prohibition of Foreign Taxation on U.S. Assistance Programs

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statutory prohibition on foreign taxation under contracts funded by U.S. assistance programs. The rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Overstreet, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0310; facsimile (703) 602–0350. Please cite DFARS Case 2004–D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 57191 on September 30, 2005, to implement Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108–7); Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199); and Section 506 of Division D of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). These statutes require that a bilateral agreement providing for U.S. assistance to a foreign country must specify that the U.S. assistance shall be exempt from taxation by the foreign government. Therefore, the foreign government is prohibited from imposing taxes on commodities acquired under contracts funded by such U.S. assistance. This DFARS rule addresses the responsibilities of the contractor and the contracting officer regarding the prohibition.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the administrative notification requirements of the rule are expected to affect less than 10 contracts per year.

C. Paperwork Reduction Act

The information collection requirements of the rule do not reach the threshold for requiring Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225, 229, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 225, 229, and 252, which was published at 70 FR 57191 on September 30, 2005, is adopted as a final rule without change.

[FR Doc. 06–3453 Filed 4–11–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

[DFARS Case 1990–037]

Defense Federal Acquisition Regulation Supplement; Incremental Funding of Fixed-Price Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of incrementally funded fixed-price contracts. The rule contains a contract clause for use in those situations where incremental funding of fixed-price contracts is permitted.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 1990–037.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises and finalizes the interim rule published at 58 FR 46091 on September 1, 1993, regarding incremental funding of fixed-price contracts. Prior to the issuance of the interim rule, incrementally funded fixed-price contracts had been used in limited situations throughout DoD for a number of years. This technique permitted DoD to award fixed-price contracts in specific circumstances

where full funding was not available and incremental funding was statutorily permitted. Use of this technique precluded the need to use a cost-type contract when the nature of the requirement was more suitable for a fixed-price contract. To implement this technique, a number of nonstandard clauses had been developed for use within the military departments and defense agencies. In recognition of the need for a standard clause for such contracts, DoD issued an interim rule to specify those situations where incremental funding of fixed-price contracts is permitted. Six sources submitted comments on the interim rule. The following is a discussion of the comments and the issues relating to the development of the final rule.

1. *Language permitting use of incremental funding*. The interim rule permitted the use of incremental funding only when the contract was funded with research and development appropriations or when Congress had otherwise authorized incremental funding. The interim rule further required that, for either base services or hazardous/toxic waste remediation contracts for which incremental funding had been authorized by Congress, the head of the contracting activity must approve the use of incremental funding. A number of respondents expressed concern regarding this language.

DoD has revised the rule to specifically address contracts for severable services. As provided for in DFARS 232.703–3, contracts crossing fiscal years, the contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 2410a). The public comments indicated that this provision may cause confusion with regard to the use of incremental funding for severable services. Therefore, the final rule contains a new paragraph 232.703–1(i) to specifically address incremental funding for severable services.

2. *Head of the contracting activity (HCA) approval*. The interim rule required the HCA to approve interim funding for base services and hazardous/toxic waste remediation contracts. DoD believes that the language in the final rule precludes the need for HCA approval. In those cases where incremental funding has been authorized by Congress, the contracting officer should have the flexibility to use such funding without requiring the administrative burden of obtaining HCA approval. This is consistent with the DoD policy of empowering contracting personnel to the maximum extent practicable. The final rule is sufficient for the contracting officer to apply the requirements without further approval, as the rule specifies exactly which contracts are eligible for incremental funding. The final rule also emphasizes the preference for full funding by requiring that incrementally funded fixed-price contracts be fully funded as soon as funds are available. Therefore, the final rule eliminates the requirement for HCA approval for base services or hazardous/toxic waste remediation contracts.

3. *Work without funding.* One respondent asserted that the clause at DFARS 252.232–7007 encourages contractors to work without funding. The respondent stated that the clause is intended as a vehicle for contracting officers to circumvent the Anti-Deficiency Act.

Under the requirements of DFARS 252.232–7007, the contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination for convenience, approximates the total amount allotted to the contract; the contractor is not obligated to continue work on those items beyond that point, and the Government is not obligated to reimburse the contractor in excess of the amount allotted to the contract. The clause notifies the contractor that continuing work is at the sole risk of the contractor. Thus, the clause is not, nor is it intended to be, a vehicle for violating the Anti-Deficiency Act. Nevertheless, DoD agrees that it would be helpful to revise the language regarding continued contract performance to emphasize that the contractor is not authorized to continue work. Therefore, the final rule changes the phrase ''The Contractor will not be obligated to continue work'' to ''The Contractor is not authorized to continue work''. In addition, the final rule redesignates paragraph (i) of the clause as paragraph (j) and adds a new paragraph (i) to read ''Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.''

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to allow incrementally funded fixed-price contracts in certain limited, and clearly defined, situations. The objective of the rule is to encourage the full funding of contracts, while recognizing that there are specific situations where full funding is not possible, and allowing incremental funding to be used in those situations. DoD received no public comments on the initial regulatory flexibility analysis. As a result of comments received on the interim rule, the final rule contains changes that clarify the applicability of the rule and the requirements of the contract clause. The rule applies to all entities with incrementally funded fixed-priced DoD contracts. DoD believes that the rule has little or no economic impact on such entities, since the rule places little cost risk on the contractor. This is especially true of the final rule, which includes revisions that clarify that a contractor is not authorized to continue performance of a contract beyond the amount incrementally funded. The final rule maintains the clear preference for fully funded fixed-priced contracts; and requires the use of a standard clause in clearly defined and limited circumstances permitting DoD to award, and the contractor to begin work under, a contract prior to the availability of full funding. The rule requires that full funding be placed on the contract as soon as funds are available; clearly states that the contractor is not authorized to perform work beyond the available funds allotted to the contract; and provides specific protections to the contractor until full funding is made available. The rule requires the contractor to notify the contracting officer at least 90 days prior to the date when, in the contractor's best judgment, the work under the contract will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount allotted to the contract. In addition, the contractor must provide information regarding additional funding needed to continue performance. This information is the minimum needed for the Government to determine the appropriate course of action. The required information should be readily available to the contractor as part of its normal business practices. The policy in the final rule is designed to minimize any economic impact on small entities. There are no practical

alternatives to the rule. The rule is consistent with statutory requirements.

C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.232–7007, Limitation of Government's Obligation, have been approved by the Office of Management and Budget under Clearance Number 0704–0359 for use through December 31, 2007.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 232 and 252, which was published at 58 FR 46091 on September 1, 1993, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.001 is added to read as follows:

232.001 Definitions.

Incremental funding means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time.

■ 3. Section 232.703–1 is revised to read as follows:

232.703–1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract (excluding any options) or any exercised option—

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(ii) The contract uses funds available from multiple (two or more) fiscal years and—

(A) The contract is funded with research and development appropriations; or

(B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.232–7007 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (b), by revising the second sentence;

■ c. By revising paragraph (i); and

■ d. By adding paragraph (j) to read as follows:

252.232–7007 Limitation of Government's Obligation.

* * * * *

LIMITATION OF GOVERNMENT'S OBLIGATION (APR 2006)

* * * * *

(b) * * * The Contractor is not authorized to continue work on those item(s) beyond that point. * * *

* * * * *

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract $____
(month) (day), (year) $____
(month) (day), (year) $____
(month) (day), (year) $____

* * * * *

[FR Doc. 06–3457 Filed 4–11–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. NHTSA 2006–24455]

RIN 2127–AJ78

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to two petitions for reconsideration of our September 2004 final rule amending the Federal motor vehicle safety standard for power-operated windows, partitions, and roof panel systems. The amendments required that switches for these windows and other items in new motor vehicles be resistant to accidental actuation that causes those items to begin to close. The purpose of the amendments was to reduce the number of injuries and fatalities to people, especially children, that occur when they unintentionally close the power-operated items on themselves by accidentally leaning against or kneeling or standing on the switch or when other occupants accidentally actuate the switch in that manner.

The petitions for reconsideration requested that the agency adopt additional amendments. The petitions are granted in part and denied in part. In responding to the petitions' request to require ''pull-up-to-close'' power window switches, we are simultaneously implementing a congressional mandate to require such switches. In addition, through this document, we are amending the standard to make a number of technical amendments.

DATES: *Effective Date:* The amendments made in this final rule are effective June 12, 2006.

Compliance Date: The requirements of the September 2004 final rule, as amended by today's rule, become mandatory for all vehicles subject to the standard that are manufactured for sale in the U.S. on or after October 1, 2008. Voluntary compliance is permitted before that date.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration for this rule, your petition must be received by May 30, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notices) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–4329).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

This document responds to two petitions for reconsideration of our September 15, 2004 final rule [1] amending Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-Operated Window, Partition, and Roof Panel Systems*. That final rule amended the standard to require that switches for these windows and other items in new motor vehicles be resistant to accidental actuation that causes those items to begin to close. Petitions for reconsideration were submitted by the Alliance of Automobile Manufacturers [2] and a consortium of special interest groups advocating highway safety.[3] The petitions requested additional amendments to Standard No. 118.

The purpose of the September 2004 amendments was to reduce the number of injuries and fatalities to people, particularly children, that occur when they unintentionally close the power-operated items on themselves by accidentally leaning against or kneeling or standing on the switch or when other occupants accidentally actuate the switch in that manner. These amendments to the standard apply to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.

In summary, the rule amended FMVSS No. 118 by adding a new paragraph S6, specifying that power-operated window, partition, and roof panel switches in new motor vehicles subject to the standard must pass an accidental actuation test that uses a test device simulating a child's knee. The test device is a hemisphere with a smooth, rigid surface and a radius of 20 mm ± 1 mm. Under the final rule, when the test device is applied with a force not to exceed 135 Newtons (30 pounds) to any switch or the housing surrounding a switch that can be used to close a power-operated window, partition, or roof panel, such application must not cause the window, partition, or roof panel to begin to close. The accidental actuation test in S6 does not apply to switches that are both roof-mounted and incapable of ''one-touch'' closure, and it does also not apply to power-operated systems that meet the automatic reversal requirements of S5 of Standard No. 118.

The petitioners requested amendments pertaining to matters that they deemed either to be inadequately addressed by our September 2004 final rule or to be newly arising therefrom. Specifically, the advocacy groups' petition asked the agency to reconsider its decision not to require automatic reversal systems and its decision to adopt a performance test for accidental actuation, rather than prohibiting the use of ''rocker'' or ''toggle'' switch designs.[4] The advocacy groups also requested that the agency amend the standard to reduce the size of the test device in the accidental actuation test, in order to account for the potential for inadvertent switch actuation by the hands, ball of foot, knuckles, elbows, toes, and even knees of young children.

The Alliance's petition requested technical amendments involving exemption of vertically-mounted switches from the accidental actuation test, as well as specification/modification of certain characteristics of the test device (*e.g.*, composition, surface finish, tolerance on size). (*See* section IV of this document for a complete discussion of issues raised in the petitions and their resolution).

Also, during the pendency of the agency's consideration of the petitions for reconsideration, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[5] Section 10308 of that legislation specifically addresses power window switches in motor vehicles, stating:

> The Secretary [of Transportation] shall upgrade Federal Motor Vehicle Safety Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out. The Secretary shall issue a final rule implementing this section by April 1, 2007.

The petitions are granted in part and denied in part, and through this document, we are amending the standard accordingly. Because the issue of requiring installation of ''pull-up-to-close'' power window switches is already before us in one of the petitions, we are, through this final rule, simultaneously implementing the congressional mandate to require switches that raise the window only when the switch is pulled up or out.

The following points highlight the amendments to Standard No. 118 that we are adopting in response to the petitions for reconsideration of the September 15, 2004 final rule and to the mandate of section 10308 of SAFETEA–LU.

- The agency is amending paragraph S6 of the standard to require that any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted (*i.e.*,, ''pull-to-close'' switches). An actuation device must operate by being pulled vertically up (if horizontally mounted), or out (if vertically mounted), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction. This provision implements the mandate of section 10308 of SAFETEA–LU.
- In order to further clarify and increase the repeatability of testing under the standard, the agency is further amending paragraph S6 to specify a composition (stainless steel) and a surface finish (between 8 and 4 micro inches) for the test device used in the accidental actuation test.
- In addition, we have decided to amend paragraph S6 to reduce the

[1] 69 FR 55517 (Sept. 15, 2004) (Docket No. NHTSA–2004–19032–1).

[2] This November 1, 2004 petition for reconsideration was submitted by the Alliance of Automobile Manufacturers, an industry trade organization whose members include BMW Group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen. (Docket No. NHTSA–2004–19032–5 and 6.)

[3] This October 21, 2004 petition for reconsideration was filed by the following advocacy organizations: Advocates for Highway and Auto Safety (Advocates), KIDS AND CARS, The Zoie Foundation, the Trauma Foundation, Consumers for Auto Reliability and Safety, Consumer Federation of America, Consumers Union, Public Citizen, Kids In Cars, 4RKidsSake, and the Center for Auto Safety. (Docket No. NHTSA–2004–19032–3 and 4.)

[4] ''Rocker'' switches are designed to pivot on a center hinge, effectively operating like a ''see-saw.'' ''Toggle'' switches operate using small levers that push back and forth to open and close a window. As a result of their design, downward pressure (*e.g.*, caused by a child kneeling or leaning) on a rocker or toggle switch could result in a window's either opening or closing, depending upon how such force is applied.

In contrast, ''push-pull'' switches function such that pressing down on the switch will only cause the window to open, but the switch must be actively pulled up in order to close the window. Thus, accidental pressing with a hand, knee, or foot on a push-pull switch could not cause a window to close, although it might cause it to open.

[5] Pub. L. 109–59, 119 Stat. 1144 (2005).

tolerance range for the radius of the test device from 20 mm ± 1 mm, as specified in the September 15, 2004 final rule, to 20 mm ± 0.2 mm. Reduction of this tolerance range, which was incorporated to facilitate testing, is reasonable in light of the precision of current manufacturing capabilities. Such modification would enhance test repeatability while keeping the size of the test device close to the 40 mm diameter intended to represent the knee of a small child.

The agency is denying the request in the advocacy groups' petition for reconsideration to mandate the installation of automatic reversal systems. We are also denying the Alliance's request to amend the standard to exclude switches mounted on vertical or nearly vertical surfaces from the standard's safer switch requirements (including the accidental actuation test).

In addition, this document also makes a technical correction to resolve a testing anomaly that has been brought to the agency's attention. Specifically, we have learned that, in certain cases, the shape of the test device specified in the final rule (a hemisphere) may result in switch actuation under the test in S6, but such actuation is an artifact of the test and does not correspond to any real world risk. Accordingly, the agency has decided to amend paragraph S6 to change the shape of the test device in the accidental actuation test from a hemisphere to a sphere, as originally proposed.

Lead Time and Compliance Date

In amending Standard No. 118 in response to the petitions for reconsideration, the agency has decided to retain the mandatory compliance date of October 1, 2008 for the safer switches provisions, as provided in the September 15, 2004 final rule. In light of industry trends and the close proximity in time between promulgation of the final rule and passage of the SAFETEA–LU legislation, we believe that adequate lead time remains for vehicle manufacturers to make any necessary design changes to incorporate the required pull-to-close power window switches as part of their normal production process. All other changes to the standard involve minor technical modifications. Accordingly, we believe that retention of an October 1, 2008 mandatory compliance date will continue to permit manufacturers to comply with the standard's safer switch requirements at minimal cost. Voluntary compliance is permitted before that date.

II. Background

A. The September 15, 2004 Final Rule

In a final rule published in the **Federal Register** on September 15, 2004, the agency amended FMVSS No. 118 to require new passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4,536 kg (10,000 pounds) or less equipped with power-operated windows, partitions, and roof panel systems to pass an accidental actuation test that uses a device simulating a small child's knee (*see* S6). (For a complete discussion of the history of this rulemaking, including related research, *see* 69 FR 55517.)

This rulemaking was conducted because available information indicated that a small, but persistent problem of injuries and fatalities has been occurring when occupants (particularly young children) unintentionally close power windows on themselves or other occupants when they accidentally actuate power window switches by leaning against or kneeling or standing on them. Although these power window incidents were found to be generally low-frequency events, averaging one to two deaths per year in recent years (1999–2002), there has been a higher incidence in some individual years (*e.g.*, five deaths of this type were recorded in 1998, and a similar number were reported in 2004). Furthermore, these tragic incidents continued to occur despite other safeguards in the standard (*e.g.*, the requirements in S4 that power windows will only operate when the key is in the ignition).

According to the agency's research, switch design is related to such injuries; in virtually all of the accidental actuation incidents, for which the type of switch is known, the vehicle was equipped with ''rocker'' or ''toggle'' switches, which are much more prone to accidental actuation as compared to pull up-push down type switches that must be lifted to close the window. If the accidental pressure of a knee, foot, or elbow actuated a pull up-push down switch, it would cause the window to open, not close. Rocker and toggle switches are also much more prone to accidental actuation if they are not shielded or recessed so that they cannot readily be contacted by a foot, knee, or elbow.

In order to address the identified problem, the final rule amended the standard to specify the following requirements for an accidental actuation test. The test device is a hemisphere with a smooth, rigid surface and a radius of 20 mm ± 1 mm. When the test device is applied with a force not to exceed 135 Newtons (30 pounds) to any switch or the housing surrounding the switch that can be used to close a power-operated window, partition, or roof panel, such application must not cause those items to begin to close.

As discussed in the final rule, the accidental actuation test in S6 does not apply to switches that are both roof-mounted and incapable of ''one-touch'' closure, because switches in those locations are very unlikely to be inadvertently actuated. In addition, the requirements of S6 do not apply to power-operated systems that meet the automatic reversal requirements of S5 of Standard No. 118.

In the September 2004 final rule, we stated that the accidental actuation test provides a simple, effective, and inexpensive means of evaluating power window systems and that it will enhance occupant protection, especially of children. The final rule was drafted to be technology-neutral, so as to permit compliance with any available technology that meets the standard's performance requirements. Accordingly, the agency anticipated that vehicle manufacturers could comply by: (1) Shielding or recessing their switches, (2) designing switches so that pressing on them in the manner described above will not cause these windows and other items to close, or (3) installing more advanced technology (*i.e.*, automatic reversal systems).

The September 15, 2004 final rule required compliance with the amended power window switch requirements of the standard for vehicles subject to the standard that are manufactured on or after October 1, 2008 (*i.e.*, MY 2009) for sale in the United States. (Voluntary compliance was permitted immediately.) The agency determined that four years of lead time would allow manufacturers sufficient time to incorporate the required changes into their vehicles in accordance with their normal production cycles. As a result, we concluded that the cost impacts of the rulemaking should be close to zero.

The September 15, 2004 final rule also denied two petitions for rulemaking requesting that the agency mandate the installation of automatic reversal systems in all new vehicles. We reached that decision because much of the potential benefit that might be provided by those systems will instead be provided by the accidental actuation test requirement. Further, we stated that while the cost of better switches will be negligible, the cost of automatic reversal systems is significant.

B. The Congressional Mandate in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

Since publication of the final rule amending Standard No. 118, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users on August 10, 2005. As noted previously, section 10308 of that Act requires the Secretary of Transportation to issue a final rule by April 1, 2007 to ''upgrade Federal Motor Vehicle Safety Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out.'' Responsibility for this rulemaking was delegated to NHTSA.

III. Petitions for Reconsideration

NHTSA received two petitions for reconsideration submitted in response to the September 15, 2004 final rule amending FMVSS No. 118 to require safer switches. One petition was submitted by a consortium of special interest groups advocating highway safety, including Advocates for Highway and Auto Safety, KIDS AND CARS, The Zoie Foundation, the Trauma Foundation, Consumers for Auto Reliability and Safety, Consumer Federation of America, Consumers Union, Public Citizen, Kids In Cars, 4RKidsSake, and the Center for Auto Safety (hereinafter ''Advocates et al.,''). The other petition was submitted by the Alliance of Automobile Manufacturers (Alliance). These petitions may be found in Docket No. NHTSA–2004–19032.

As noted above, the petitioners requested further amendments to FMVSS No. 118 regarding issues they deemed to be either inadequately addressed by our September 2004 final rule or newly arising therefrom. Specifically, the Advocates et al., petition asked the agency to amend the standard by adopting a requirement for pull-to-close power window switches (thereby prohibiting rocker and toggle switches), and by adopting a requirement for automatic reversal systems. The advocacy groups also requested that the agency amend the standard to reduce the size of the test device in the accidental actuation test.

The Alliance's petition requested a number of technical amendments to the standard, including an exclusion from the accidental actuation test for certain switches based upon their orientation and placement in the vehicle (*i.e.*, vertically-mounted switches) and specification/modification of certain characteristics of the test device (*e.g.*, composition, surface finish, size of tolerance). All of the issues raised in the petitions for reconsideration are addressed in section IV, *Discussion and Analysis*, immediately below.

IV. Discussion and Analysis

A. Pull-To-Close Power Window Switches

The September 15, 2004 final rule established a performance test under paragraph S6, *Actuation Devices*, applicable to any actuation device mounted in the occupant compartment of a vehicle that can be used to close a power-operated window, partition, or roof panel, unless such device falls within one of two specified exclusions. Because this provision was intended to be technology-neutral, it neither mandates nor prohibits any particular switch design.

The Advocates et al., petition for reconsideration argued that the September 15, 2004 final rule should have prohibited installation of ''rocker'' and ''toggle'' switch designs. According to the advocacy groups, due to NHTSA's failure to outlaw rocker and toggle switches, ''manufacturers are permitted to continue to install these obviously inferior safety designs that are inherently susceptible to incidental actuation.'' Instead of adopting a performance test, the Advocates et al., petition argued that the agency should have mandated installation of ''push-pull'' switches, which it stated is the type used exclusively in vehicles produced by European and Japanese manufacturers.

Although the advocacy group acknowledged that NHTSA normally avoids mandating the use of one particular design to the exclusion of others in its rulemakings, their petition suggested that other FMVSSs contain design-restrictive requirements (*e.g.*, FMVSS No. 101, *Controls and Displays*, FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, FMVSS No. 111, *Rearview Mirrors*). According to the Advocates et al., petition, in light of NHTSA's past adoption of design-restrictive safety requirements, strict adherence to a technology-neutrality principle should not constitute an impediment to mandating the use of a single type of switch (*i.e.*, pull-to-close switches) which possesses superior safety-related characteristics.

In the final rule, the agency decided to adopt a switch performance test, rather than prohibit any particular switch design, for a number of reasons. First, the agency concluded that an appropriately designed rocker or toggle switch (*i.e.*, one that is properly shrouded or recessed) would be greatly improved as compared to an unprotected rocker or toggle switch and should have essentially the same resistance to inadvertent operation as a pull-to-close switch. Second, the performance test should ensure that all switches are adequately protective no matter how they are designed or where they are mounted in a vehicle.

In their petition for reconsideration, the advocacy groups suggested that the agency's sole reason for specifying a performance test rather than a design criterion was to avoid being design restrictive. On the contrary, we adopted that requirement because the agency believes that a performance test is the best way to identify switches that are reasonably safe and to provide an objective means of determining compliance. Such an approach generally has the added advantages of obviating the need to precisely describe a particular switch construction and operation that is required in order to qualify as a certain type of switch and of not retarding technological innovation.

However, the agency's decision in this area has been superseded as a result of the congressional mandate in section 10308 of SAFETEA–LU, which requires all power windows in new vehicles not in excess of 10,000 pounds to have switches that raise the window only when the switch is ''pulled up or out.'' After thoroughly considering this mandate, it is clear that the intent of the Congress is to specify a strict design requirement so that only pull-to-close power window switches, the type of switch espoused in the Advocates et al., petition, would be allowed. Accordingly, we are granting the request in the Advocates et al., petition to mandate pull-to-close switches, and we are amending Standard No. 118 in a manner that will satisfy the agency's mandate under SAFETEA–LU. The balance of this discussion explains the steps we have taken to implement our mandate under section 10308 of SAFETEA–LU and related issues.

In overview, we have revised paragraph S6 of the standard to include a new regulatory requirement (*i.e.*, pull-to-close operability) for power window switches under S6(c), as a supplement to the performance test implemented in the September 2004 final rule. Specifically, the paragraph S6 of the standard has been amended to provide:

(c) Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An

actuation device must operate only when pulled vertically up (if horizontally mounted), or out (if vertically mounted), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.

As noted above, as part of implementing the SAFETEA–LU mandate, we have decided to retain the final rule's accidental actuation performance test, subject to certain technical modifications (discussed below) that were suggested in the petitions. Our rationale is that even given the design requirements for pull-to-close switches, we believe that the performance test is crucial to guard against poorly designed pull-up switches or any unforeseen switch design that could be construed as meeting the newly mandated design requirement but which, for some reason, is still susceptible to inadvertent actuation.

In further clarification of our implementation, we note that the SAFETEA–LU legislation did not mandate pull-to-close switches for power-operated partitions and roof panels. However, we believe that because those switches are already covered under the accidental actuation test, there is not a safety need to extend requirements impacting design beyond those set forth by Congress. All power-operated partition and roof panel switches in vehicles (with the exception of ceiling-mounted ones) are already required to either meet the performance test of the September 2004 final rule (as amended) or be equipped with an automatic reversal system. Thus, we are denying the request in the Advocates et al., petition to require pull-to-close switches in those cases that exceed our mandate under SAFETEA–LU.

B. Orientation and Placement of Switches

Under the September 15, 2004 final rule, there are two exceptions to the accidental actuation test. Specifically, paragraph S6(d) states that the requirement in S6(a)—regarding prevention of window closure due to unintentional switch actuation—does not apply to either:

(1) Actuation devices that are mounted in a vehicle's roof, headliner, or overhead console and that can close a window, partition, or roof panel only by continuous rather than momentary switch actuation, or

(2) Actuation devices for closing power-operated windows, partitions, and roof panels that comply with S5 of this standard [*i.e.*, related to automatic reversal].

In its petition for reconsideration, the Alliance recommended that the exception in S6(d)(1) should be expanded to include power window switches mounted on vertical or nearly vertical surfaces inside the vehicle. Specifically, the Alliance suggested that the exception should apply to switches ''mounted on surfaces of 75 degrees of incline or greater.'' The Alliance argued that such modification to the standard would be appropriate because children cannot climb on or stand on vertical surfaces, and it also stated that known fatalities related to power window switches involved toggle switches mounted on relatively flat (horizontal) surfaces. According to the Alliance, the final rule as promulgated would require a number of vehicles with toggle power window switches on the console or instrument panel to be redesigned at significant cost, but with no benefit.

After careful consideration, we have decided not to expand the standard's exceptions to the accidental actuation test, so as to include switches mounted on vertical or nearly vertical surfaces. As noted in the final rule, there is some uncertainty surrounding the precise mechanism of action by which occupants may inadvertently actuate power window switches. It is reasonable to conclude that most fatalities/injuries occur when children kneel or stand on the horizontal surface of an armrest containing an exposed window switch or switches. However, it is easily foreseeable that a child or other vehicle occupant might lean against a vertical door panel, in which case a window switch mounted vertically there would present at least as great a risk as a horizontally mounted one.

In contrast, the switches excluded under paragraph S6(d)(1) of the final rule are excluded because they are effectively out of reach for inadvertent contact. The same cannot be said of switches mounted on door panels, whether or not they are vertically oriented. Accordingly, we are not adopting the recommendation in the Alliance's petition to expand the exemption in S6(d)(1) to include power window switches mounted on vertical or nearly vertical surfaces.

C. Test Device and Methodology

1. Size of the Test Device

For the actuation test of S6, the September 15, 2004 final rule specified use of a test device in the form of a hemisphere with a smooth, rigid spherical surface and a radius of 20 mm ± 1 mm (*see* S6(b)(1)).

The Advocates *et al.,* petition argued that the diameter of the test device is too large, particularly because the agency increased the size of the device by 60 percent (from 1 inch to 1.6 inches) over that proposed in the our November 1996 notice of proposed rulemaking (NPRM).[6] The advocacy groups stated that the larger test device would permit manufacturers to utilize recessed openings for switches that are far larger and shallower than those which could have been used under the proposal, and as a result, power window switches will still be susceptible to inadvertent actuation by the hands, ball of foot, knuckles, elbows, toes, and even knees of young children. According to the Advocates et al., petition, the agency's final rule provides for a test device so large as to neglect the possibility of operation by those other body parts. The Advocates et al., petition urged the agency to amend the standard to provide for a smaller test device that would better represent the body parts of small children that might inadvertently actuate a power window switch.

The Alliance's petition also raised an issue related to the size of the test device. Specifically, it objected to the incorporation of the 1 mm tolerance on the size of the test device, which was not proposed in the NPRM, for the following reasons. The Alliance argued that such tolerance is unnecessary, particularly since other types of test apparatus under FMVSS No. 118 do not have size tolerances specified (*e.g.*, test rods under S5). Furthermore, the Alliance's petition stated that a ± 1 mm radial tolerance in effect changes the required diameter of the test device from 40 mm to 38 mm, because manufacturers need to assume worst-case conditions when they conduct certification tests.

In order to remedy this perceived problem, the Alliance recommended amending the standard to specify a minimum radius of 20 mm for the test device. The Alliance's petition indicated that with current production capabilities for machined parts, tolerances can be held to 0.003 to 0.005 inches (0.076 to 0.127 mm).

Consistent with the reasoning in the final rule, we continue to believe that the size of the test device specified in the final rule is appropriate, and in their petition, the advocacy groups did not present any data to demonstrate that body parts smaller than a child's knee have resulted in inadvertent switch actuation that caused injury. For the reasons that follow, we have decided to deny the request in the Advocates et al.,., petition that we amend the standard to specify a smaller test device.

[6] 61 FR 58504 (Nov. 15, 1996) (Docket No. NHTSA–2004–17216–1).

First, power window switches must be of sufficient size to render them reasonably ergonomic and accessible for normal operation. In contrast, a switch that could resist the wide range of actuation possibilities that the advocacy groups assert should be encompassed under the rule would be significantly compromised in terms of normal use. For example, if switches needed to be resistant to actuation by children's knuckles and toes, then even the pull-to-close switches mandated under section 10308 of SAFETEA–LU would fail to meet the requirement, because those child body parts are at least as small, if not smaller, than adult fingers which switches must be able to accommodate.

Second, there is no indication in our review of over two years of child fatality cases that power window switches were inadvertently operated in any way other than the most obvious one (*i.e.*, where a child knelt upon an armrest while leaning out of an open window).

Furthermore, focusing on ways in which switches theoretically might be unintentionally actuated by smaller body parts causes one to lose sight of the reality of the underlying safety problem. Although the evidence from the case data is limited, it appears that the power window switches involved in events leading to death and injury are primarily designs where the switches were largely or totally exposed. It is evident that even minor design changes in the configuration of those switches could have made a significant safety difference.

For these reasons and in light of the congressional mandate for pull-to-close power window switches, we believe that the size of the test device in the final rule, which represents the knee form of a small child, is sufficient to eliminate unsafe switches while maintaining functionality. Accordingly, we are denying the request in the Advocates et al.,., petition to decrease the size of the test device.

Turning to the issue raised in the Alliance's petition, we note that the agency's intent in including a size tolerance for the test device in the final rule was to facilitate testing under the standard. However, after considering the petitioner's arguments related to the size of the final rule's ± 1 mm manufacturing tolerance for the actuation test device, we agree that a smaller tolerance is appropriate.

Because the test device specified in the accidental actuation test is intended to be representative of the knee form of a small child (the worst-case scenario corresponding to actual cases of inadvertent power window switch actuation), the agency believes it is appropriate to specify and to test with a test device that is representative of the minimum radius specified under the standard (i.e. , 20 mm) in order to ensure that the switch demonstrates the desired level of resistance to inadvertent actuation. Devices with a larger radius would certainly pass an accidental actuation test already passed by a device with a smaller radius.

By specifying a size tolerance, it is possible to facilitate testing by ensuring that the test device meets the standard's specifications so as to be representative of a small child's knee within a reasonable degree of manufacturing variability. However, in light of the information provided on production capabilities for machined parts, we have decided to reduce the tolerance on the test device from ± 1 mm to ± 0.2 mm. We believe that this revision will provide a reasonable manufacturing tolerance that will continue to closely represent the knee form of a small child.

2. Composition and Surface Finish of the Test Device

As noted above, for the actuation test of S6, the September 15, 2004 final rule specified use of a test device in the form of a hemisphere with a smooth, rigid spherical surface and a radius of 20 mm ± 1 mm (*see* S6(b)(1)).

The Alliance's petition for reconsideration expressed concern that the final rule does not specify either the material composition or the surface finish of the test device. The Alliance recommended specification and use of a test device made of stainless steel and with a surface ''polished to between 8 and 4 micro inches.''

The agency's intent in specifying the material and surface finish for the test device in qualitative terms was to be as unrestrictive as possible in order to facilitate testing under the standard. However, we agree that it would be possible to specify a material composition and surface finish parameters for the test device without increasing testing costs or compliance burdens. We believe that the test would still be easily implemented with such modification, and test repeatability may be enhanced to some extent.

Regarding the choice of material to be used to fabricate the test device, we agree that a more detailed specification is appropriate because of the wide range of possible materials that could be considered ''rigid'' (e.g., wood, plastic, Teflon, cast iron) and thereby introduce variation into test results. Accordingly, we have decided to adopt the Alliance's recommendation to specify the use a test device made of stainless steel.

Regarding the surface finish of the test device, we note that the actuation test, as adopted in the final rule, was intended to emphasize contact in the normal direction (i.e., perpendicular to the surface of the test device) and to eliminate frictional force in the planar direction (i.e., tangent to the surface of the test device). Nevertheless, if specifications as to the surface of the test device are provided, as suggested by the Alliance, then the potential for lateral friction may be further minimized. Accordingly, we have decided to adopt the Alliance's recommendation that the test device should have a surface finish of between 8 and 4 micro inches, because we believe that this specification would be both practical and appropriate.

D. Automatic Reversal

As discussed in some detail in the preamble of the September 15, 2004 final rule, the agency decided not to amend Standard No. 118 so as to require vehicles equipped with power-operated windows to have an automatic reversal system.[7] Instead, the standard continues to provide automatic reversal as a manufacturer option for certifying compliance under the standard (*see* S5). In the final rule, we stated that we were not mandating automatic reversal systems in light of their substantial cost ($8–12.50 per window or $32–50 per vehicle) and the fact that the amendments to the standard to require power window switches resistant to inadvertent actuation will reduce the limited benefits that could be obtained from those systems.[8]

The Advocates *et al.,* petition for reconsideration requested that the agency reexamine its decision not to require automatic reversal capability for power-operated windows, partitions, and roof panel systems. In explaining why it believes there is a need for automatic reversal, the Advocates et al., petition began by arguing that FMVSS No. 118 ''is based on the flawed premise'' that adult supervision can be assumed if the ignition key is present in the vehicle. According to the Advocates et al.,., petition, the provisions of S4, to which all power window systems are certified for compliance, rely on vigilance and ''adult supervision''—not on fail-safe design and operation—to prevent power window-related deaths and injuries. However, the advocacy groups point to discussion in the preamble to the September 2004 final rule, stating that most power window-related deaths of young children

[7] *See* 69 FR 55517, 55527–28.

[8] *Id.* at 55523.

occurred while the vehicle's key was in the ignition. Thus, the Advocates et al., petition argued that real-world behavior and circumstances are at variance with the underlying rationale of the standard, so in keeping with the premise of public health countermeasures, the agency should change the nature of the environment in order to abate risk (i.e., by requiring automatic reversal), rather than to rely on the judgment of individuals and human behavior. Thus, the advocacy groups stated that the agency should have gone further to safeguard power windows, addressing all power window fatality scenarios by adopting an automatic reversal requirement, rather than focusing solely on switch design and thereby neglecting a large portion of the problem.

Furthermore, the advocacy groups argued that the agency's cost-benefit assessment related to automatic reversal was inadequate and unpersuasive. In their petition, the advocacy groups asserted that the fatality and injury data relied upon by the agency were unreliable and that the breadth of the safety problem is much greater than the data indicate (especially since many cases may go unreported). More specifically, the Advocates et al., petition stated that current power window systems result in a substantial exposure to risk of death or injury, even if actual harm only occurs in a small percentage of cases, because children are left unsupervised in vehicles with an active power window system (the key in the ignition or the availability of a remote control) thousands of times each day.

In addition, the advocacy groups stated that NHTSA should not have been deterred from mandating automatic reversal merely because of a low benefit-to-cost ratio for that safety system, based upon the precedent in other rulemakings. As examples, the Advocates et al., petition pointed to the agency's 1995 final rule [9] under FMVSS No. 201, *Occupant Protection in Interior Impact* (including rear seats in the interior occupant protection rule) and our 2000 final rule [10] amending FMVSS No. 208, *Occupant Crash Protection* (issued in part to protect children from air bag-related injuries). The advocacy groups stated that NHTSA adopted requirements in these rulemakings, despite considerable cost to industry and relatively few fatalities.

After careful consideration, we have decided to deny the request in the Advocates et al., petition to include an automatic reversal requirement under FMVSS No. 118. We note that the advocacy groups have not provided any new data regarding either: (1) The incidence of fatalities and injuries for inadvertent or intentional actuation of power window switches, or (2) the costs of automatic reversal systems. We continue to believe that the limited benefits that could be expected from an automatic reversal requirement are not justified by the high cost of such systems, particularly given the potential for the safer switches requirements (both the pull-to-close mandate of section 10308 of SAFETEA–LU and the performance test in S6) to prevent power window-related injuries and fatalities. The following discussion explains our reasoning in light of the arguments raised in the Advocates et al., petition; however, for a more complete discussion, please also read the discussion in the September 15, 2004 final rule regarding automatic reversal systems.

First, we disagree with the characterization in the Advocates et al., petition that FMVSS No. 118 depends upon supervision of children for safety, and the conclusion that flows therefrom, *i.e.* that because reliance on adult supervision has proven inadequate, the agency must mandate automatic reversal. Supervision of children and supervisory control of the ignition key, in fact, are not the same. Because of FMVSS No. 118 requirements, control of the ignition key (and of any remote control which can operate the windows) is sufficient for ensuring safety vis-à-vis power windows, thereby obviating the need for direct supervision of children with respect to power window operation. By requiring the simple act of key removal, the standard ensures power windows can be rendered inoperable, rather than making supervision of child occupants a necessary condition for safety, as the advocacy groups assert.[11]

Furthermore, the September 2004 final rule was intended to prevent fatalities and injuries associated with inadvertent actuation of power window switches, even if children are left unsupervised with the key left in the ignition. Based upon the data examined by the agency (as discussed in the final rule), we believe that the amendments to the standard (i.e., the accidental actuation test and the requirement for pull-to-close switches) will prevent the types of power-window incidents that have been documented.

In their petition, the advocacy groups presented other possible scenarios, involving either inadvertent or intentional (but accidental) switch actuation that have the potential to produce power window-related injuries. For example, the Advocates et al., petition discussed the possibility of a child becoming entrapped when two or more children are left unattended in the presence of enabled power windows, and the second child inadvertently actuates a switch. In their petition, the advocacy groups alleged that there are cases of this type. However, there is not any documentation that any such cases have actually occurred. Even so, the risk of unintentional switch operation in the two-child scenario presented in the Advocates et al., petition is already addressed by the safer switch requirement of the final rule.

In the case of intentional switch operation (i.e., operating the switch as designed with a finger), one child could entrap another child only if the first child were manipulating switches at the driver's window (the only vehicle location with comprehensive controls for all windows) or if the two children were at the same window. However, the available data did not include any cases in which it could be verified that one child accidentally caused entrapment of another child by intentionally actuating a power window switch.[12] We are aware of only one documented case of a fatality in which a driver may have closed a window while unaware that a child was being entrapped in the window opening.[13]

Furthermore, we do not believe that the speculative arguments in the Advocates et al., petition about magnitude of risk justify their request for the agency to require automatic reversal systems, absent data demonstrating a safety problem. It is not feasible to eliminate all potentially conceivable risks through regulation. We do not believe that the high cost of automatic reversal systems are justified in the absence of data demonstrating a safety need, particularly where the standard's safer switches provision is expected to address the problems which led to this rulemaking.

We likewise find no merit to the argument in the Advocates et al., petition seeking to link the agency's adoption of requirements in other safety

[9] 60 FR 43031 (August 18, 1995).

[10] 65 FR 30680 (May 12, 2000).

[11] We note that key removal is essential for other safety reasons as well, such as to prevent roll-aways and to prevent children from moving the gear selector or starting the engine. Even if all vehicles were equipped with automatically reversing power windows, it still would always be advisable to never leave the ignition key in an unattended vehicle.

[12] *See* 69 FR 55517, 55523–24 (Sept. 15, 2004).

[13] *See* Appendix K of the August 19, 2003 Center for Auto Safety et al.,. petition for rulemaking (Docket No. NHTSA–2004–17216–19).

standards (despite allegedly low benefit-to-cost ratios) as justification for requiring automatic reversal systems in FMVSS No. 118. On that point, the agency considers each potential amendment to a safety standard on its own merits, and such considerations are not limited to costs. Consequently, the agency's analysis in the rulemakings for FMVSS Nos. 201 and 208 are not relevant to our determination not to require automatic reversal systems under FMVSS No. 118.

For the reasons above, we do not believe that there is significant safety need that would justify the high costs of requiring automatic reversal systems under Standard No. 118, particularly given the potential of current requirements for pull-to-close switches and the accidental actuation test to prevent the types of power window-related incidents documented in the available data. Accordingly, the request in the Advocates et al., petition for an automatic reversal requirement is denied.

V. Technical Correction

Since publication of the September 2004 final rule, a testing anomaly related to the accidental actuation test under S6 of the standard has been brought to our attention. Specifically, it is possible for the hemisphere-shaped test device to contact switches in an unintended manner, one in which a sphere-shaped test device could not.[14] Available information suggests that a hemisphere, unlike a whole sphere, could fit into a side-by-side switch recess designed for fingertips and could actuate a pull-up switch. However, window closure in this situation is the result of an artifact of the test design and has no relevant safety implications, because a hemisphere held in the orientation necessary to cause the problem is not representative of a child's knee.

To resolve this anomaly, we are making a technical correction to S6 to return the shape of the test device to a full sphere, as we originally proposed.[15] The reason for this change from a complete sphere to a hemisphere was primarily to facilitate attachment of a handle to the device and alignment of the applied force in the requisite direction (i.e., through the center of the point of contact of the device's spherical surface with a switch being tested). We do not believe that this technical correction will have any impact upon the conduct of the accidental actuation test.

VI. Lead Time and Compliance Date

In the September 2004 final rule, the agency stated its intention to provide sufficient lead time to allow vehicle manufacturers to incorporate compliant power window switches as part of the normal vehicle redesign process (which manufacturers suggested range from three to five years). As discussed in that rule, we expressed our belief that providing this lead time would reduce the costs associated with the final rule to essentially zero. Accordingly, the final rule required that all new vehicles subject to the standard that are produced on or after October 1, 2008 for sale in the U.S. must comply with the amended power window switch requirements. The final rule noted that voluntary compliance is permitted prior to the mandatory compliance date.

In setting forth the amended requirements to FMVSS No. 118 contained in this final rule responding to petitions for reconsideration, we have decided to retain the mandatory compliance date of October 1, 2008, for the reasons that follow. The primary change effected by this final rule involves a requirement for power window switches with pull-to-close operability, a new requirement which implements the agency's mandate under section 10308 of SAFETEA–LU. (All of the other amendments to the standard adopted pursuant to this response to petitions for reconsideration are minor technical changes which should not affect lead time considerations.)

However, the enactment of the SAFETEA–LU legislation followed the September 2004 final rule by a relatively short period of time (approximately 11 months), and vehicle manufacturers presumably were aware of this new and relatively straight-forward mandate soon after enactment, if not before.

It is unlikely that vehicle manufacturers committed significant resources to redesigning their switches during that intervening time period, and that they chose a recessed rocker or toggle switch design (as permitted under the September 2004 final rule), as opposed to a pull-to-close switch design that would meet the statutory mandate. In fact, we would note that certain high-volume vehicle models which previously had rocker or toggle switches have been converted to pull-to-close switches since publication of the September 2004 final rule (e.g., Ford Explorer, Chevrolet Impala). This suggests that the September 2004 final rule only accelerated the industry trend toward installation of pull-to-close switches (the most common design in current vehicles).

In any event, we believe that vehicle manufacturers have adequate lead time to effect changes related to incorporation of pull-to-close power window switches. For these reasons, we believe that additional time to comply with the power window switch requirements in this notice is unnecessary.

VII. Benefits and Costs

Section XI of the September 15, 2004 final rule summarized the benefits associated with our amendments to FMVSS No. 118 to require safer power window switches, and Section XII of that final rule described the associated costs. In summary, those sections of the final rule stated that based upon all available evidence, the agency expects that, on average, at least one child fatality and at least one serious injury (e.g., amputation, brain damage from near suffocation) per year could be prevented by the requirements of the final rule. As discussed in that final rule, we believe that this is a conservative estimate and that actual benefits are likely to be higher.

In terms of costs, we stated in the September 2004 final rule that we expect that the new requirements will impose very little cost burden on vehicle manufacturers, particularly given the ample lead time provided (i.e., compliance date of October 1, 2008). Modifications made to comply with the final rule were expected to consist merely of changes in the mode of switch operation and/or in the shape of surrounding trim pieces, and the final rule was not expected to affect any other aspect of the operation of power windows. The cost to manufacturers, while perhaps greater than zero, were expected to be negligible, given that any necessary switch modifications will presumably be incorporated during the course of normal product design cycles.

The agency has determined that the technical amendments resulting from this final rule responding to petitions for reconsideration, including the congressional mandate for pull-to-close power window switches, will not appreciably change the costs and benefits reported in the September 2004 final rule. We continue to believe that there is adequate lead time to allow manufacturers to comply with the amended standard without appreciable cost. Accordingly, the agency has decided that the estimates in that

[14] A representative from Toyota Motors North American, Inc. (Toyota) discussed this issue with NHTSA staff on June 21, 2005, providing a schematic illustrating the potential actuation problem with a hemisphere-shaped test device. (*See* Docket No. NHTSA–2004–19032–8.) General Motors provided similar information regarding the shape of the test device. (*See* Docket No. NHTSA–2004–19032–10.)

[15] 61 FR 58504, 58507 (Nov. 15, 1996).

document remain valid and that additional analysis is not required.

VIII. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[16] These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.[17] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[18] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[19] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[20]

As noted previously, the agency published a final rule in the **Federal Register** on September 15, 2004, amending FMVSS No. 118 to require power window switches resistant to inadvertent actuation. The agency received two petitions for reconsideration of that final rule. In addition, in the intervening period, Congress passed section 10308 of SAFETEA–LU, which directed the Secretary of Transportation ''to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out.'' In this final rule responding to petitions for reconsideration, the agency carefully considered the statutory requirements of both SAFETEA–LU and 49 U.S.C. Chapter 301.

First, this final rule reflects the agency's careful consideration and analysis of all issues raised in the petitions for reconsideration. In responding to the issues raised in these petitions, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated relevant, available information related to various power window systems. We also carefully considered how best to implement the legislative mandate to require pull-to-close power window switches. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the power window requirements remain practicable, the agency evaluated the potential impacts of the petitions' requested actions in light of the cost, availability, and suitability of various power window systems, consistent with our safety objectives and the requirements of SAFETEA–LU. As noted above, most of the changes resulting from this final rule involve relatively minor modifications to the September 15, 2004 final rule, and even the requirement for pull-to-close power window switches arguably falls in that category. In sum, we believe that this final rule responding to petitions for reconsideration is practicable and will maintain the benefits of the Standard No. 118, including minimizing the likelihood of death or injury from the accidental operation of power-operated window, partition, and roof panel systems.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, this final rule amends the standard to include a requirement for pull-to-close operability of power window switches, and it also makes minor modifications to better define the test device used for the accidental actuation test. The standard's test procedures continue to carefully delineate how testing will be conducted. The agency continues to believe that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the requirements of the standard for power-operated window, partition, and roof panel systems.

Fourth, we believe that this final rule responding to petitions for reconsideration will meet the need for motor vehicle safety by making certain modifications that will enhance the resistance of power window switches to inadvertent actuation, thereby preventing potentially injurious or fatal incidents, particularly those involving small children.

Finally, we believe that this final rule responding to petitions for reconsideration is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard resulting from this final rule will further the agency's efforts to address Congress' concern that power window switches be resistant to inadvertent actuation, which may lead to fatalities and serious injuries, particularly among children. Under section 10308 of SAFETEA–LU, Congress mandated issuance of a final rule to amend FMVSS No. 118 such that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out. Because this is essentially the same modification requested by one of the petitions for reconsideration, addressing Congress's safety objective through this rulemaking was determined to be appropriate and allows us to expeditiously implement congressional intent. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 118 because it furthers the agency's objective of minimizing the likelihood of death or injury resulting from the accidental operation of power-operated window, partition, and roof panel systems.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under E.O. 12866. Further, this action has been determined to be ''not significant'' under the Department of Transportation's Regulatory Policies and Procedures. This final rule

[16] 49 U.S.C. 30111(a).

[17] 49 U.S.C. 30102(a)(9).

[18] 49 U.S.C. 30111(b).

[19] *Id.*

[20] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

responding to petitions for reconsideration involves technical amendments to FMVSS No. 118, with the most noteworthy being a requirement that power window switches have pull-to-close operability. The agency has estimated that the incremental costs associated with these technical modifications to the standard resulting from this final rule will not appreciably change the costs of compliance with FMVSS No. 118. In light of current industry design trends and the substantial lead time provided, the cost of this final rule is expected to be close to zero. On average, we expect that the September 2004 final rule for safer power window switches will result in annual benefits that are expected to be a saving of one child's life and the avoidance of at least one serious injury, and that this final rule responding to petitions for reconsideration will maintain that anticipated level of benefits. Therefore, the impacts of these amendments are so minor that a full regulatory evaluation is not required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the present final rule responding to petitions for reconsideration only makes technical modifications and corrections to the safety standard for power-operated window, partition, and roof panel systems. Although the final rule does implement a congressional mandate for pull-to-close power window switches, small entities would continue to have design freedom with respect to materials, subcomponents, electronics, and all other design factors other than the shape of the switch-finger interface. In addition, given the substantial lead time, we continue to expect that the costs associated with this rulemaking would be close to zero.

D. Executive Order 13132 (Federalism)

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires NHTSA 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'' are 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.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts a State law unless the agency consults with State and local officials early in the process of developing the regulation.

Although it simultaneously implements a statutory mandate for pull-to-close power window switches, this final rule responding to petitions for reconsideration of September 15, 2004 final rule amending FMVSS No. 118 was analyzed in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that the rule would not have sufficient Federalism implications to warrant consultations with State and local officials or the preparation of a Federalism summary impact statement. This final rule is not expected to have any substantial effects on the States, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

F. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this final rule responding to petitions for reconsideration is expected to have a positive safety impact on children, it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information

collection requirement associated with this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

Currently, there are no voluntary consensus standards directly related to power-operated window switch design. However, NHTSA will consider any such standards as they become available.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 (so currently about $112 million in 2001 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency 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 the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule responding to petitions for reconsideration will not result in the expenditure by State, local, or tribal governments or the private sector, in the aggregate, of more than $112 million annually. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

K. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

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

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.118 is amended by revising S6 to read as follows:

§ 571.118 Standard No. 118; Power-operated window, partition, and roof panel systems.

* * * * *

S6 *Actuation Devices.* Except as provided in paragraph S6(b), actuation devices in the occupant compartments of vehicles used to close power-operated windows, partitions, and roof panels must meet the following requirements:

(a) An actuation device must not cause a window, partition, or roof panel to begin to close from any open position when tested as follows:

(1) Using a stainless steel sphere having a surface finish between 8 and 4 micro inches and a radius of 20 mm + 0.2 mm, place the surface of the sphere against any portion of the actuation device.

(2) Apply a force not to exceed 135 Newtons (30 pounds) through the geometric center of the sphere. This force may be applied at any angle with respect to the actuation device.

(3) For actuation devices that cannot be contacted by the sphere specified in S6(a)(1) prior to the application of force, apply a force up to the level specified in S6(a)(2) at any angle in an attempt to make contact with the actuation device. The sphere is directionally applied in such a manner that, if unimpeded, it would make contact with the actuation device.

(b) The requirement in S6(a) does not apply to either—

(1) actuation devices that are mounted in a vehicle's roof, headliner, or overhead console that can close power-operated windows, partitions, or roof panels only by continuous rather than momentary switch actuation, or

(2) actuation devices for closing power-operated windows, partitions, or roof panels which comply with paragraph S5.

(c) Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An actuation device must operate only when pulled vertically up (if horizontally mounted), or out (if vertically mounted), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.

* * * * *

Issued: April 7, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–3505 Filed 4–10–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 040606B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 first seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher processor vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 8, 2006, through 1200 hrs, A.l.t., September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2006 and 2007 final harvest specification for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the adjustment on March 14, 2006 (71 FR 13777, March 17, 2006), allocated a directed fishing allowance for Pacific cod of 1,749 metric tons to catcher processor vessels using pot gear in the BSAI, for the period 1200 hrs, A.l.t., January 1, 2006, through 1200 hrs, A.l.t., June 10, 2006.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2006 A season allocation of Pacific cod allocated as a directed fishing allowance to catcher processor vessels using pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 6, 2006.

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

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

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

Dated: April 7, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–3502 Filed 4–7–06; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 040606A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Pot or Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 7, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2006 and 2007 final harvest specification for groundfish in the BSAI (71 FR 10894, March 3, 2006), the adjustment on March 14, 2006 (71 FR 13777, March 17, 2006), and the reallocation on March 21, 2006 (71 FR 14825, March 24, 2006), allocated a directed fishing allowance for Pacific cod of 2,536 metric tons to catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2006 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the

requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 5, 2006.

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

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

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

Dated: April 6, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–3503 Filed 4–7–06; 2:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 70
Wednesday, April 12, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23173; Directorate Identifier 2005–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all Short Brothers Model SD3 airplanes. The original NPRM would have required installing additional fuel tank bonding jumpers, performing an in-place resistance check of the float switches, inspecting certain internal components of the fuel tanks, and performing related corrective actions if necessary. The original NPRM would have also required revisions to the Airworthiness Limitations section of the Instructions for Continued Airworthiness, and to the airplane flight manual procedures for operation during icing conditions and fuel system failures. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding service information. We are proposing this supplemental NPRM to prevent ignition sources inside the fuel tanks, which could lead to fire or explosion.

DATES: We must receive comments on this supplemental NPRM by May 8, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

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

Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–23173; Directorate Identifier 2005–NM–190–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to all Short Brothers Model SD3 airplanes. The original NPRM was published in the **Federal Register** on December 5, 2005 (70 FR 72406). The original NPRM proposed to require installing additional fuel tank bonding jumpers, performing an in-place resistance check of the float switches, inspecting certain internal components of the fuel tanks, and performing related corrective actions if necessary. The original NPRM also proposed to require revisions to the Airworthiness Limitations section of the Instructions for Continued Airworthiness, and to the airplane flight manual procedures for operation during icing conditions and fuel system failures.

Since the original NPRM was issued, Short Brothers has issued three additional temporary revisions (TRs) to the airworthiness limitations section of the aircraft maintenance manuals (AMMs) of the affected airplanes. In addition, we have been informed that a fourth TR was issued that was not addressed by British airworthiness directive G–004–0021, dated August 25, 2004, which was referenced as the parallel British airworthiness directive in the original NPRM.

Relevant Service Information

Short Brothers has issued Service Bulletins SD3 SHERPA–28–2, SD360 SHERPA–28–3, SD330–28–37, and SD360–28–23; all dated June 2004. The service bulletins describe procedures for installing additional bonding jumpers

between the vent pipes of both fuel tanks and the airplane structure; for performing an in-place resistance check of the fuel tank float switches; for inspecting the condition of certain sensor cables and cable supports inside the fuel tanks; for inspecting the integrity of the existing bonding of certain vent pipes inside the forward fuel tank; and for performing applicable corrective actions. Corrective actions include replacing defective float switches with new, reconditioned, or serviceable float switches, and repairing damaged sensor cables, cable supports, and existing vent pipe bonding.

Short Brothers has issued Advance Amendment Bulletin 1/2004, dated July 13, 2004, applicable to Shorts airplane flight manuals having Doc. Nos. SB.4.3, SB.4.6, SB.4.8, SB.5.2, SB.6.2, SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SBH.3.9. The advance amendment bulletin describes revisions needed to meet the requirements of FAA SFAR 88 and/or CAA Airworthiness Notice AN55; the revisions affect sections of the flight manuals applicable to operation during icing conditions and fuel system failures.

Short Brothers has issued TRs to the airworthiness limitations section of the aircraft maintenance manuals (AMM) of the affected airplanes, as shown in the following table. The TRs address airworthiness limitations to certain components of the fuel tank system installations.

AMM TEMPORARY REVISIONS

Airplane model	Temporary revision	Dated	To AMM
SD3–30	TR330–AMM–13	June 21, 2004	SD3–30 AMM.
SD3–30	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60	TR360–AMM–34	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–60 SHERPA	TRSD360S–AMM–15	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–15	July 28, 2004	SD3–SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–16	July 28, 2004	SD3–SHERPA AMM.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2004–0021 R1, dated September 15, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom. Paragraph (j) of this supplemental NPRM has been revised accordingly.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the original NPRM or on the determination of the cost to the public.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this proposed AD. Therefore, we are issuing this supplemental NPRM, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between Proposed AD and Service Information

The service bulletins specify to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the CAA approve would be acceptable for compliance with this proposed AD.

Clarification of Inspection Terminology

In this proposed AD, the ''visual inspection'' specified in the Shorts service bulletins is referred to as a ''general visual inspection.'' We have included the definition for a general visual inspection in a note in the proposed AD.

Change to Work Hour Rate

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

This supplemental NPRM would affect about 54 airplanes of U.S. registry. The average labor rate is estimated to be $80 per work hour.

The proposed revisions to the AFM and AMM would take about 1 work hour per airplane. Based on these figures, the estimated cost of the proposed revisions for U.S. operators is $4,320, or $80 per airplane.

The proposed resistance check, inspections, and jumper installations, would take about 40 work hours per airplane. Required parts would cost about $10 per airplane. Based on these figures, the estimated cost of these proposed actions for U.S. operators is $173,340, or $3,210 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers PLC: Docket No. FAA–2005–23173; Directorate Identifier 2005–NM–190–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 8, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Shorts Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the fuel tanks, which could lead to fire or explosion.

Compliance

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

Revision of Airplane Flight Manual (AFM)

(f) Within 30 days after the effective date of this AD, revise the Limitations and Normal Procedures sections of the AFMs as specified in Table 1 of this AD to include the information in Shorts Advance Amendment Bulletin 1/2004, ''Introduction of Changes to Meet the Requirements of FAA SFAR 88 and/or UK CAA Airworthiness Notice AN55,'' dated July 13, 2004, as specified in the advance amendment bulletin. This advance amendment bulletin addresses operation during icing conditions and fuel system failures. Thereafter, operate the airplane according to the limitations and procedures in the advance amendment bulletin.

Note 2: The requirements of paragraph (f) of this AD may be done by inserting a copy of the advance amendment bulletin into the AFM. When this advance amendment bulletin has been included in general revisions of the AFM, the general revisions may be inserted into the AFM and the advance amendment bulletin may be removed, provided the relevant information in the general revision is identical to that in the advance amendment bulletin.

TABLE 1.—AFM REVISIONS

Airplane model	AFM documents to be revised
SD3–30	SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SBH.3.9.
SD3–60	SB.4.3, SB.4.6, and SB.4.8.
SD3–60 SHERPA	SB.5.2.
SD3–SHERPA	SB.6.2.

Revision of Airworthiness Limitation (AWL) Section

(g) Within 180 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating airplane maintenance manual (AMM) sections 5–20–01 and 5–20–02 as introduced by the Shorts temporary revisions (TR) specified in Table 2 of this AD into the AWL section of the AMMs for the airplane models specified in Table 2. Thereafter, except as provided by paragraph (i) of this AD, no alternative structural inspection intervals may be approved for the longitudinal skin joints in the fuselage pressure shell.

Note 3: The requirements of paragraph (g) of this AD may be done by inserting a copy of the applicable TR into the applicable AMM. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

TABLE 2.—AMM TEMPORARY REVISIONS

Airplane model	Temporary revision	Dated	To AMM
SD3–30	TR330–AMM–13	June 21, 2004	SD3–30 AMM.
SD3–30	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60	TR360–AMM–34	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–60 SHERPA	TRSD360S–AMM–15	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–15	July 28, 2004	SD3–SHERPA AMM.
SD3–SHERPA	TRSD3S–AMM–16	July 28, 2004	SD3–SHERPA AMM.

Resistance Check, Inspection, and Jumper Installation

(h) Within 180 days after the effective date of this AD: Perform the insulation resistance check, general visual inspections, and bonding jumper wire installations; in accordance with Shorts Service Bulletin SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, or SD3 SHERPA–28–2; all dated June 2004; as applicable. If any defect or damage is discovered during any inspection or check required by this AD, before further flight, repair the defect or damage using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Note 4: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(j) British airworthiness directive G–2004–0021 R1, dated September 15, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on April 4, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5357 Filed 4–11–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0227; FRL–8054–7]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions concern procedures for the calculation of sulfur emissions from copper smelters. We are proposing to approve a local rule that helps regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 12, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0227, by one of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov*. Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov.*
- Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: ADEQ R18–2—Appendix 8. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 22, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 06–3407 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HO–OPP–2006–0251; FRL–7771–3]

Tetrahydrofurfuryl Alcohol (THFA); Proposed Action on Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1) to revoke the existing exemption from the requirement of a tolerance for residues of the inert ingredient tetrahydrofurfuryl alcohol (THFA) (CAS Reg. No. 97–99–4) under 40 CFR 180.910 because it does not meet the safety requirements of FFDCA section 408(b)(2). While EPA has determined that dietary risks from use of THFA exceed the Agency's level of concern, limited uses of THFA may be permitted. Therefore, EPA is also proposing to establish for THFA an exemption from the requirement of a tolerance under 40 CFR 180.1263 that includes use limitations. The regulatory action proposed in this document contributes toward the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA)

of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory action proposed in this document pertains to the proposed revocation of one tolerance which would be counted as tolerance reassessment toward the August 2006 review deadline.

DATES: Comments must be received on or before June 12, 2006.

ADDRESSES: Submit your comments, identified by Docket identification number (ID) No. EPA–HQ–OPP–2006–0251, by one of the following methods:

• *http:/ /www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery.* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0251. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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– OPP–2006–0251. 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.regulatioris.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 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 Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–306–0404; e-mail address: *angulo.karen@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. Submitting CBI. Do not submit this information to EPA through *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:

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 and Statutory Findings

A. What Action is the Agency Taking?

EPA is now in the process of reassessing all inert ingredient exemptions from the requirement of a tolerance (''tolerance exemptions'') established prior to August 2, 1996, as required by the FFDCA section 408(q), as amended by the FQPA. Inert ingredient chemicals must meet a high safety standard in order to merit an exemption from the numerical residue limitations that are imposed in a tolerance.

1. In evaluating the inert ingredient THFA, the Agency has determined that dietary risks of concern may result from the use of THFA under the current tolerance exemption in 40 CFR 180.910, which allows an unlimited amount of THFA to be applied to growing crops and raw agricultural commodities after harvest.

The hazard characterization of THFA shows effects of concern. Consistent systemic effects from repeated dermal and oral exposure to THFA include decreased body weight and body weight gain. Effects were consistent over species and routes of exposure. While no neurotoxicity studies were performed, whole body spasms were reported in the subchronic inhalation study.

Developmental and reproductive effects of concern have been identified. Alterations in the male reproductive system from subchronic exposure to THFA also indicates a concern for alterations in the developing male reproductive system. The available data show there is evidence of increased susceptibility (both quantitative and qualitative) of the offspring after *in utero* exposure to THFA, including decreased fetal body weights.

The screening level dietary exposure assessment showed that the risks were above the Agency's level of concern for the general population and the most highly exposed sub-population (children 1 to 2 years old). Because of these risk levels, the unlimited exemption from a tolerance as is currently granted to THFA under 40 CFR 180.910 does not meet the safety requirements of FFDCA section 408(b)(2). Therefore, EPA is proposing to revoke the existing THFA tolerance exemption, revocation to be effective 18 months after publication of the final rule.

The assessment documents for THFA are available electronically under EPA–HQ–OPP–2006–0251 at *http://www.regulations.gov*.

2. EPA has identified uses of THFA that do not pose risks of concern. EPA is proposing to establish a tolerance exemption under § 180.1263 that permits:

(1) Use as a seed treatment,

(2) Application at the time of planting,

(3) Application to cotton, and,

(4) Use in herbicides with one application to wheat and barley prior to the pre-boot stage.

These limitations significantly reduce the number of times that THFA may be applied per season - often to one application only -- and, therefore, reduce the potential for dietary exposures below the Agency's level of concern. Contributions to surface/drinking water are not anticipated from the use of THFA-containing pesticide products under the proposed use limitations considering THFA's physical-chemical properties and biodegradation potential in the environment. No residential risks of concern are anticipated at this time for the new tolerance exemption.

i. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to THFA and any other substances and THFA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that THFA has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

ii. *Determination of safety for U.S. population, infants and children.* Considering that dietary (food and drinking water) and residential risks are not of concern under the use limitations of the new exemption, EPA finds that exempting THFA with the limitations in § 180.1263 will be safe for the general population including infants and children.

iii. *Analytical enforcement methodology.* An analytical method is not required for the new tolerance exemption for enforcement purposes because the Agency is establishing an exemption from the requirement of a tolerance.

B. What is the Agency's Authority for taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

C. When do these Actions Become Effective?

EPA is proposing to revoke THFA's current tolerance exemption in 40 CFR 180.910, effective 18 months after the date of publication of the final rule in the **Federal Register**. Any commodities listed in this proposal treated with pesticide products containing the inert ingredient THFA, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on

the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

EPA is proposing that the establishment of a new tolerance exemption under § 180.1263 for use of THFA will become effective on the date of publication of the final rule in the **Federal Register**. Applications for new pesticide products that include THFA will be subject to the limitations of the new tolerance exemption as of the date of publication of the final rule in the **Federal Register**.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerancesand exemptions from tolerances that were in existence on August 2, 1996. This document proposes to place an 18 month expiration date on one inert ingredient tolerance exemption, which will be counted in a final rule as a tolerance reassessment toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocation in this proposal is not discriminatory and is designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**--Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (0MB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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). This proposed rule does not contain any information collections subject to 0MB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or 0MB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C 601 et seq.), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, the Agency has concluded in a memorandum dated May 25, 2001 that for import tolerance revocation there is a negligible joint probability of certain defined conditions holding simultaneously which would indicate an RFA/SBREFA concern and require more analysis. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption

provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.910 is amended by revising the entry for Tetrahydrofurfuryl alcohol in the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* * * *	
Tetrahydrofurfuryl alcohol (THFA) (CAS Reg. No 97–99–4)	Expires [*insert date 18 months after date of publication of the Final rule in the* FEDERAL REGISTER]	Solvent/cosolvent
* * *	* * * *	

* * * * *

3. Section 180.1263 is added to subpart D to read as follows:

§ 180.1263 Tetrahydrofurfuryl alcohol; exemption from the requirement of a tolerance.

Tetrahydrofurfuryl alcohol (THFA, CAS Reg. No. 97–99–4) is exempt from the requirement of a tolerance in or on all raw agricultural commodities when used in accordance with good agricultural practices as an inert ingredient applied only:

(a) For use as a seed treatment.

(b) For application at the time of planting.

(c) For use on cotton.

(d) For use in herbicides with one application to wheat and barley prior to the pre-boot stage.

[FR Doc. E6–5399 Filed 4–11–06; 8:45 arn]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–611; MB Docket No. 06–59, RM–11319]

Radio Broadcasting Services; Gravette, AR and Southwest City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, section 73.202(b) of the Commission's rules. The Audio Division requests comment on a petition filed by KERM, Inc. pursuant to section 1.420(i) of the Commission's rules. Petitioner proposes to change the community of license for Station KURM–FM from Southwest City, Missouri, to Gravette, Arkansas, and to change the FM Table of Allotments by deleting Channel 262A at Southwest City, Missouri, and by adding Channel 262A at Gravette, Arkansas, as the community's first local aural broadcast service. The proposed coordinates for Channel 262A at Gravette, Arkansas, are 36–25–54 NL and 94–30–46 WL. The allotment will require a site restriction of 5.4 km (3.4 miles) west of Gravette.

DATES: Comments must be filed on or before May 8, 2006, and reply comments on or before May 23, 2006.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Dan J. Alpert, Esq., The Law Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 06–59; adopted March 15, 2006, and released March 17, 2006. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Gravette, Channel 262A.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Southwest City, Channel 262A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–5110 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–612; MB Docket No. 05–155; RM–11226]

Radio Broadcasting Services; Denver City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of Ramar Communications II, Ltd, licensee of Station KSTQ–FM, Plainview, Texas, the site restriction for Channel *248C2 is modified to accommodate Ramar Communications' pending application to modify Station KSTQ–FM's operation. The site for Channel *248C2 is modified to Petitioner's suggested site 13.6 kilometers (8.5 miles) west of Denver City. The modified coordinates for Channel *248C2 at Denver City are 32–55–57 NL and 102–58–10 WL.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–155, adopted March 15, 2005, and released March 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com.* Federal Register This document is not subject to the Congressional Review Act. (The Commission is therefore not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule (70 FR 19400, Apr. 13, 2005) was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–5035 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

RIN 0750–AF23

Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Buy American Act Exemption for Commercial Information Technology (DFARS Case 2005–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement provisions of annual appropriations acts that authorize an exemption from the Buy American Act for the acquisition of commercial information technology.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 12, 2006 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D011, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2005–D011 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199); Section 517 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447); and Section 717 of the Consolidated Appropriations Act, 2006 (Pub. L. 109–115) provide an exemption from the Buy American Act for the acquisition of information technology that is a commercial item. This proposed rule amends the acquisition procedures in DFARS part 225 to reflect the exemption. The proposed rule applies the same exemption to the Balance of Payments Program policy in DFARS subpart 225.75, since the Balance of Payments Program is an extension of the Buy American Act restrictions to acquisitions of supplies for overseas use. The proposed rule will eliminate the need for issuance of annual deviations to address the exemption.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the proposed rule is to promote Government access to commercial information technology, by eliminating the application of domestic source requirements to the acquisition of such information technology. The proposed rule will apply to entities interested in providing commercial information technology products to

DoD. Such entities will no longer need to track the origin of components to determine if an information technology product complies with Buy American Act requirements. As a result, manufacturers of domestic components of information technology products may face increased competition from manufacturers of foreign components. There are no significant alternatives to the proposed rule that would accomplish the objectives of the applicable statutes.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D011.

C. Paperwork Reduction Act

The proposed rule will reduce the information collection requirements that have been approved by the Office of Management and Budget, under Clearance Number 0704–0229, for use through May 31, 2007. Under this clearance, 36,175 annual burden hours have been approved for the provision at DFARS 252.225–7000, Buy American Act-Balance of Payments Program Certificate; and 1,000 annual burden hours have been approved for the provision at DFARS 252.225–7035, Buy American Act-Free Trade Agreements-Balance of Payments Program Certificate. DoD estimates that the proposed rule will result in a 5 percent reduction in the burden hours for the provision at DFARS 252.225–7000 (1,800 hours) and a 50 percent reduction in the burden hours for the provision at DFARS 252.225–7035 (500 hours).

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is proposed to be amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 225.1101 is amended by revising paragraph (2)(iii), paragraph (10)(i) introductory text, and paragraph (10)(ii) to read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) * * *

(iii) An exception to the Buy American Act or Balance of Payments Program applies (see FAR 25.103, 225.103, and 225.7501); or

* * * * *

(10)(i) Except as provided in paragraph (10)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $193,000, and a Free Trade Agreement applies to the acquisition.

* * * * *

(ii) Do not use the clause if—

(A) Purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction; or

(B) Acquiring information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and the same provision in subsequent appropriations acts).

* * * * *

3. Section 225.7501 is amended by revising paragraphs (a)(2)(iv) and (v) and adding paragraph (a)(2)(vi) to read as follows:

225.7501 Policy.

* * * * *

(a) * * *

(2) * * *

(iv) An industrial gas;

(v) A brand drug specified by the Defense Medical Materiel Board; or

(vi) Information technology that is a commercial item, using fiscal year 2004 or subsequent funds (Section 535 of Division F of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), and the same provision in subsequent appropriations acts);

* * * * *

[FR Doc. E6–5281 Filed 4–11–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

RIN 0750–AF22

Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Definitions of Component and Domestic Manufacture (DFARS Case 2005–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the definitions of ''component'' and ''domestic manufacture'' as they relate to policy on foreign acquisition.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 12, 2006 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005-D010, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2005–D010 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Part 225 and associated provisions and clauses to clarify the distinction between foreign acquisition policies that apply only to top-level components of end products and those that apply to both top-level and lower-tier components of end products. As used in this background discussion, ''top-level components'' are those components that are incorporated directly into the end product; and ''lower-tier components''

are components that are incorporated into a component of the end product.

The general definition of ''component'' in FAR 2.101 is ''any item supplied to the Government as part of an end item or of another component.'' Therefore, for general use, the term includes both top-level components and lower-tier components. For purposes of determining whether a product is a domestic end product under the Buy American Act or the Balance of Payments Program, the term ''component'' is defined in FAR 25.003 to include only ''an article, material, or supply incorporated directly into an end product or construction material'' (i.e., only top-level components). This definition would also be applicable to any other situation in which evaluation of the end product is based on the value of the components, similar to that under the Buy American Act (e.g., to determine a qualifying country end product or whether anchor chain is a domestic end product).

In broadly applying these concepts to DFARS Part 225, ''component'' has been defined to apply only to top-level components, except in Subpart 225.70, where the term ''component'' includes components at all tiers. However, there are some requirements of Part 225 other than those in 225.70 that are not based on or are not similar to the Buy American Act, and there are some requirements in 225.70 that should be treated as similar to the Buy American Act.

Therefore, the definitions of ''component'' included in the proposed rule reflect the correct applicability of foreign acquisition policies as follows:

- 225.900–70 and 252.225–7013, Duty-Free Entry—Duty-free entry is not related to evaluation of domestic products under the Buy American Act and should apply to qualifying country components at any tier.
- 252.225–7019, Restriction on Anchor and Mooring Chain—The requirement that the cost of components manufactured in the United States exceed 50 percent of the total cost of components is similar to the Buy American Act component test, in which only top-level components are considered. Therefore, the definition restricting application to top-level components should apply.
- 252.225–7025, Restriction on Acquisition of Forgings—The requirement to acquire forging items that are of domestic manufacture applies to any forging item, whether purchased as an end item or as a component at any tier.

In addition, the proposed rule eliminates references to the DoD Industrial Preparedness Production Planning Program, at 225.7005–1 and in the definition of ''domestic manufacture'' at 252.225–7025, since DoD no longer has an Industrial Preparedness Production Planning Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule updates and clarifies DFARS terminology, but makes no significant change to DoD acquisition policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D010.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.900–70 is added to read as follows:

225.900–70 Definition.

Component, as used in this subpart, means any item supplied to the Government as part of an end product or of another component.

3. Section 225.7001 is amended as follows:

a. By revising paragraph (b);

b. By redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively; and

c. By adding a new paragraph (c) to read as follows:

225.7001 Definitions.

* * * * *

(b) *Component,* other than bearing components, is defined in the clauses at 252.225–7012, Preference for Certain Domestic Commodities, and 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, except that for use in 225.7007, the term has the meaning given in the clause at 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain.

(c) *End product* is defined in the clause at 252.225–7012, Preference for Certain Domestic Commodities.

* * * * *

225.7005–1 [Amended]

4. Section 225.7005–1 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b) respectively.

5. Section 225.7101 is revised to read as follows:

225.7101 Definitions.

Component and *domestic manufacture,* as used in this subpart, are defined in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.225–7000 is amended by revising the clause date and paragraph (a) to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

* * * * *

Buy American Act—Balance of Payments Program Certificate (XXX 2006)

(a) *Definitions. Component, domestic end product, foreign end product, qualifying country,* and *qualifying country* end product have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

* * * * *

7. Section 252.225–7013 is amended as follows:

a. By revising the clause date;

b. By redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4) respectively; and

c. By adding a new paragraph (a)(1) to read as follows:

252.225–7013 Duty-Free Entry.

* * * * *

Duty-Free Entry (XXX 2006)

(a) * * *

(1) *Component* means any item supplied to the Government as part of an end product or of another component.

* * * * *

8. Section 252.225–7019 is amended as follows:

a. By revising the clause date;

b. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively;

c. By adding a new paragraph (a); and

d. By revising newly designated paragraph (d) to read as follows:

252.225–7019 Restriction on Acquisition of Anchor and Mooring Chain.

* * * * *

Restriction on Acquisition of Anchor and Mooring Chain (XXX 2006)

(a) *Definition. Component,* as used in this clause, means an article, material, or supply incorporated directly into an end product or construction material.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

9. Section 252.225–7025 is amended as follows:

a. By revising the clause date;

b. By redesignating paragraphs (a)(1) and (2) as paragraphs (a)(2) and (3) respectively;

c. By adding a new paragraph (a)(1); and

d. By revising newly designated paragraph (a)(2) and *paragraph (b) to read as follows:*

252.225–7025 Restriction on Acquisition of Forgings.

* * * * *

Restriction on Acquisition of Forgings (XXX 2006)

(a) * * *

(1) *Component* means any item supplied to the Government as part of an end product or of another component.

(2) *Domestic manufacture* means manufactured in the United States, its outlying areas, or Canada.

* * * * *

(b) End products and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

* * * * *

10. Section 252.225–7035 is amended by revising the clause date and paragraph (a) to read as follows:

252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate (XXX 2006)

(a) *Definitions. Component, domestic end product, end product of Australia, Canada, Chile, Mexico, or Singapore, foreign end product, qualifying country end product,* and *United States,* as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

* * * * *

[FR Doc. E6–5282 Filed 4–11–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

RIN 1018–AU56

Revision of Federal Duck Stamp Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service, or we), propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest [also known as the Federal Duck Stamp Contest (contest)]. Our proposed amendments would raise the contest entry fee by $25, to $125; update contest opening and entry deadline dates, locations, and mail and Internet site information; specify penalties for contestants who contact judges or copy designs from the Internet; relieve restrictions on our ability to announce judges' names; clarify ambiguous language in our regulations concerning matting of entries and minimum age of entrants; and update or correct technical advising for the contest, the common names and spelling of species on our list of contest design subjects, and minor grammar errors.

DATES: To ensure our consideration, we must receive your comments on this proposal by May 12, 2006.

ADDRESSES: You may submit comments by any one of the following methods:

1. Federal Duck Stamp Web site: *http://www.fws.gov/duckstamps.* Follow the instructions for submitting comments.

2. E-mail: *duckstamps@fws.gov.*

3. Fax: 703–358–2009 to Chief, Federal Duck Stamp Office.

4. U.S. Mail: Chief, Federal Duck Stamp Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4070, Arlington, VA 22203–1622.

5. Hand Delivery: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4070, Arlington, VA.

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

For more information on requirements for submitting or viewing comments, see ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Patricia Fisher, Chief, Federal Duck Stamp Office, (703) 358–2000 (phone), *duckstamps@fws.gov* (e-mail), or (703) 358–2009 (fax).

SUPPLEMENTARY INFORMATION: We propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest [also known as the Federal Duck Stamp Contest (contest)]. Our proposed amendments would raise the contest entry fee by $25, to $125; update contest opening and entry deadline dates, locations, and mail and Internet site information, so that our regulations would be brought up to date with our current and new practices. They would also specify penalties for contestants who contact judges or copy designs from the Internet; relieve restrictions on our ability to announce judges' names; clarify ambiguous language in our regulations concerning matting of entries and minimum age of entrants; and update or correct contest technical advisor information, the treatment and spelling of species' common names on our contest design subject list, and minor grammar errors. We do not believe the proposed changes have much impact on the body of the regulations, and, except for the plagiarism penalty, the increase in the entry fee, and the penalty for contacting judges, they relieve restrictions on the public, clarify existing and new practices, or make corrections. Therefore we believe 30 days will allow the public sufficient time to review and respond to our proposed changes. The public will benefit from having final regulations in place well in advance of our June 2006 contest opening date.

Background

History of the Federal Migratory Bird Hunting Stamp (Duck Stamp) Program

On March 16, 1934, Congress passed and President Franklin D. Roosevelt signed the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the Service. We are legislatively mandated to use the revenue first to administer the Duck Stamp permit program and contest, and secondly for conservation, to buy or lease waterfowl sanctuaries.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.8 million stamps are sold each year, and as of 2004, Federal Duck Stamps have generated more than $700 million for the preservation of more than 5.2 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

History of the Duck Stamp Contest

The first Federal Duck Stamp was designed at President Roosevelt's request by Jay N. ''Ding'' Darling, a nationally known political cartoonist for the *Des Moines Register* and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries. Since then, the contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of noted art, waterfowl, and philatelic authorities to select each year's winning design. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

Proposed Changes

The regulations governing the contest are at 50 CFR part 91. Our proposed amendments raise the entry fee from $100 to $125, to help offset the rising cost of administering the contest, update the contest regulations concerning opening and entry deadline dates, making the new dates earlier than the ones currently specified in part 91, and specify penalties for contestants who contact judges. These revisions also remove a restriction governing our ability to announce names of judges. To update our regulations to reflect the ascendance of Internet technology, we also now expressly prohibit contestants from copying designs from the Internet. Although in the past we have held the contest solely in Washington, DC, from 2005 on, we have begun and plan to continue to hold the contest in a different U.S. location each year. Therefore, we will update contest location information. These changes also clarify ambiguous language in our regulations concerning matting of entries and minimum age of entrants. These amendments also update Service mail and Internet site information; update the common names and spellings of species on our list of potential contest design subjects; update the regulations to reflect a change in technical advising for the contest; and correct minor grammar errors.

Service Mailing Addresses; Location of Contest

We correct the address of the Duck Stamp Office as it appears at § 91.1(b) and § 91.16(b), because the office is no longer in Washington, DC, but is now located in Arlington, VA.

The current regulations at § 91.22 reflect the long tradition of the contest being held in Washington, DC, at the Main Interior Building auditorium. However, the 2006 contest will be the second contest to take place outside of Washington, DC. We plan to hold future duck stamp contests in various U.S. locations corresponding to flyways. Therefore, we are removing the sentence from § 91.22 that states that the contest is held in the Main Interior Building auditorium. Holding the contest in various geographic locations will help attract more attention to the program, hopefully increasing the number of contest entries and giving a greater number of people throughout the U.S. access to the contest. The overall goal is to increase duck stamp stales to gain additional funds with which to purchase waterfowl habitat. The 2005 Duck Stamp Contest was the first contest ever held outside Washington, DC and took place at the Memphis College of Arts, in Memphis, TN. The 2006 contest will also be held in Memphis, at the same location.

Updating Species' Common Names or Spellings

Section 91.4 contains our list of eligible species. For each year's contest, we choose five or fewer species from the list; one or more of those species (or a combination thereof; see § 91.14) are the only acceptable subjects for entries during that contest year. We announce each year's eligible species in a **Federal Register** notice, as well as in other materials we prepare and make available. Our list in § 91.4 contains scientific and common names accepted by the American Ornithologists' Union (AOU; *http://www.aou.org/;* see also the AOU Check-list at *http://www.aou.org/checklist/birdlist46.pdf,* our standard reference on taxonomy, nomenclature, and capitalization). Since we first wrote our regulations, the AOU has changed the common name for the species *Clangula hyemalis,* from ''Oldsquaw'' to ''Long-tailed Duck.'' For Snow Goose (*Chen caerulescens*), we add the clarification that both ''white'' and ''blue'' morphs are on the list in § 91.4. We make these changes, along with spelling corrections of some other names, to our list in § 91.4 so that this list will reflect the most current scientific and common names.

Contest Opening and Entry Deadline Dates

We are correcting § 91.11 of the regulations to bring the dates of the contest into alignment with current practices. The contest is now being held in early fall. Therefore, we now open the contest and start accepting entries on June 1 of each year, instead of July 1, as currently specified in the regulations. If you wish to enter a design in the contest, you must postmark your packaged entry no later than midnight on August 15. The current regulations give this deadline as September 15, but it is no longer correct.

When we first wrote our regulations and codified them in the Code of Federal Regulations (CFR), the Internet was not as widely used as it is today. Therefore, we are taking this opportunity to add to § 91.11(c) that you can obtain the most up-to-date contest information by viewing the Web site *http://www.fws.gov/duckstamps* or by calling (703) 358–2000.

Increase in Contest Entry Fee; Clarification of Minimum Age of Entrants

We propose to raise the contest entry fee from $100 to $125 (§ 91.12), to help offset the rising cost of administering the contest. This modest increase is our first since 1996. It will help us continue to improve the contest. We also propose to change the language specifying minimum age of contest entrants so that the minimum age will remain 18 no matter when the contest begins.

Clarification of Entry Format Requirements

We are revising our regulations concerning contest entry format to more specifically guide entrants on proper matting procedures. In the past, some entrants have used glue to affix matting to their pictures, or have used other incorrect practices. You must not permanently affix matting to your picture, because if you later sell your picture, someone who has bought it might want to put it in another mat for framing. However, it is best to present your entry for the contest with matting affixed to the front of it, because judges will be judging your entry as it appears with matting—i.e., the judges do not look at extra painting that may lie beneath the matting. We are revising our regulations at § 91.13 to say that you must affix matting to your picture with white or clear tape that can be removed later.

Preventing Internet Plagiarism; Including Noneligible Species in Designs

Existing § 91.14 specifies that ''an entry design may not be copied or duplicated from previously published art, including photographs.'' We now update this section to add that an entry design may not be copied or duplicated from images in any format on the Internet. This section also explains that a live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design, but that the design may depict other appropriate things such as hunting dogs, as long as the eligible bird or birds are in the foreground and center of attention We propose to add that appropriate noneligible bird species are also allowed to appear in the background of the design. We have been verbally advising entrants that noneligible bird species are allowed in the background of designs; therefore, we simply want to codify the practice we have been following.

Penalties for Contestants Who Contact Judges; Broadening the Judge Selection Process

We are amending § 91.21 to add penalties for contestants who contact judges before or during the contest. The penalty will be disqualification from that year's contest. Also, that person will be prohibited from entering the following 3 contests. Thus, the person would be prohibited from entering a total of 4 contests. In this same section, we are removing a restriction governing our selection of judges by removing from § 91.21(a) the stipulation that we will announce judges' names on the first day of the contest. This change allows us to announce our judges prior to the start of each year's contest, rather than waiting until the contest actually starts, and thereby allows us to publicize the contest more widely.

Technical Advising for the Contest

In our current regulations at § 91.24, we state that the Bureau of Engraving and Printing analyzes contest finalists' entries and advises us of any serious anatomical problems or design problems from the perspective of an engraver. However, since we wrote those regulations, the Bureau of Engraving and Printing has ceased production of stamps. Therefore, we are revising § 91.24 to note that our technical advisor is now the U.S. Postal Service.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order (E.O.) 12866.

1. This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule deals solely with the Federal Duck Stamp Contest. No other Federal agency has any role in regulating this endeavor.

3. This rule does not alter budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of the Federal Duck Stamp Contest.

4. This rule does not raise novel legal or policy issues. This rule is primarily a reorganization and clarification of existing regulations. New provisions proposed in the rule are in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The changes we propose are intended primarily to clarify the requirements for the contest. In addition, these changes do not affect the information collected These changes will affect individuals, not businesses or other small entities as defined in the RFA. The fee increase to $125 per entrant from $100 per entrant represents a $25.00 total increase per entrant. In recent years we have received an average of 250 entries per year. If this average remains constant, then approximately $6,250.00 is the estimated annual increase to the public to participate in the program.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

1. Does not have an annual effect on the economy of $100 million or more.

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

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

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. A federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*) is therefore not required.

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule proposes to revise the current regulations in 50 CFR part 91 that govern the duck stamp contest. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the rule clearly stated?
2. Does the rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the rule (grouping and order of sections, use of headings, paragraphing, and so forth) aid or reduce its clarity?
4. Would the rule be easier to understand if it were divided into more (but shorter) sections?
5. Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful toward your understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Public Comments Solicited

We are asking the public, other concerned governmental agencies, the scientific community, industry, or any other interested party to comment on this rule so that any final action resulting from this proposal will be as accurate and as effective as possible. Comments will become part of the Administrative Record for this rulemaking action. You may inspect comments at the hand-delivery address (given in the **ADDRESSES** section) during normal business hours.

If you wish to comment, you may submit your comments by any one of several methods listed under **ADDRESSES**. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: 1018–AU56'' and your name and return U.S. mail address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2000. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 91—[AMENDED]

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

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Amend § 91.1(b) by revising the second sentence and adding a third sentence to read as follows:

§ 91.1 Purpose of regulations.

(a) * * *

(b) * * * A copy of the regulations, along with the Reproduction Rights Agreement and Display and Participation Agreement, may be requested from the Federal Duck Stamp Office, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr. MBSP–4070, Arlington, VA 22203–1622. These documents can also be downloaded from our Web site: *http://www.fws.gov/duckstamps/.*

* * * * *

3. Amend § 91.2 by revising the definition of Display and participation agreement to read as follows:

§ 91.2 Definitions.

* * * * *

Display and participation agreement—a document that each contestant must complete, sign, and submit with the entry. The signed agreement allows the Service to display the entry at various locations for promotional purposes, and requires the artist to participate in events on behalf of the Federal Duck Stamp Program.

* * * * *

4. Revise § 91.4 to read as follows:

§ 91.4 Eligible species.

Five or fewer of the species listed below will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in § 91.1.

(a) Whistling-Ducks. (1) Fulvous Whistling-Duck (*Dendrocygna bicolor*)

(2) Black-bellied Whistling-Duck (*Dendrocygna autumnalis*)

(b) Swans. (1) Trumpeter Swan (*Cygnus buccinator*)

(2) Tundra Swan (*Cygnus columbianus*)

(c) Geese. (1) Greater White-fronted Goose (*Anser albifrons*)

(2) Snow Goose (including ''white'' and ''blue'' morphs) (*Chen caerulescens*)

(3) Ross's Goose (*Chen rossii*)

(4) Emperor Goose (*Chen canagica*)

(5) Canada Goose (*Branta canadensis*)

(d) Brant. (1) Brant (*Branta bernicla*)

(e) Dabbling Ducks. (1) Wood Duck (*Aix sponsa*)

(2) American Wigeon (*Anas americana*)

(3) Gadwall (*Anas strepera*)

(4) American Green-winged Teal (*Anas crecca carolinensis*)

(5) Mallard (*Anas platyrhynchos*)

(6) Mottled Duck (*Anas fulvigula*)

(7) American Black Duck (*Anas rubripes*)

(8) Northern Pintail (*Anas acuta*)

(9) Blue-winged Teal (*Anas discors*)

(10) Cinnamon Teal (*Anas cyanoptera*)

(11) Northern Shoveler (*Anas clypeata*)

(f) Diving Ducks. (1) Canvasback (*Aythya valisineria*)

(2) Redhead (*Aythya americana*)

(3) Ring-necked Duck (*Aythya collaris*)

(4) Greater Scaup (*Aythya marila*)

(5) Lesser Scaup (*Aythya affinis*)

(g) Sea-Ducks. (1) Common Eider (*Somateria mollissima*)

(2) King Eider (*Somateria spectabilis*)

(3) Spectacled Eider (*Somateria fischeri*)

(4) Steller's Eider (*Polysticta stelleri*)

(5) Harlequin Duck (*Histrionicus histrionicus*)

(6) Long-tailed Duck (*Clangula hyemalis*)

(7) Black Scoter (*Melanitta nigra*)

(8) Surf Scoter (*Melanitta perspicillata*)

(9) White-winged Scoter (*Melanitta fusca*)

(10) Bufflehead (*Bucephala albeola*)

(11) Barrow's Goldeneye (*Bucephala islandica*)

(12) Common Goldeneye (*Bucephala clangula*)

(h) Mergansers. (1) Hooded Merganser (*Lophodytes cucullatus*)

(2) Red-breasted Merganser (*Mergus serrator*)

(3) Common Merganser (*Mergus merganser*)

(i) Stiff Tails. (1) Ruddy Duck (*Oxyura jamaicensis*)

5. Revise § 91.11 to read as follows:

§ 91.11 Contest opening date and entry deadline.

The contest will officially open on June 1 of each year. Entries must be postmarked no later than midnight, August 15. For the latest information on contest time and place as well as all deadlines, please visit our Web site at *http://www.fws.gov/duckstamps* or call (703) 358–2000.

6. Revise § 91.12 to read as follows:

§ 91.12 Contest eligibility.

United States citizens, nationals, or resident aliens are eligible to participate in the contest. Any person who has won the contest during the preceding 3 years will be ineligible to submit an entry in the current year's contest. All entrants must be at least 18 years of age by the contest opening date (see § 91.11) to participate in the Federal Duck Stamp Contest. Contest judges and their relatives are ineligible to submit an entry. All entrants must submit a nonrefundable fee of $125.00 by cashier's check, certified check, or money order made payable to U.S. Fish and Wildlife Service. (Personal checks will not be accepted.) All entrants must submit a signed Reproduction Rights Agreement and a signed Display and Participation Agreement.

7. Revise § 91.13 to read as follows:

§ 91.13 Technical requirements for design and submission of entry.

The design must be a horizontal drawing or painting 7 inches high and 10 inches wide. The entry may be drawn in any medium desired by the contestant and may be either multicolored or black and white. No scrollwork, lettering, bird band numbers, signatures or initials may appear on the design. Each entry must be matted (on the front only) with a 9 inch by 12 inch white mat, 1 inch wide. The matting must be affixed with clear or white tape holding the matting to the picture. Entries must not be framed, or under glass, or have any protective covering (other than the matting) attached to them. The entire entry cannot exceed ¼ inch in total thickness.

8. Revise § 91.14 to read as follows:

§ 91.14 Restrictions on subject matter for entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. The design may depict more than one of the eligible species. Designs may include, but are not limited to, hunting dogs, hunting scenes, use of waterfowl decoys, National Wildlife Refuges as the background of habitat scenes, noneligible species, or other designs that depict uses of the stamp for sporting, conservation, and collecting purposes. The overall mandate will be to select the best design that will make an interesting, useful, and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original hand-drawn creation. The entry design may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the Internet. Photographs, computer-generated art, or art produced from a computer printer or other computer/mechanical output device (airbrush method excepted) are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for a Federal or State stamp design may be submitted in the current contest if the entry meets the above criteria.

9. Revise § 91.16(b) to read as follows:

§ 91.16 Submission procedures for entry.

* * * * *

(b) Each entry should be appropriately wrapped to protect the art work and then either hand-delivered or sent by registered mail, certified mail, express mail, or overnight delivery service to the address is § 91.1(b) of this part.

10. Revise § 91.17 to read as follows:

§ 91.17 Property insurance for contest entries.

Each contestant is responsible for obtaining adequate insurance coverage for his/her entry. Neither the Service nor the Department of the Interior will insure the entries, nor is the Service or Department responsible for loss or damage unless such is caused by Service or Department negligence or willful misconduct. The Service and Department reserve the right to determine whether negligence or willful misconduct led to artwork being damaged. Entry fees for the subsequent year's contest may be waived for artists whose artwork we determine to be damaged by any negligence on our part. This waiver remains at our discretion.

11. Amend § 91.21 by removing the final sentence from paragraph (a) and adding a new paragraph (c), to read as follows:

§ 91.21 Selection and qualification of contest judges.

* * * * *

(c) *Disqualification.* Any contestant who contacts a judge prior to or during the contest will automatically be disqualified from the current year's

contest and barred from entering the three contests that come after the current year's contest.

12. Revise § 91.22 to read as follows:

§ 91.22 Display of contest entries.

The Federal Duck Stamp Office assigns all eligible entries a number as entries are received. That office displays the entries in numerical order at the contest site.

§ 91.24 [Amended]

13. Amend § 91.24(f) by removing the words ''Bureau of Engraving and Printing'' and adding the words ''U.S. Postal Service'' in their place.

Dated: March 30, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–5223 Filed 4–11–06; 8:45 am]

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Notices

Federal Register
Vol. 71, No. 70
Wednesday, April 12, 2006

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment Regarding Cold War Era Unaccompanied Personnel Housing

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to issue program comment on Cold War era unaccompanied personnel housing.

SUMMARY: The Department of Defense (DoD) is formulating its plan on how to manage its inventory of Cold War (1946–1974) era unaccompanied personnel housing (UPH). In order to better meet its Federal historic preservation responsibilities in managing these properties, DoD has requested the Advisory Council on Historic Preservation (ACHP) to comment on the overall management of such properties, as opposed to submit each individual undertaking under such management to separate review. The DoD and ACHP have drafted such a comment and now seek public input on it. ACHP will take into account this public input prior to deciding whether to issue the program comment.

DATES: Submit comments on or before May 12, 2006.

ADDRESSES: Address all comments concerning this proposed program comment to Dave Berwick, Army Program Manager, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax 202–606–8672. You may submit electronic comments to *dberwick@chp.gov*.

FOR FURTHER INFORMATION CONTACT: Dave Berwick (202) 606–8505.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

Under Section 800.14(e) of those regulations, agencies can request ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.6. An agency can meet its Section 106 responsibilities for those undertakings by taking into account ACHP's Program Comment and by following the steps set forth in those comments.

DoD has requested such a Program Comment to cover management of its Cold War era unaccompanied personnel housing (UPH). A copy of the draft Program Comment can be found at the end of this notice. Once the public input resulting from this notice is considered, ACHP will decide whether to issue a final Program Comment to DoD.

Background on Cold War Era Unaccompanied Personnel Housing

Prior to the Civil War, the military constructed few permanent barracks. In general, permanent barracks existed at a few interior installations, coastal fortifications, and military academies. After the Civil War, as new military installations were constructed, more attention was given to the design and construction of large barrack buildings located on the edge of parade grounds. The Army began constructing two-company barracks featuring a central block flanked by two wings. Between 1866 and 1942, the Army issued standardized plans, but thousands of troops were also housed in temporary World War I mobilization barracks.

In the 1920s, poor living conditions of Army personnel led to the sale of excess property in order to improve military posts and housing. Large barracks were constructed between the 1920s and 1940s according to standardized plans. During World War II, mobilization plans were used for the large number of temporary barracks constructed to house the exponential growth of the military.

The DoD maintained a standing force of unprecedented size during the Cold War; the Army retained almost 900,000 personnel during the 1950s. Faced with the task of providing adequate housing for that many soldiers, the Army reverted to the use of standardized plans for permanent construction of UPH. As reported to Congress: ''The use of standardized plans saves in design costs, saves time in initiation of work, and provides uniformity throughout the Army. Where such plans are used, the only additional design work necessary at a specific site is to adapt the structure to the local terrain and existing utilities systems.'' (U.S. Congress, House. Hearings Before the Committee on Armed Services, *Military and Naval Construction,* 82nd Congress, 2nd Session, p. 3966)

Cold War Era sleeping facilities were predominantly provided in squad rooms with partial partitions. Dormitory style rooms were provided for the top four grades of enlisted personnel, at Service schools with substantial out-of-classroom study, and where there was shift-type work. In the 1950s, accommodating all company functions in a single building was the prime consideration in the design of barracks. Hammerhead and H-style barracks consolidated troop housing, dining facilities, and administration facilities into one building.

In the 1960s Rolling Pin barracks separated troop housing, dining facilities, and administration facilities into separate buildings. These were grouped into regimental complexes consisting of ten Rolling Pin barracks, two consolidated mess halls, two administrative buildings, chapel, post exchange, gymnasium, and dispensary.

With the suspension of the Selective Services Act in 1973, the military recognized the need to attract and retain servicemen in a voluntary military. Quality of life was identified as important to troop morale. Open dormitory design with limited privacy was now an undesirable feature. New barracks design incorporated the preferred ''2+2,'' consisting of two adjoining, two person rooms sharing a bathroom, throughout the 1980s.

The historic significance of Cold War UPH lies in their association with developing trends associated with the build-up of the military to support the Cold War. As the size of the military

increased, and Congress placed limits on funding available for housing, the Military Departments developed standardized barracks plans to meet the needs of its unaccompanied enlisted personnel. The development of permanent housing for a large standing military of enlisted personnel reflects the response to the Cold War, and therefore the properties are potentially significant as a class of resources under Criterion A of the National Register Criteria for their association with the events, activities, and patterns of the Cold War build-up, though properties may not be individually eligible.

Currently, DoD has identified 4,524 Cold War era unaccompanied housing buildings in its inventory. Of this total, 2,863 (63%) belong to the Army, 1,051 (23%) belong to the Navy, and 605 (13%) belong to the Air Force.

The Program Comment will apply to all Cold War Era UPH buildings. These buildings were constructed to house the unprecedented number of military personnel retained during the Cold War. The Military Departments followed a number of standardized designs for construction of UPH buildings during this period. The so-called Hammerhead, Rolling-Pin, and H-style barracks were the most common designs of the period. Though these designs were originally the traditional open floor plan style, the Military Departments are upgrading all barracks to the current standards of living, including individual rooms and bathrooms. DoD anticipates that this Program Comment for UPH will allow the Military Departments to more expeditiously improve Quality of Life for Soldiers, Sailors, Airmen, and Marines.

DoD anticipates that all of its Cold War era UPH will be subject to the following categories of undertakings: ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure.

This action will include all buildings and structures that were designed and built as UPH in the years 1946–1974, regardless of current use. This will be all buildings and structures with the DoD Category Group (2 digit) Code of 72, Unaccompanied Personnel Housing, in the Military Service's Real Property Inventory currently or at the time of construction.

DoD is requesting that the ACHP provide a Program Comment as a DoD-wide Section 106 compliance action related to the effects on Cold War era UPH due to the management actions listed above. Such management actions have a potential to adversely affect historic UPH.

Under the UPH Program Comment, a possible, though not likely, outcome would be the alteration or demolition of the entire group of properties built between 1946 and 1974. Because much of this housing is still being actively used by the Military Departments to house its soldiers, sailors, airmen, and marines, it is more likely that many of these buildings will remain in use and in the inventory. However, as alteration or complete demolition is an option under the Program Comment, the proposed mitigation must reflect and address that possibility. Because the significance of these properties lies primarily in their association with the history surrounding the build up of the Cold War, and not in their architectural qualities, the loss of this entire class of properties would be appropriately mitigated if the record of that association is completed before the buildings are irreversibly altered or demolished. In this case, the existing Army study, entitled *Unaccompanied Personnel Housing (UPH) During the Cold War (1946–1989),* comprehensively records the history of the construction and use of UPH during the Cold War era, and documents how the changing needs of the Cold War military were met through the design of Department's UPH. Consequently, because the important aspects of the relationship between these properties and the Cold War are already well documented through the history, plans, and photographs contained in the existing study, even if all the properties are demolished the effect of the loss will be appropriately mitigated.

Text of the Draft Program Comment

The following is the full text of the draft Program Comment:

Program Comment for Cold War Era Unaccompanied Personnel Housing

I. Introduction

This Program Comment provides DoD, and its Military Departments with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act with regard to the effect of the following management actions on Cold War Era Unaccompanied Personnel Housing (UPH) that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities.

In order to take into account the effects on such UPH, DoD and its Military Departments will conduct documentation in accordance with *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.* As each Military Department will be responsible for conducting its own mitigation actions, the following required documentation is structured by Military Department, followed by DoD-wide requirements.

II. Treatment of Properties

A. Army Mitigation

1. In 2003, the Army completed a study entitled *Unaccompanied Personnel Housing (UPH) During the Cold War (1946–1989).* This Historic Context study was undertaken to support the analysis of real property related to Army UPH, and to support the identification and evaluation of historic properties. In addition to providing historic information regarding the UPH program, the study also documents the property types defined in their historic context. In-depth archival research of primary and secondary sources was undertaken on the organizational history, doctrines, and policies that influenced the design and development of Army UPH during the Cold War era. Data were collected to identify significant events and policies that influenced site plans, building design, and spatial arrangement of Army UPH facilities. Archival research was also directed to compile data on the evolution and modification of these property types over time. In addition, site visits to six Army installations containing UPH facilities were completed. The installations were examined to identify and document UPH-related property types based on extant real property in the Army inventory. These case studies included a summary installation history, interview data from the cultural resource management, a review of extant real property, and a detailed architectural analysis of the design, materials, construction and modification of over 700 examples of Army UPH. The resulting report provides a comprehensive and detailed record of Army UPH, including a collection of site plans, as-built building plans, and photographs (Chapter 4). Since these standard designs have already been well documented, no additional documentation of the Army's UPH are needed as part of the overall DoD mitigation.

2. The Army, in order to take into account effects on potentially historic UPH, will amend *Unaccompanied Personnel Housing (UPH) During the Cold War (1946–1989)* in order to make it available to a wider audience. Due to security concerns, the distribution of the context study is limited to U.S. Government Agencies Only. The Army will remove the elements of the document that are security risks and then make the context available to the public.

B. Navy Mitigation

1. The Navy will produce a supplemental context study appendix that will be attached as an appendix to the Army's *Unaccompanied Personnel Housing (UPH) During the Cold War (1946–1989).* The final product will be a separately bound volume of additional information and photographs and tabular appendices that, when taken with the Army's and Air Force's context studies, provide a clear picture of the DoD's UPH. The context study appendix will:

—Explore the post-World War II changing demographics of Navy personnel and its impact on housing needs;
—Amend, as necessary, and adopt the Army's criteria for evaluating the historic significance of UPH;
—Consider the importance of major builders, developers and architects that may have been associated with design and construction of UPH; and
—Describe the inventory of UPH in detail, providing information on the various types of buildings and architectural styles and the quantity of each.

2. The Navy shall document a representative sample of the basic types of UPH. The Navy will choose three geographically dispersed installations with the greatest number and variety of such resources. The Marine Corps will choose one such example. The sample chosen shall be the best representative examples of the range of UPH types constructed during the Cold War era. This documentation would include collecting existing plans and drawings, writing a historic description in narrative or outline format, and compiling historic photographs of the buildings (similar in scope to the Army's documentation).

C. Air Force Mitigation

1. The Air Force will produce a supplemental context study appendix that will be attached to the Army's *Unaccompanied Personnel Housing (UPH) During the Cold War (1946–1989).* The final product will be a separately bound volume of additional information and photographs and tabular appendices that, when taken with the Army's and Navy's context studies, provide a clear picture of the Department of Defense's UPH. The context study appendix will:

—Explore the post-World War II changing demographics of Air Force personnel and its impact on housing needs;
—Amend, as necessary, and adopt the Army's criteria for evaluating the historic significance of UPH;
—Consider the importance of major builders, developers and architects that may have been associated with design and construction of UPH; and
—Describe the inventory of UPH in detail, providing information on the various types of buildings and architectural styles and the quantity of each.

The Air Force shall include documentation of representative sampling of the basic types of UPH. The Air Force will choose three geographically dispersed installations with the greatest number and variety of such resources. The sample chosen shall be the best representative examples of the range of UPH types constructed during the Cold War era. This documentation would include collecting existing plans and drawings, writing a historic description in narrative or outline format, and compiling historic photographs of the buildings, and would be similar in scope to the Army's documentation.

D. DoD-Wide Mitigation

1. Additionally, DoD recently completed a draft context study entitled *The Built Environment of Cold War Era Servicewomen* through the Legacy Resource Management Program. This context study examines how the needs of women service members shaped construction plans and practices of several types of facilities, including UPH. The Legacy Program recently approved funds for the completion of this document. The legacy program will make the context study available to the Military Departments and the public to enhance the consideration and documentation of the UPH story.

2. DoD and its Military Departments will make copies of all documentation available electronically, to the extent possible under security concerns, and hard copies will be placed in a permanent repository, such as the Center for Military History.

3. As a result of on-going consultations with stakeholders, each Military Department will provide a list of its UPH properties covered by the Program Comment, by State, to stakeholders. Each Military Department will be responsible for determining how to convey its information.

4. All Military Departments will encourage adaptive reuse of UPH properties when feasible, as well as the use of historic tax credits by private developers under lease arrangements. Military Departments will also incorporate adaptive reuse and preservation principles into master planning documents and activities.

These actions satisfy DoD's requirement to take into account the effects of the following management actions on Cold War Era DoD UPH that may be listed or eligible for listing on the National Register of Historic Places: ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, ceasing maintenance activities, new construction, demolition, deconstruction and salvage, remedial activities, and transfer, sale, lease, and closure.

III. Applicability

A. This Program Comment applies solely to Cold War Era DoD UPH. The Program Comment does not apply to the following properties that are listed, or eligible for listing, on the National Register of Historic Places: (1) Archaeological properties, (2) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations, and/or (3) UPH in National Register of Historic Places districts where the UPH is a contributing element of the district and the proposed undertaking has the potential to adversely affect such historic district. This exclusion does not apply to historic districts that are made up solely of UPH properties. In those cases the Program Comment would be applicable to such districts.

Since the proposed mitigation for UPH documents site plans, building designs, and the spatial arrangement of UPH, along with the events and actions that lead to the development of UPH, the important aspects of UPH, whether single buildings or districts made up entirely of UPH, will be addressed regardless of the type of undertaking that may affect this particular property type.

B. An installation with an existing Section 106 agreement document in place that addresses UPH can choose to:

(1) Continue to follow the stipulations in the existing agreement document for the remaining period of the agreement; or

(2) Seek to amend the existing agreement document to incorporate, in whole or in part, the terms of this Program Comment; or

(3) Terminate the existing agreement document, and re-initiate consultation informed by this Program Comment if necessary.

C. All future Section 106 agreement documents developed by the Military Departments related to the undertakings and properties addressed in this Program Comment shall include appropriate provisions detailing whether and how the terms of this Program Comment apply to such undertakings.

IV. Completion Schedule

On or before 60 days following approval of the Program Comment, DoD, its Military Departments and ACHP will establish a schedule for completion of the treatments outlined above.

V. Effect of the Program Comment

By following this Program Comment, DoD and its Military Departments meet their responsibilities for compliance under Section 106 regarding the effect of the following management actions on Cold War era DoD UPH that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, ceasing maintenance activities, new construction, demolition, deconstruction and salvage, remedial activities, and transfer, sale, lease, and closure. Accordingly, DoD installations are no longer required to follow the case-by-case Section 106 review process for such effects.

As each of the Military Departments is required under this Program Comment to document their own facilities, failure of anyone Military Department to comply with the terms of the Program Comment will not adversely affect the other Departments' abilities to continue managing their properties under the Program Comment.

VI. Duration and Review of the Program Comment

This Program Comment will remain in effect until such time as Headquarters, Department of the Army determines that such comments are no longer needed and notifies ACHP in writing, or ACHP withdraws the comments in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, the Army would be required to comply with the requirements of 36 CFR 800.3 through 800.7 regarding the effects under this Program Comments' scope.

Headquarters, Department of the Army and ACHP will review the implementation of the Program Comment ten years after its issuance.

Authority: 36 CFR 800.14(e).

Dated: April 7, 2006.

John M. Fowler,

Executive Director.

[FR Doc. 06–3509 Filed 4–11–06; 8:45 am]

BILLING CODE 4310–K6–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment Regarding World War II and Cold War Era Army Ammunition Production Facilities and Plants

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to issue program comment on World War II and Cold War Era Army Ammunition Production Facilities and Plants.

SUMMARY: The Department of the Army (Army) is formulating its plan on how to manage its inventory of World War II (1939–1946) and Cold War (1946–1974) era Army Ammunition 1344 Production Facilities and Plants. In order to better meet its Federal historic preservation responsibilities in managing these properties, the Army has requested the Advisory Council on Historic Preservation (ACHP) to comment on the overall management of such properties, as opposed to submit each individual undertaking under such management to separate review. The Army and ACHP have drafted such a comment and now seek public input on it. ACHP will take into account this public input prior to deciding whether to issue the program comment.

DATES: Submit comments on or before May 12, 2006.

ADDRESSES: Address all comments concerning this proposed program comment to Dave Berwick, Army Program Manager, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax 202–606–8672. You may submit electronic comments to *dberwick@achp.gov.*

FOR FURTHER INFORMATION CONTACT: Dave Berwick (202) 606–8505.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

Under Section 800.14(e) of those regulations, agencies can request ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.6. An agency can meet its Section 106 responsibilities for those undertakings by taking into account ACHP's Program Comment and by following the steps set forth in those comments.

The Department of the Army (Army) has requested such a Program Comment to cover management of its World War II (WWII) and Cold War era Army Ammunition Production Facilities and Plants. A copy of the draft Program Comment can be found at the end of this notice. Once the public input resulting from this notice is considered, ACHP will decide whether to issue a final Program Comment to the Army.

Background on WWII and Cold War ERA Army Ammunition Production Facilities and Plans

Beginning in 1940, the Ordnance Department, one of the seven Army technical services that were the forerunners of the present-day U.S. Army Materiel Command (AMC), established industrial facilities in order to carry out its mission of supplying ordnance to the United States Army Ground Forces, the Navy, the Coast Guard, the Marine Corps and numerous foreign countries. A majority of these facilities were Government-Owned Contractor-Operated (GOCO), and approximately 30 survive as Army ammunition plants (AAPs) in the inventory of AMC. Over the years, many of the original plants fell into disuse and were closed. Others were updated to meet the changing needs of different periods of conflict including the Cold War. Historians agree that U.S. ammunition production was of enormous importance to the Allied victory in World War II based in part on the technologies developed; the efficiency of production facilities, aided in large part by input from U.S. industries; and the sheer firepower developed. A large percentage of the buildings and structures associated with these facilities were built based on standardized plans known as ''typical'' or ''ideal'' plans. Variations were carried

out at the individual installations to account for differences in sites and specific production needs. In addition, temporary mobilization plans such as the 700– and 800–series plans were used for a variety of buildings at ammunition production facilities during WWII. The 700– and 800–series designs were the standardized plans used for quickly constructing the temporary military facilities that were needed for mobilization. The 700–series plans were developed in the intervening period between WWI and WWII. Both plans were used during WWII, with some mobilizations camps combining buildings from both plans.

Many of these WWII production facilities were used for Cold War ordnance development and remained active for years thereafter. A few Cold War-era facilities were newly constructed in the 1950s. Over the years these ammunition production facilities and plants were either transformed to keep up with changing technological needs or were left unused as technology and usefulness passed them by. Today, many are active, working facilities while others lie dormant until such time as they are required for future use or are determined excess.

Army records indicate that there are 10,933 WWII and Cold War Era Army ammunition production facilities and plants, including associated buildings, structures, and utilities, located within approximately 30 installations nationwide. The Army has requested that the Program Comment apply to all WWII and Cold War Era ammunition production facilities and plants and associated buildings, structures, and utilities. The WWII and Cold War Era Army ammunition plants were built as complete installations, containing not only the ammunition production facilities themselves, but also housing, storage, administration buildings, and associated structures. Most ammunition production facilities and plants from the World War II era were GOCO facilities, built for the Ordnance Department as Ordnance Works.

The Army anticipates that all of its WWII and Cold War era Army Ammunition Production Facilities and Plants will be subject to the following categories of undertakings: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and/or closure. The Army is requesting that the ACHP issue a Program Comment on the effects of these categories of undertakings on all WWII and Cold War Era Army Ammunition Production Facilities and Plants, including associated buildings, structures, and utilities.

The proposed action will cover approximately 10,933 buildings and structures. The Department of Defense (DoD) has requested a similar program comment to cover all WWII and Cold War Era Ammunition Storage Facilities. If approved, the DoD Program Comment will cover an additional 5,421 associated ammunition storage buildings at Army Ammunition Plants.

The categories of undertakings listed above are anticipated to occur as Army management activities continue. Therefore, there is a potential for adverse effects to historic ammunition production facilities and plants.

Text of the Draft Program Comment

The following is the full text of the draft Program Comment:

Program Comment for World War II and Cold War Era Army Ammunition Production Facilities and Plants

I. Introduction

This Program Comment provides the Department of the Army (Army) with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act with regard to the effect of the following management actions on World War II (WWII) and Cold War Era Army Ammunition Production Facilities and Plants that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities.

In order to take into account the effects on WWII and Cold War Era Army Ammunition Production Facilities and Plants (Facilities and Plants), the Army will conduct documentation in accordance with *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.*

II. Treatment of Properties

A. Army Mitigation

1. The Army has an existing context study, *Historic Context for the World War II Ordnance Department's Government-Owned Contractor-Operated (GOCO) Industrial Facilities 1939–1945* as well as documentation of nine World War II GOCO Plants.

2. The Army will prepare a supplemental volume that revises and expands the existing context to include the Cold War Era (1946–1974). The updated context study will:

—Focus on the changes that the plants underwent to address changing weapons technology and defense needs; and

—Identify prominent architect-engineer firms that may have designed architecturally significant buildings for Army Ammunition Plants.

3. The Army will prepare documentation that generally comports with the appropriate HABS/HAER standards for documentation for selected architecturally significant Facilities and Plants at two installations. This documentation will be similar to and follow the format of the existing documentation described in section II.A.1, above.

4. Upon completion of the documentation, the Army will then make the existing documentation of the nine WWII GOCO Army Ammunition Plants and the WWII GOCO context and the new documentation, to the extent possible under security concerns, available in electronic format to Federal and State agencies that request it.

5. In addition, as a result of on-going consultations with stakeholders, the Army will provide a list of properties covered by the Program Comment, by state, to the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation.

6. The Army will also develop additional public information on the Army ammunition process, from production through storage, to include:

—A display that can be loaned to one of the Army's museums, such as the Ordnance Museum at Aberdeen Proving Ground, or used at conferences; and

—A popular publication on the ammunition process to accompany the display.

Copies of this information will be available electronically, to the extent possible under security concerns, and hard copies will be placed in a permanent repository, such as the Center for Military History.

7. The Army will encourage adaptive reuse of the properties when feasible, as well as the use of historic tax credits by private developers under lease arrangements. The Army should also incorporate adaptive reuse and preservation principles into master planning documents and activities.

The above actions satisfy the Army's requirement to take into account the effects of the following management actions WWII and Cold War-era Army ammunition plants and production

facilities that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance activities, new construction, demolition, deconstruction and salvage, remedial activities, and transfer, sale, lease and/or closure of such facilities.

III. Applicability

A. This Program Comment applies solely to WWII and Cold War Era Army ammunition production facilities and plants. The Program Comment does not apply to the following properties that are listed, or eligible for listing, on the National Register of Historic Places: (1) Archeological properties, (2) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations, and/or (3) ammunition production facilities in National Register of Historic Places districts where the ammunition production facility is a contributing element of the district and the proposed undertaking has a potential to adversely affect such historic district. This third exclusion does not apply to historic districts that are entirely within the boundaries of an ammunition production plant. In those cases the Program Comment would be applicable to such districts.

B. An installation with an existing Section 106 agreement document that addresses WWII and Cold War-era ammunition plants and production facilities can choose to:

1. Continue to follow the stipulations in the existing agreement document for the remaining period of the agreement; or

2. Seek to amend the existing agreement document to incorporate, in whole or in part, the terms of this Program Comment; or

3. Terminate the existing agreement document and re-initiate consultation informed by this Program Comment, if necessary.

C. All future Section 106 agreement documents developed by Army installations related to undertakings and properties addressed in this Program Comment shall include appropriate provisions detailing whether and how the terms of the Program Comment apply to such undertakings.

IV. Completion Schedule

On or before 60 days following issuance of the Program Comment, the Army and ACHP will establish a schedule for completion of the treatments outlined above.

V. Effect of the Program Comment

By following this Program Comment, the Army has met its responsibilities for compliance under Section 106 regarding the effect of the following management actions on WWII and Cold War Era Army Ammunition Production Facilities and Plants that may be listed or eligible for listing on the National Register of Historic Places: ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities. Accordingly, the Army will no longer be required to follow the case-by-case Section 106 review process for such effects.

VI. Duration and Review of the Program Comment

This Program Comment will remain in effect until such time as Headquarters, Department of the Army determines that such comments are no longer needed and notifies ACHP in writing, or ACHP withdraws the comments in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, the Army would be required to comply with the requirements of 36 CFR 800.3 through 800.7 regarding the effects under this Program Comments' scope.

Headquarters, Department of the Army and ACHP will review the implementation of the Program Comment ten years after its issuance.

Authority: 36 CFR § 800.14(e).

Dated: April 7, 2006.

John M. Fowler,

Executive Director.

[FR Doc. 06–3508 Filed 4–1–06; 8:45 am]

BILLING CODE 4310–K6–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Program Comment Regarding World War II and Cold War Era Ammunition Storage Facilities

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to issue program comment on World War II and Cold War era ammunition storage facilities.

SUMMARY: The Department of Defense (DoD) is formulating its plan on how to manage its inventory of World War II (1939–1946) and Cold War (1946–1974) era ammunition storage facilities. In order to better meet its Federal historic preservation responsibilities in managing these properties, DoD has requested the Advisory Council on Historic Preservation (ACHP) to comment on the overall management of such properties, as opposed to submit each individual undertaking under such management to separate review. DoD and ACHP have drafted such a comment and now seek public input on it. ACHP will take into account this public input prior to deciding whether to issue the program comment.

DATES: Submit comments on or before May 12, 2006.

ADDRESSES: Address all comments concerning this proposed program comment to Dave Berwick, Army Program Manager, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. Fax 202–606–8672. You may submit electronic comments to *dberwick@achp.gov.*

FOR FURTHER INFORMATION CONTACT: Dave Berwick (202) 606–8505.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

Under Section 800.14(e) of those regulations, agencies can request ACHP to provide a ''Program Comment'' on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.6. An agency can meet its Section 106 responsibilities for those undertakings by taking into account ACHP's Program Comment and by following the steps set forth in those comments.

The Department of Defense (DoD) has requested such a Program Comment to cover management of its World War II and Cold War era ammunition storage facilities. A copy of the draft Program Comment can be found at the end of this notice. Once the public input resulting from this notice is considered, ACHP will decide whether to issue a final Program Comment to DoD.

Background on World War II and Cold War Era Ammunition Storage Facilities

Ammunition and explosives storage structures, usually called magazines, are present at most former and present U.S. military installations. The structures generally have an utilitarian form. Prior to the mid-1920s, magazines were generally warehouse-type structures constructed to house the volatile materiel. They were built of stone and brick and provided mostly dry, ventilated, and secure storage for ammunition and explosives. However, in 1926 at Lake Denmark, New Jersey, a set of chain reaction explosions changed the way ammunitions and explosives would be stored.

A new earth-covered concrete magazine was designed that directed the force of the explosion upward rather than outward, decreasing the chances of sympathetic, chain reaction explosions. This igloo-type magazine was then used throughout the military and was modified a few times, but generally was the predominant type of magazine after the 1920s. The underground igloos, although exhibiting considerable variation, share a very basic design plan: That of an arched barrel-shaped vault. Some partially bermed (covered with earth) facilities, such as the Richmond Magazine, were designed during World War II (WWII) as a wartime substitute for the practical igloo designs prompted by material shortages and mobilization needs and lacked the arched concrete roof and concrete front wall. The general design of igloo storage did not change much until modified once again in the late 1980s.

Modern ammunition storage facilities reflect the spacing and construction technique lessons learned in the 1926 Lake Denmark disaster, in which ammunition bunkers exploded in a chain reaction. There are six standardized underground igloo magazine designs that were used during WWII to store high explosives, and several types of aboveground magazines for particular classes of ammunition. The Cold War period saw only minor modifications to existing designs to satisfy the needs of newer technology.

DoD has identified 29,425 ammunition storage facilities that fall within the category being considered under this Program Comment. These ammunition storage facilities can be found at most military installations nationwide.

The Department of the Army (Army) has 76% of the DoD inventory, totaling 22,407 facilities. The Army's inventory consists of 19,409 WWII era facilities and 2,998 Cold War era facilities. Of the combined total, 15,301 are underground storage facilities.

The Department of the Navy (Navy), which includes the Marine Corps, has over 17% of the total DoD inventory with 5,108 facilities. The Navy's inventory consists of 4,143 WWII era facilities and 965 Cold War era facilities. Of its combined total, 4.084 are underground storage facilities.

The Department of the Air Force (Air Force) has just over 6% of the total DoD inventory with 1,910 facilities. The Air Force's inventory consists of 263 WWII era facilities and 1,647 Cold War Era Facilities. Of its combined total, 1,311 are underground facilities.

This Program Comment will include all buildings and structures that were designed and built as ammunition storage facilities within the years 1939–1974, regardless of current use, and that are identified by a DoD Category Group (2 digit) Code of 42, Ammunition Storage (category code 42XXXX), in the Military Service's Real Property Inventory currently or at the time of construction.

DoD anticipates that all of its WWII and Cold War era ammunition storage facilities will be subject to the following categories of undertakings: Ongoing operations, maintenance and repair, rehabilitation renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure. DoD is requesting that the ACHP issue a Program Comment on these categories of undertakings for all WWII and Cold War Era DoD ammunition storage facilities. Therefore, there is a potential for adverse effects to historic properties.

Under the Ammunition Storage Program Comment, a possible, though not likely, outcome would be the alteration or demolition of the entire group of Ammunition Storage property types built between 1939 and 1974. Because many of these properties are still being actively used by the Military Departments to store ammunition, it is more likely that many of these buildings will remain in use and in the inventory. However, as alteration or complete demolition is an option under the Program Comment, the proposed mitigation must reflect and address that possibility. Because the significance of these properties lies not only in their association with the history surrounding the development of ammunition and ammunition storage during the WWII and Cold War eras, but also in their engineering and design qualities, the loss of this entire class of properties would be significant if the record of the association and design features was not completed before the buildings are irreversibly altered or demolished. In this case, however, the proposed documentation will record both the historical associations and the design features of the properties. Consequently, because the important aspects of these properties will be well documented through the history, plans, and photographs, even if all the properties are demolished, the effect of the loss should not be historically significant.

Text of the Proposed Comment

The following is the full text of the draft Program Comment:

Program Comment for World War II and Cold War Era Ammunition Storage Facilities

I. Introduction

This Program Comment provides the Department of Defense (DoD) and its Military Departments with an alternative way to comply with their responsibilities under Section 106 of the National Historic Preservation Act with regard to the effect of the following management actions on World War II and Cold War Era ammunition storage facilities that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities.

In order to take into account the effects on World War II and Cold War Era ammunition storage facilities, DoD and its Military Departments will conduct documentation in accordance with *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.* As each Military Department will be responsible for conducting its own mitigation actions, the following required documentation is structured by Military Department, followed by DoD-wide requirements.

II. Treatment of Properties

A. Army Mitigation

1. The Army shall expand and revise its existing context study, *Army Ammunition and Explosives Storage in the United States, 1775–1945* to include the Cold War Era. This document provides background information and criteria for evaluating the historic significance of such buildings. The updated context study will:

—Identify the changes in ammunition storage during the Cold War;

—Focus on the changes required for ammunition storage due to technological advancement in weaponry;
—Consider the importance of major builders, architects or engineers that may have been associated with design and construction of Ammunition Storage Facilities throughout the Army or at specific Amy installations; and
—Describe the inventory of Ammunition Storage Facilities in detail, providing information on the various types of buildings and architectural styles and the quantity of each.

2. The Army shall undertake in-depth documentation on Ammunition Storage Facilities at nine installations. The existing context study concluded that the Army possessed ''only a few basic types and an abundance of examples'' of Ammunition Storage Facilities, due to the standardization of ammunition storage facilities beginning in the 1920s. The context study suggests that six geographically dispersed installations contain an array of primary examples of both aboveground and underground magazines with a high degree of integrity:
—Hawthorne Army Depot, Nevada—early igloos;
—McAlester Army Ammunition Plant, Oklahoma—Corbetta Beehive;
—Pine Bluff Arsenal, Arkansas—biological and chemical igloos;
—Ravenna Army Ammunition Plant, Ohio—standard World War II and aboveground magazines;
—Blue Grass Army Ammunition Plant, Kentucky—standard World War II igloos and aboveground magazines; and
—Louisiana Army Ammunition Plant, Louisiana—Stradley special weapons.

The Army shall document these six as well as three additional installations that possess Cold War Era Ammunition Storage Facilities. Documentation at the three additional installations will be determined after completion of the expended context study described in section II.A.1., above. This study will include a brief history of the installation and the surrounding community, if appropriate, and a detailed history of the storage facilities and documentation of the buildings. The documentation will primarily consist of historic photographs and existing plans. Documentation will be tailored to address the different natures of aboveground and underground storage.

B. Navy Mitigation

1. The Navy will develop a supplemental context study that will be attached as an appendix to the Army's existing context study, *Army Ammunition and Explosives Storage in the United States, 1775–1945.* The final product will be a separately bound volume of additional information and photographs and tabular appendices that, when presented with the Army's and Air Force's context studies, provide a clear picture of the Department of Defense's Ammunition Storage facilities. This context study appendix will:
—Cover both World War II and the Cold War Era, form 1939–1974;
—Explore the changes in ammunition storage resulting from World War II;
—Examine the changes required for ammunition storage due to technological advancement in weaponry during the Cold War;
—Consider the importance of major builders, architects or engineers that may have been associated with design and construction of Ammunition Storage Facilities; and
—Describe the inventory of Ammunition Storage Facilities in detail, providing information on the various types of buildings and architectural styles and the quantity of each.

2. The Navy shall document a representative sample of the basic types of both aboveground and underground ammunition storage facilities. The Navy will choose three geographically dispersed installations with the greatest number and variety of such resources. The Marines will choose one such installation. The sample chosen shall be the best representative examples of the range of Ammunition Storage types constructed during World War II and the Cold War era. This documentation will include collecting existing plans and drawings, writing a historic description in narrative or outline format, and compiling existing historic photographs of the structures. Documentation will be tailored to address the different natures of aboveground and underground storage.

C. Air Force Mitigation

1. The Air Force will develop a supplemental context study that will be attached as an appendix to the Army's existing context study, *Army Ammunition and Explosives Storage in the United States, 1775–1945.* The final product will be a separately bound volume of additional information and photographs and tabular appendices that, when presented with the Army's and Navy's context studies, provide a clear picture of the Department of Defense's Ammunition Storage facilities. The context study appendix will:
—Cover the Cold War Era, from 1946–1974;
—Explore the changes in ammunition storage resulting from the Cold War;
—Examine the changes required for ammunition storage due to technological advancement in weaponry during the Cold War;
—Consider the importance of major builders, architects or engineers that may have been associated with design and construction of Ammunition Storage Facilities; and
—Describe the inventory of Ammunition Storage Facilities in detail, providing information on the various types of buildings and architectural styles and the quantity of each.

2. The Air Force shall document a representative sample of the basic types of both aboveground and underground ammunition storage facilities. The Air Force will choose three geographically dispersed installations with the greatest number and variety of such resources. The sample chosen shall be the best representative examples of the range of Ammunition Storage types constructed during the Cold War era. This documentation would include collecting existing plans and drawings, writing a historic description in narrative or outline format, and compiling existing historic photographs of the structures. Documentation will be tailored to address the different natures of aboveground and underground storage.

3. The Air Force will not be required to consider its World War II Era facilities in these mitigation actions. The Air Force was established in September 1947 and therefore was not associated with structures constructed during this era. Rather the Air Force has inherited its current inventory of 263 World War II Era Ammunition Storage facilities from former Army installations. Given the substantial mitigation actions that will be undertaken by the Army to document its facilities, further documentation for the small number of similar facilities located at Air Force installations provides no additional historic value. While no documentation will be done on World War II facilities under the Air Force's control, all of the 263 facilities in its inventory are covered under this Program Comment.

D. DoD-Wide Mitigation

1. Copies of the documentation described above will be made available electronically, to the extent possible

under security concerns, and hard copies will be placed in a permanent repository, such as the Center for Military History.

2. In addition, as a result of on-going consultations, each Military Department will provide a list of properties covered by the Program Comment, by State, to State Historic Preservation Officers, Tribal Historic Preservation Officers, and other interested parties, as appropriate. Each Military Department will be responsible for determining how to convey its information.

3. All Military Departments will encourage adaptive reuse of the properties when feasible, as well as the use of historic tax credits by private developers under lease arrangements. Military Departments will also incorporate adaptive reuse and preservation principles into master planning documents and activities.

The above actions satisfy DoD's requirement to take into account the effects of the following management actions on World War II and Cold War Era ammunition storage facilities that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities.

III. Applicability

A.1. This Program Comment applies solely to World War II and Cold War Era DoD ammunition storage facilities. The Program Comment does not apply to the following properties that are listed, or eligible for listing, on the National Register of Historic Places: (1) Archeological properties, (2) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations, and/or (3) ammunition storage facilities in National Register of Historical Places districts where the ammunition storage facility is a contributing element of the district and the proposed undertaking has the potential to adversely affect such historic district. This third exclusion does not apply to historic districts that are made up solely of ammunition storage facility properties. In those cases the Program Comment would be applicable to such districts.

Since the proposed mitigation for the Ammunition Storage facilities documents site plans, building designs, and the spatial arrangement of ammunition storage facilities, along with the events and actions that lead to the development of standardized ammunition storage facilities in DoD, the important aspects of ammunition storage, whether single buildings or districts made up entirely of ammunition storage, will be addressed regardless of the type of undertaking that may affect this particular property type. The one currently known ammunition storage district, at Hawthorne Army Ammunition Plant, has been identified for further study, as outlined in Section II(A)(2) above.

2. An installation with an existing Section 106 agreement document in place that addresses ammunition storage facilities can choose to:

(i) Continue to follow the stipulations in the existing agreement document for the remaining period of the agreement; or

(ii) Seek to amend the existing agreement document to incorporate, in whole or in part, the terms of this Program Comment; or

(iii) Terminate the existing agreement document, and re-initiate consultation informed by this Program Comment if necessary.

3. All future Section 106 agreement documents developed by the Military Departments related to the undertakings and properties addressed in this Program Comment shall include appropriate provisions detailing whether and how the terms of this Program Comment apply to such undertakings.

IV. Completion Schedule

On or before 60 days following issuance of the Program Comment, DoD, its Military Department and ACHP will establish a schedule for completion of the treatments outlined above.

V. Effect of the Program Comment

By following this Program Comment, DoD and its Military Departments meet their responsibilities for compliance under Section 106 regarding the effect of the following management actions on World War II and Cold War Era ammunition storage facilities that may be listed or eligible for listing on the National Register of Historic Places: Ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, cessation of maintenance, new construction, demolition, deconstruction and salvage, remediation activities, and transfer, sale, lease, and closure of such facilities. Accordingly, DoD installations are no longer required to follow the case-by-case Section 106 review process for such effects.

As each of the Military Departments is required under this Program Comment to document their own facilities, failure of any one Military Department to comply with the terms of the Program Comment will not adversely affect the other Departments' abilities to continue managing their properties under the Program Comment.

VI. Duration and Review of the Program Comment

This Program Comment will remain in effect until such time as the Office of the Secretary of Defense determines that such comments are no longer needed and notifies ACHP in writing, or ACHP withdraws the comments in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, DoD and its Military Departments would be required to comply with the requirements of 36 CFR 800.3 through 800.7 regarding the effects under this Program Comments' scope.

DoD and ACHP will review the implementation of the Program Comment ten years after its issuance.

Authority: 36 CFR 800.14(e).

Dated: April 7, 2006.

John M. Fowler,

Executive Director.

[FR Doc. 06–3511 Filed 4–11–06; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent of Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request renewal of approval for an annual information collection on supplemental food security questions in the Current Population Survey, commencing with the December 2006 survey. These data will be used to monitor household level food security and food insecurity in the United States; to assess food security and changes in food security for population subgroups; to assess the need for, and performance of, domestic food assistance programs; to improve the measurement of food security; and to provide information to aid in public policy decision making.

DATES: Comments on this notice must be received by June 16, 2006 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Mark Nord, Food Assistance Branch, Food Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Room N–2180, Washington, DC 20036–5831. Tel. 202–694–5433. Submit electronic comments to *marknord@ers.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for an Annual Food Security Supplement to the Current Population Survey, Beginning in December 2006.

Type of Request: Approval to collect information on household food insecurity.

OMB Number: 0536–0043.

Expiration data: N/A.

Abstract: The U.S. Census Bureau will supplement the December Current Population Survey, beginning in 2006, with questions regarding household food shopping, food sufficiency, coping mechanisms and food scarcity, and concern about food sufficiency. A similar supplement has been appended to the CPS annually since 1995. The last collection was in December 2005. Copies of the information to be collected can be obtained from the address in the preamble.

ERS is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U. S. Department of Agriculture. The Department spends about $46 billion each year to ensure access to nutritious, healthful diets for all Americans. The Food and Nutrition Service administers the 15 food assistance programs of the USDA including Food Stamps, Child Nutrition, and WIC programs. These programs, which serve 1 in 5 Americans, represent our Nation's commitment to the principle that no one in our country should lack the food needed for an active healthy life. They provide a safety net to people in need. The programs' goals are to provide needy persons with access to a more nutritious diet, to improve the eating habits of the Nation's children, and to help America's farmers by providing an outlet for the distribution of food purchased under farmer assistance authorities.

These data will be used to monitor the prevalence of food security and the prevalence and severity of food insecurity among the Nation's households. The prevalence of these conditions as well as year-to-year trends in their prevalence will be estimated at the national level and for population subgroups. The data will also be used to monitor the amounts that households spend for food and their use of community food pantries and emergency kitchens. These statistics along with research based on the data will be used to identify the causes and consequences of food insecurity, and to assess the need for, and performance of, domestic food assistance programs. The data will also be used to improve the measurement of food security and to develop measures of additional aspects and dimensions of food security. This consistent measurement of the extent and severity of food insecurity will aid in policy decision making. The supplemental survey instrument was developed in conjunction with food security experts nationwide as well as survey method experts within the Census Bureau and was recently reviewed by the Committee on National Statistics of the National Research Council. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. All interviews, whether by personal visit or by telephone, are conducted using computers.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 7.6 minutes for each household that responds to the laborforce portion of the CPS.

Respondents: Individuals or households.

Estimated Number of Respondents: 56,200.

Estimated Total Annual Burden on Respondents: 7,155 hours.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 21, 2006.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. E6–5343 Filed 4–11–06; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of a petition for trade adjustment assistance (TAA) that was by the Tropical Fruit Growers of South Florida, Inc, representing Florida lychee producers. Florida lychee producers are no longer eligible for TAA benefits in fiscal year 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. imports of fresh lychees declined 3 percent between 2004 and 2005. Therefore, imports were no longer a contributing factor for program eligibility—a requirement for TAA program eligibility and therefore insufficient grounds to re-certify this petition.

FOR FURTHER INFORMATION, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 29, 2006.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–5402 Filed 4–11–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Millville Peak/Logan Peak Road Relocation Project, Wasatch-Cache National Forest, Cache County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Wasatch-Cache National Forest gives notice of the agency's intent to prepare an environmental impact statement on a proposal to relocate a total of about 5 miles of the Millville Peak and Logan

Peak Roads (Forest Roads 20168 and 20042, respectively) due to road damage and safety concerns. The relocation would place construction in adjacent roadless areas.

DATES: Comments concerning the scope of the analysis must be received by May 12, 2006. The draft environmental impact statement is expected to be published in November 2006, with public comment on the draft material accepted for a period of 45 days, and the final environmental impact statement is expected in March, 2007.

ADDRESSES: Send written comments to Rob Cruz, District Ranger, Logan Ranger District, 1500 East Highway 89, Logan, Utah 84321, ATTN: Millville Peak/Logan Peak Road EIS. Or, e-mail comments to: *comments-intermtn-wasatch-cache-logan@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Evelyn Sibbernsen, Environmental Coordinator, Logan Ranger District, 1500 East Highway 89, Logan, Utah 84321, (435) 755–3620.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Millville Peak/Logan Peak Road Relocation Project is for public safety, resource improvement, and to provide a safe, reliable, ground access route for maintenance of the State-owned communications facility at Logan Peak.

The State of Utah, Information Technology Services, owns a high voltage electrical power line buried beneath the surface of a portion of the public access roadways, Millville Peak Road (Forest Road 20168) and Logan Peak Road (Forest Road 20042). The power line, installed nearly twenty years ago, serves the State-owned radio communications facility located at Logan Peak. The tower houses microwave equipment for several local, state, and national public safety entities providing a vital link in their communications systems.

Normal vehicular and off-highway recreational traffic on the roadway, combined with irregular road maintenance and seasonal erosion, have severely damaged the surface of the roadway to the site, exposing the power line at several locations. The potential for death and serious injury is significant around those locations where the cable has been exposed. Severe damage to the roadway also impacts accessibility to the communications facility at Logan Peak.

The first two-thirds of the 16-mile roadway accessing the communications site have been repaired and maintained where the cable could be buried deeper and the road maintained with additional gravel and installation of proper drainage. However, along the later section where the roadway gets excessively steep and rocky, road damage has resulted in the cable becoming increasingly exposed. Travel on this section of the road is unsafe and limits access to the communications facility on Logan Peak. The cable can no longer be safely covered and the road damage cannot be corrected by maintenance.

There is a need to eliminate the public safety hazard posed by the exposed electrical power cable and a need to improve ground access to this vital communications facility located on Logan Peak.

Proposed Action

The Forest Service proposes to re-locate a total of about 5 miles of the Millville Peak and Logan Peak Roads. The new roadways would be relocated away from the cable and designed to maintain an 8% or lower grade. They would be relocated up to one quarter mile from the existing roadways (at the greatest extent) and would have a maintenance level of 2; the same as the existing roads. The old roadways would be physically closed and revegetated.

The Millville Peak Road forms a part of the boundary between the Mount Logan North Roadless Area (19, 197 acres) and the Mount Logan South Roadless Area (17,001 acres). The section of road to be relocated would be constructed near the edge of the two roadless areas. The management prescriptions within which the road would be relocated, Management Prescriptions 3.1w (Watershed Emphasis) and 2.7 (Special Interest Areas), allow no road construction. Re-alignment of the road within the 3.1w or 2.7 management prescriptions would necessitate a non-significant amendment of the Forest Plan.

Possible Alternatives

A no action alternative will be considered as well as any other alternatives that may be developed in response to significant issues.

Responsible Official

The Responsible Official is Faye Krueger, Forest Supervisor, Wasatch-Cache National Forest, 8236 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

Nature of Decision To Be Made

The decision to be made is whether or not to relocate this section of the Millville Peak and Logan Peak Roads and if so, where and to what degree.

Scoping Process

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest welcomes any public Service comments on the proposal.

Preliminary Issues

Preliminary issues identified by the interdisciplinary team include the effects on the roadless character of the Mount Logan North and Mount Logan South Roadless Areas, the effects on motorized recreation challenge opportunities, access to routes that connect to the portion of the Millville Peak Road that would be relocated (such as Forest Road 20126), effects on snowmobile opportunities and experience from the new road cut just below Logan Peak, the potential for new weed infestations from the new road cut, effects on threatened, endangered, and sensitive plant and wildlife species, and the effectiveness of the old Millville and Logan Peak Road closures in preventing future (unauthorized) use.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v.

NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

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

Dated: April 6, 2006.

Faye L. Krueger,

Forest Supervisor.

[FR Doc. 06–3481 Filed 4–11–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee will meet in Lincoln City, OR, April 20, 2006. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: BLM/FS Stewardship Contracting Briefing, FS ATV National Update, BLM RMP Participation—Role of PAC, BLM 2010, Spotted Owl Recovery/Marbled Murrelet Delisting, Status of the RAC's ''2006 topics for Coast PAC'', Role of Coast PAC in 2006, Public Comment and Round Robin.

DATES: The meeting will be held April 20, 2006, beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Surftides Inn, 2945 NW Jetty Ave., Lincoln City, Oregon 97367.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 11:30 a.m. for fifteen minutes. The meeting is expected to adjourn around 3 p.m.

Dated: April 6, 2006.

H. ''Wood'' Fine,

Director of Operations.

[FR Doc. 06–3482 Filed 4–11–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[06–GL–S]

Designation for the State of Texas Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) announces the designation of Intercontinental Grain Inspections, Inc. (Intercontinental), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

DATES: *Effective Date:* April 10, 2006.

ADDRESSES: USDA, GIPSA, John R. Sharpe, Division Director, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: John R. Sharpe at 202–720–8262, e-mail *John.R.Sharpe@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the February 1, 2006, **Federal Register** (71 FR 5232), GIPSA announced that Global Grain Inspection Services, Inc. (Global), asked GIPSA to voluntarily cancel their designation to provide domestic grain inspection services in the area for which they were designated in the State of Texas effective April 9, 2006. Accordingly, Global's designation will cease effective April 9, 2006, and GIPSA asked persons or organizations interested in providing official grain inspection services in the State of Texas to submit an application for designation by March 3, 2006.

There were three applicants for the Texas geographic area: A company proposing to do business as Gulf Country Inspection Service, Inc (Gulf); a company proposing to do business as Intercontinental Grain Inspections, Inc. (Intercontinental), a subsidiary of Socit Gnrale de Surveillance North America, Inc. (SGS); and South Texas Grain Inspection LLC (South Texas), a proposed organization being formed by the Corpus Christi Grain Exchange, Inc. (CCGE), to function under a trust. Gulf and Intercontinental indicated they would be willing to accept more or less geographic area previously designated to Global in order to provide needed service to all requestors. South Texas applied only for the Texas Counties named in the February 1, 2006, **Federal Register.** GIPSA asked for comments on Gulf, Intercontinental, and South Texas, in the March 14, 2006, **Federal Register.**

Comments were due by March 29, 2006. GIPSA received a total of 17 comments by the closing date. GIPSA received 1 comment from a grain association supporting Gulf for designation. We received 7 comments supporting Intercontinental for designation; 4 of which were from grain elevators in the area, 2 from prospective employees, and 1 from a border bridge owner. GIPSA received 8 comments supporting South Texas for designation; 7 of which were from grain industry in the area and one from a congressional office. The final commenter, a grain company official, supported both Intercontinental and South Texas.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Intercontinental is better able to provide official services in the geographic area specified in the February 1, 2006, **Federal Register**, for which it applied. Intercontinental is designated for 18 months only, effective April 10, 2006, and terminating

September 30, 2007. Intercontinental will be headquartered in Fort Worth, Texas.

Given Global's cancellation date of April 9, 2006, there was not sufficient time to solicit and designate a replacement agency and have a new agency begin. For these reasons, interested persons that want to obtain official services in the Texas area North of Interstate 10 should call the FGIS Wichita Field Office at 316–722–6370 and South of Interstate 10 should call the FGIS League City Field Office at 281–338–2787 to obtain interim service until Intercontinental begins service.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–5400 Filed 4–11–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests by certain producers/exporters of the subject merchandise and petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain polyethylene terephthalate film, sheet and strip (PET film) from India. This review covers three producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2004, through June 30, 2005.

The Department has preliminarily determined that certain companies subject to this review made U.S. sales at prices less than normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Magd Zalok (MTZ), Drew Jackson (Polyplex), or Kavita Mohan (Jindal), 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) 482–4162, (202) 482–4406, or (202) 482–3542, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the antidumping duty order on PET film from India. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002) (Amended Final Determination). On July 1, 2005, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on PET film from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005).

In accordance with 19 CFR § 351.213(b)(2), the following producers/exporters requested that the Department conduct an administrative review of their sales and entries of subject merchandise into the United States during the POR: Garware Polyester Limited (Garware), MTZ Polyfilms, Ltd. (MTZ), and Jindal Poly Films Limited[2] (Jindal). Additionally, in accordance with 19 CFR § 351.213(b)(1), on July 29, 2005, petitioners requested that the Department conduct a review of Polyplex Corporation Ltd. (Polyplex) and Jindal. On August 29, 2005, the Department initiated an administrative review of Garware, Jindal, MTZ, and Polyplex. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005).

On August 9, 2005, the Department issued its antidumping questionnaire to Garware, Jindal, Polyplex, and MTZ. Subsequently, Garware and Jindal withdrew their respective requests for administrative reviews. In September and October 2005, Jindal, Polyplex, and MTZ responded to the Department's antidumping questionnaire. Thereafter, the Department issued supplemental questionnaires to Jindal, Polyplex, and MTZ and received timely responses. The petitioners submitted no comments regarding the respondents' questionnaire and supplemental questionnaire responses.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Period of Review

The POR is July 1, 2004, through June 30, 2005.

Scope of the Order

For purposes of this order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90.[3] HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Partial Rescission of Review

19 CFR § 351.213(d)(1) provides that the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested administrative review. On September 14, 2005, before the 90-day time period expired, Garware withdrew its request to be reviewed by the Department and no other parties requested an administrative review of Garware. Consequently, the Department is rescinding this administrative review with respect to Garware.

Although Jindal withdrew its request to be reviewed, petitioners requested a review of Jindal. Therefore, we have not rescinded this review with respect to Jindal.

Comparison Methodology

In order to determine whether the respondents sold PET film to the United States at prices less than NV, the Department compared the export price (EP) and constructed export price (CEP)

[1] The petitioners are Dupont Teijin Films, Mitsubishi Polyester Film Of America, Toray Plastics (America), Inc., and SKC America, Inc.

[2] Formerly Jindal Polyester Limited.

[3] The scope reflects the HTSUS subheading currently in effect for non-metallized PET film. This HTSUS subheading has been revised since the last completed antidumping duty administrative review of PET film from India.

of individual U.S. sales to the monthly weighted–average NV of sales of the foreign like product made in the ordinary course of trade. *See* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order, that were produced by the same person and in the same country as the subject merchandise, and sold by respondents in the comparison market during the POR, to be foreign like products, for the purpose of determining appropriate product comparisons to PET film sold in the United States.

The Department compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the month in which the U.S. sale was made until two months after the month in which the U.S. sale was made. Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by the respondents in the following order of importance: grade, thickness, and surface quality.

Subject Merchandise Entered Under Temporary Importation Bonds

In accordance with section 733(d)(2) of the Act, the Department can only assess antidumping duties on subject merchandise entered for consumption in the United States. *See Titanium Metals Corp. v. United States*, 901 F. Supp. 362 (CIT 1995). Normally, entries under temporary importation bonds (TIBs) are not entered for consumption, and the Department therefore does not assess antidumping or countervailing duties on TIB entries. Consistent with its treatment on assessment of duties, the Department's practice is to exclude those sales that entered under a TIB from its margin calculation because there will be no assessment of antidumping duties on such entries. *See e.g., Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 48793, 48794 (September 8, 1999). However, Article 303.3 of the North American Free Trade Agreement (NAFTA) provides that merchandise entered into the United States under a TIB and subsequently re–exported to another NAFTA party shall be considered to be entered for consumption at the time of re–exportation and shall be subject to all relevant customs duties. MTZ reported sales of merchandise imported under TIBs. There is, however, no claim or evidence on the record that any of this merchandise was, or will be, re–exported to a NAFTA party. Therefore, we have preliminarily excluded these sales from our calculation of MTZ's dumping margin.

Duty Drawback

Before increasing a respondent's reported U.S. sales prices by the amount of duty drawback, pursuant to section 772(c)(1)(B) of the Act, the Department's practice is to examine whether: (1) import duties and rebates are directly linked to, and are dependent upon, one another, or, in the context of a duty exemption, the exemption is linked to the exportation of subject merchandise and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996); *see also, Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003) and accompanying Issues and Decisions Memorandum at Comment 5.

Jindal

Jindal reported that it received duty drawback under the Advance License program. The Advance License program allows Indian companies to import specified materials duty–free if such materials are used to produce a product that is exported by the company. Standard input/output ratios specific to the exported product limit the quantity of each material input that may be imported duty–free. No customs duties are paid on the imported materials; however, there is a contingent liability for the unpaid duties. This contingent liability is extinguished by exporting finished products containing the types of materials covered by the advance license. Jindal did not pay import duties on certain materials because it agreed to export PET film made with such materials. Thus, the record indicates that the duty exemption is linked to the exportation of subject merchandise. Moreover, the record indicates that Jindal imported sufficient quantities of raw materials to account for its exports of PET film to the United States. Accordingly, in calculating EP for Jindal, the Department has preliminarily added an amount for duty drawback to the reported prices.

MTZ

MTZ reported that it received duty drawback under the Duty Entitlement Passbook Scheme (DEPS). Under the DEPS, Indian companies are granted a credit equal to a percentage of the free–on-board (FOB) value of their exports. These companies can then use this credit to offset customs duty owed on imported materials used to manufacture exported products or sell the credit to other Indian importers.

The Department has preliminarily determined that MTZ is not entitled to a duty drawback adjustment. The DEPS does not require a company to link the credit granted on exported merchandise to the actual import duties paid on the types of materials used to manufacture the exported product. While the Department does not require a respondent to link a specific entry of materials on which duties were paid (or which was imported duty–free) to the specific export of the finished product on which the DEPS credit is based, it does require the respondent to demonstrate that the imported materials are of the same type used to produce the exported subject merchandise. Under the scheme, however, DEPS recipients are not required to import the types of inputs used to produce the exported merchandise. Moreover, in this case, MTZ reported that it purchased the major material inputs used to produce the subject merchandise domestically. See MTZ's January 19, 2006 submission, at 56. Based on the foregoing, the Department has preliminarily determined not to increase MTZ's reported U.S. sales prices by the amount of duty drawback claimed under the DEPS.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative expenses and profit. For EP sales, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP sales,

the U.S. LOT is the level of the constructed sale from the exporter to its affiliate. The Department adjusts CEP, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by 19 CFR § 351.412. *See Micron Technology, Inc. v. United States*, 243 F.3d, 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether the respondents made sales at separate LOTs, we obtained information from all three respondents regarding the marketing stages for the reported U.S. and comparison market sales, including a description of the selling activities performed by respondents for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

Jindal

Jindal reported home market sales to two categories of customers through two channels of distribution. The record, however, indicates that Jindal performs the same selling functions in both channels of distribution and, with one exception, performs corresponding selling functions in these channels at the same level of intensity. Therefore, we have preliminarily determined that, during the POR, Jindal sold the foreign like product in the home market at one LOT.

Jindal reported U.S. sales to a single category of customer through one channel of distribution. Because there is only one sales channel in the U.S. market involving the same selling functions for all sales, we have preliminarily determined that there is one LOT in the U.S. market.

In comparing the home and U.S. market LOTs, we found that Jindal performs essentially the same selling functions in both LOTs and, for a majority of these selling functions, there is either no difference, or an insignificant difference, in the level of intensity reported for corresponding selling functions. Therefore, we have preliminarily determined that Jindal sold foreign like product and subject merchandise at the same LOT during the POR and thus a LOT adjustment to NV is not warranted. *See* Memorandum to the File from the Team, Level of Trade Analysis: Jindal Poly Films Limited, dated concurrently with this notice.

MTZ

MTZ reported home market sales to two categories of customers through one channel of distribution. The record, however, indicates that MTZ performs the same selling functions for both types of customers and, almost without exception, performs corresponding selling functions at essentially the same level of intensity. Therefore, we have preliminarily determined that, during the POR, MTZ sold foreign like product in the home market at one LOT.

MTZ reported U.S. sales though one channel of distribution to two types of customers. The record shows that, regardless of the type of customer, MTZ performs essentially the same selling functions and performs corresponding selling functions at the same level of intensity. Accordingly, we have preliminarily determined that, during the POR, MTZ sold subject merchandise in the U.S. market at one LOT.

In comparing the home and U.S. market LOTs, we found that MTZ performs a majority of the reported selling functions in both LOTs and, for all but one of these functions, MTZ performs corresponding selling functions at the same level of intensity in both LOTs. Therefore, we have preliminarily determined that MTZ sold foreign like product and subject merchandise at the same LOT during the POR and thus a LOT adjustment to NV is not warranted. *See* Memorandum to the File from the Team, Level of Trade Analysis: MTZ Polyfilms, Ltd., dated concurrently with this notice.

Polyplex

Polyplex's reported home market sales to two categories of customers through two channels of distribution. The record, however, shows that Polyplex performs the same selling functions in both channels of distribution. Although Polyplex performs most of the corresponding selling functions in the two channels at different levels of intensity, we found that the differences in levels of intensity are not so significant as to signal two different marketing stages. Therefore, we have preliminarily determined that, during the POR, Polyplex sold foreign like product in the home market at one LOT.

Polyplex reported CEP sales of subject merchandise to its U.S. affiliate through one channel of distribution. Because there is only one sales channel in the U.S. market involving the same selling functions for all sales, we have preliminarily determined that there is one LOT in the U.S. market.

In comparing the home and U.S. market LOTs, we found significant differences in the types of selling functions performed by Polyplex in each LOT and the levels of intensity at which Polyplex performed those selling functions. Specifically, we found the selling functions performed by Polyplex in the home market LOT to be generally greater in number, and intensity, than those selling functions performed in the U.S. market LOT. Therefore, we have preliminarily determined that, during the POR, Polyplex sold foreign like product at a different, more advanced LOT than that of its U.S. sales of subject merchandise.

Because there is only one LOT in the home market, the difference in the NV and CEP LOTs cannot be quantified. Furthermore, the Department does not have information which would allow it to examine pricing patterns based on sales of other products and there is no other information on the record upon which such an analysis could be based. Therefore, a LOT adjustment is not possible. However, given that we have determined that the home market LOT is more advanced than the U.S. LOT, pursuant to section 773(a)(7)(B) of the Act, we granted Polyplex a CEP offset. *See* Memorandum from the Team to the File, Level of Trade Analysis: Polyplex Corporation, Ltd., dated concurrently with this notice.

Export Price and Constructed Export Price

We based the price of both Jindal's and MTZ's U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, and the use of CEP

was not otherwise warranted based on the facts of the record. In accordance with section 772(c) of the Act, we calculated EP using prices, less discounts, for packed subject merchandise delivered to unaffiliated purchasers in the United States from which we deducted, where applicable, the following expenses: foreign inland freight (from the plant to the port of exportation), international freight, marine insurance, brokerage and handling, and U.S. duties. In accordance with section 772(c)(1)(C) of the Act, we increased U.S. price by the applicable countervailing duty imposed to offset the export subsidies most recently found in the countervailing duty proceeding covering PET film from India. Additionally, for Jindal, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

We based the price of Polyplex's U.S. sales of subject merchandise on CEP, in accordance with section 772(b) of the Act, because Polyplex sold subject merchandise to unaffiliated purchasers in the United States after importation through its U.S. affiliate, Spectrum Marketing, Inc. (Spectrum). We calculated CEP using prices, less discounts, for packed subject merchandise delivered to the first unaffiliated purchaser in the United States. In accordance with sections 772(c)(2)(A) and 772(d)(1) and (3) of the Act, we made deductions from the starting price, where appropriate, for the following expenses: foreign and U.S. inland freight, U.S. brokerage and handling, international freight, marine insurance, U.S. duties, U.S. warehousing expense, direct and indirect selling, to the extent these expenses are associated with economic activity in the United States, and CEP profit. In accordance with section 772(c)(1)(C) of the Act, where appropriate, we increased U.S. price by the applicable countervailing duty imposed to offset the export subsidies found in the most recently completed administrative review of the countervailing duty order on PET film from India.

Normal Value

After testing home market viability, whether comparison–market sales to affiliates were at arm's–length prices, and whether comparison–market sales were at below–cost prices, we calculated NV for respondents as noted in the ''Price–to-Price Comparisons'' section of this notice.

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared the aggregate volume of each respondent's home market sales of the foreign like product to the aggregate volume of its U.S. sales of subject merchandise. Because the aggregate volume of each respondent's home market sales of foreign like product is more than five percent of the aggregate volume of its U.S. sales of subject merchandise, we based NV on sales of the foreign like product in the respondent's home market. *See* section 773(a)(1)(C)(ii) of the Act.

B. Affiliated–Party Transactions and Arm's–Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length. *See* 19 CFR § 351.403(c). Sales to affiliated customers for consumption in the home market that were determined not to be at arm's–length were excluded from our analysis. Polyplex, reported sales of the foreign like product to an affiliated customer. To test whether these sales were made at arm's–length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR § 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). Polyplex's sales to its affiliated home market customer did not pass the arm's–length test. Therefore, we have excluded these sales from our analysis.

C. Cost of Production (COP) Analysis

In the most recently completed proceeding segments in which Jindal and Polyplex received a calculated dumping margin, the Department determined that these companies sold certain foreign like product at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. For Polyplex, *see Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34899 (May 16, 2002) as amended on July 1, 2002 (67 FR 44175) (*Amended Final Determination*); for Jindal *see Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 70 FR 8072 (February 17, 2005). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that during the instant POR, Jindal and Polyplex sold foreign like product at prices below the cost of producing the merchandise. As a result, the Department initiated a cost of production inquiry with respect to Jindal and Polyplex. The Department, however, has not initiated a cost of production inquiry with respect to MTZ because MTZ has never been a respondent in a prior segment of this proceeding and no party alleged, in this segment of the proceeding, that MTZ sold foreign like product below the cost of production.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each unique foreign like product sold by Jindal and Polyplex during the POR, we calculated a weighted–average COP based on the sum of the respondent's materials and fabrication costs, general and administrative expenses, interest expenses, and import duties normally associated with imported material. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review* 68 FR 6889 (February 11, 2003). For further information, see the analysis memoranda for Jindal and Polyplex, dated concurrently with this notice.

2. Test of Comparison Market Sales Prices

In order to determine whether sales were made at prices below the COP on a product–specific basis, we compared the respondent's weighted–average COP to the prices of its home market sales of foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined

whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in ''substantial quantities'' and within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. In such cases, because we used POR average costs, we also determined, in accordance with section 773(b)(2)(D) of the Act, that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Based on this test, we disregarded below–cost sales for Jindal and Polyplex.

Price–to-Price Comparisons

Where it was appropriate to base NV on prices, we used the prices at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the comparison U.S. sale. We calculated NV using prices, less any discounts or rebates, for packed foreign like product delivered to unaffiliated purchasers or, where appropriate, affiliated purchasers in the home market. In accordance with sections 773(a)(6)(A), (B), and (C) of the Act, where appropriate, we deducted from the starting price the following home market expenses: movement, inland insurance, packing, credit, commissions, and other direct selling. For Jindal and MTZ, we added to the starting price the following U.S. expenses: packing, credit, and other direct selling. In addition, for Jindal, we added interest revenue to the starting price. For Polyplex, we added U.S. packing costs and interest revenue to the starting price. Finally, where appropriate, we made price adjustments for physical differences in the merchandise and made a reasonable allowance for other selling expenses where commissions were paid in only one of the markets under consideration. *See* 773(a)(6)(C)(ii) of the Act and 19 CFR § 351.410(e).

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted–average dumping margins exist for the period July 1, 2004, through June 30, 2005:

Manufacturer/Exporter	Margin (percent)
Jindal Poly Films Limited	2.33
MTZ Polyfilms, Ltd	0.00
Polyplex Corporation Ltd.	0.01

Public Comment

Within 10 days of publicly announcing the preliminary results of this review, we will disclose to interested parties any calculations performed in connection with the preliminary results. *See* 19 CFR § 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR § 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice in the **Federal Register**, or the first workday thereafter. Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. Also, interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Unless the deadline for issuing the final results of review is extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in the written comments, within 120 days of publication of the preliminary results in the **Federal Register**.

Assessment Rates

In accordance with 19 CFR § 351.212(b)(1), in these preliminary results of review we calculated importer–specific assessment rates or, where the importer was not known, customer–specific assessment rates for each respondent. If a respondent did not report the entered value of its sales, we calculated per–unit assessment rates for the respondent by summing, on an importer or customer–specific basis, the dumping margins calculated for all of the respondent's sales to the importer or customer and dividing this amount by the total quantity of those sales. If the importer/customer–specific assessment rate is above *de minimis* (*i.e.*, 0.50 percent *ad valorem* or greater), we will instruct CBP to assess the importer/customer–specific rate uniformly, as appropriate, on all entries of subject merchandise during the POR that were entered by the importer or sold to the customer. To determine whether the per–unit duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 CFR § 351.106(c)(2), we calculated customer–specific *ad valorem* ratios based on the export prices. The Department will issue appropriate assessment instructions based on the final results of review directly to CBP within 15 days of publication of those final results.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the companies examined in the instant review will be the rate established in the final results of this review (except that if the rate for a particular company is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other

manufacturers or exporters will continue to be the ''all others'' rate of 5.71 percent, which is the ''all others'' rate established in the LTFV investigation, adjusted for the export subsidy rate in the countervailing duty investigation. *See Amended Final Determination*. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and countervailing duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: April 3, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–5404 Filed 4–11–02; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Charter Renewal of the Industry Trade Advisory Committees (ITACs); Request for Nominations

AGENCY: International Trade Administration, Manufacturing and Services.

ACTION: Notice of Renewal of the Charters and Request for Nominations.

SUMMARY: On February 17, 2006, the Secretary of Commerce and the United States Trade Representative (USTR) renewed the charters of the 16 Industry Trade Advisory Committees (ITACs) and the Committee of Chairs of the ITACs for a four-year term to expire on February 17, 2010. The ITACs advise the USTR and the Secretary on trade matters. There are currently opportunities for membership on each of these Committees, including opportunities to serve as environmental representatives or public health or health care community representatives on select ITACs. Nominations will be accepted for current vacancies and those that occur throughout the remainder of the charter term, which expires on February 17, 2010.

DATES: Appointments will be made on a rolling basis. For that reason, nominations will be accepted through February 17, 2010.

ADDRESSES: Submit nominations to Ingrid V. Mitchem, Director, Industry Trade Advisory Center, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 4043, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ingrid V. Mitchem, Director, Industry Trade Advisory Center, (202) 482–3268.

Recruitment information also is available on the International Trade Administration Web site at: *www.ita.doc.gov/itac.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix 2), and section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), the Secretary of Commerce (the Secretary) and the United States Trade Representative (USTR) have renewed the charters of 16 Industry Trade Advisory Committees (ITACs) and the Committee of Chairs of the ITACs. The Secretary and the USTR welcome nominations for the ITACs listed below:

- Industry Trade Advisory Committees on:
  - (ITAC 1) Aerospace Equipment
  - (ITAC 2) Automotive Equipment and Capital Goods
  - (ITAC 3) Chemicals, Pharmaceuticals, Health/Science Products and Services
  - (ITAC 4) Consumer Goods
  - (ITAC 5) Distribution Services
  - (ITAC 6) Energy and Energy Services
  - (ITAC 7) Forest Products
  - (ITAC 8) Information and Communications Technologies, Services, and Electronic Commerce
  - (ITAC 9) Nonferrous Metals and Building Materials
  - (ITAC 10) Services and Finance
  - (ITAC 11) Small and Minority Business
  - (ITAC 12) Steel
  - (ITAC 13) Textiles and Clothing
  - (ITAC 14) Customs Matters and Trade Facilitation
  - (ITAC 15) Intellectual Property Rights
  - (ITAC 16) Standards and Technical Trade Barriers

Background

Section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), established a private-sector trade advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests.

Section 135(a)(1) directs the President to:

> Seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—
>
> (A) negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the Trade Act of 1974 and section 2103 of the Bipartisan Trade Promotion Authority Act of 2002];
>
> (B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and
>
> (C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States * * *

Section 135(c)(2) of the 1974 Trade Act provides that:

> (2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—
>
> (A) consult with interested private organizations; and
>
> (B) take into account such factors as—
>
> (i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,
>
> (ii) the character of the nontariff barriers and other distortions affecting such competition,
>
> (iii) the necessity for reasonable limits on the number of such advisory committees,
>
> (iv) the necessity that each committee be reasonably limited in size, and
>
> (v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-administer 16 ITACs and the Committee of Chairs of the ITACs.

Functions

The duties of the ITACs are to provide the President, through the Secretary and the USTR, with advice on objectives and bargaining positions for multilateral trade negotiations, bilateral and regional trade negotiations, and other trade-related policy matters. The Committees provide nonpartisan, industry input in the development of trade policy objectives. The Committees' efforts have assisted the United States in putting forward unified positions when it negotiates trade agreements.

The ITACs address market-access problems; barriers to trade; tariff levels; discriminatory foreign procurement

practices; and information, marketing, advocacy needs of their sector. Thirteen ITACs provide advice and information on issues that affect specific sectors of U.S. industry. Three ITACs focus on cross-cutting, functional issues that affect all industry sectors: customs matters and trade facilitation (ITAC 14); intellectual property rights (ITAC 15); and standards and technical trade barriers (ITAC 16). In addition to members appointed exclusively to these three ITACs, ITACs 1—13 each may select a member to represent their ITAC on each of these three cross-cutting ITACs so that a broad range of industry perspectives is represented. Other trade policy issues, e.g., government procurement, subsidies, etc., are handled in ad hoc policy meetings.

Committees meet an average of six times a year in Washington, DC. Some ITACS meet more often depending on the work of a particular committee.

Membership

Members serve without compensation and are responsible for all expenses incurred to attend the meetings. ITAC members are appointed jointly by the Secretary of Commerce and the USTR. Appointments are made at the chartering of each Committee and periodically throughout the four-year charter term. Members serve at the discretion of the Secretary and the USTR. Appointments to an ITAC expire at the end of the Committee's charter term, in this case, February 17, 2010.

Each Committee elects a chairperson from the membership of the Committee, and that chairperson serves on the Committee of Chairs of the ITACs.

Eligibility

Eligibility for membership on any Committee is limited to U.S. citizens who are not full-time employees of a governmental entity and are not registered with the Department of Justice under the Foreign Agents Registration Act. Members must represent a U.S. entity that (a) is directly engaged in the import or export of goods or that sells its services abroad, or (b) is an association of such entities. For purposes of the preceding sentence, a ''U. S. entity'' is an organization incorporated in the United States (or if unincorporated, having its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities. If the nominee is to represent an entity or corporation with ten percent or greater non-U.S. ownership, the nominee must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States.

In addition to the industry representatives, the ITACs on Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3) and on Forest Products (ITAC 7) have environmental representatives. The Secretary of Commerce and the USTR also are soliciting nominations for the appointment of public health or health care community representatives to the ITACs on Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3) and on Intellectual Property Rights (ITAC 15). Commerce solicited nominations for public health or health care community representatives in December 2005 (70 FR 74776, Dec. 16, 2005). Commerce is still in the process of considering nominations received in response to that solicitation. Anyone who submitted a nomination in response to that announcement does not need to submit an additional nomination in response to this broader announcement. Environmental representatives and public health and health care community representatives must represent a U.S. entity interested in issues relevant to the work of the specific ITAC. A nongovernmental organization is a ''U.S. entity'' if the organization is (1) Incorporated in the United States (or, if unincorporated, having its headquarters in the United States), (2) the organization is controlled by U.S. citizens or by another U.S. entity, and (3) at least 50 percent of the organization's annual revenue is attributable to nongovernmental U.S. sources. Regarding the controlled by factor, a nongovernmental organization is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than ten percent of whose Board of Directors or membership is made up of non-U.S. citizens or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States.

Members are selected to represent their respective sponsoring U.S. entity's interests on trade matters and thus nominees are considered foremost based upon their ability to carry out the goals of section 135(c) of the Trade Act of 1974, as amended. Other criteria are the nominee's knowledge of and expertise in international trade issues as relevant to the work of the committee and ensuring that the Committees are balanced in terms of sectors, product lines, demographics, geographic representation, and company size. Appointments to all ITACs are made without regard to political affiliation. All ITAC members must be able to obtain and maintain a security clearance.

Application Procedures

For consideration, a nominee should send (1) A sponsor letter, (2) a resume, with demonstrated knowledge of international trade issues, and (3) company or organization information to the Director, Industry Trade Advisory Center, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 4043, Washington, DC 20230. Sponsor letters must be on the company or organization letterhead. Company or organization information must address the activities, products, or services of the U.S. entity to be represented and certify that the entity is a U.S. entity as defined in the Eligibility section above. Additional requirements exist for nominations of consultants, legal advisors, and trade associations. The specific requirements will vary depending on the nature of the organization and interests to be represented. Interested consultants, legal advisors, and trade associations should contact the Industry Trade Advisory Center or consult the ITAC Web site for additional information on the submission requirements.

This notice is issued pursuant to the Federal Advisory Committee Act (5 U.S.C., app. 2), 19 U.S.C. 2155, and 21 CFR part 14 relating to advisory committees.

Dated: April 6, 2006.

Jack McDougle,

Acting Assistant Secretary for Manufacturing and Services.

[FR Doc. E6–5421 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 85–12A18.

SUMMARY: On April 6, 2006, The U.S. Department of Commerce issued an amended Export Trade Certificate of

Review to U.S. Shippers Association (''USSA'').

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2004).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The original USSA Certificate (No. 85–00018) was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on November 5, 2004 (69 FR 67703, November 19, 2004).

USSA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

(a) Atotech USA, Inc., Rockhill, South Carolina; Bostik, Inc., Wauwatosa, Wisconsin; Hutchinson FTS, Inc., Troy, Michigan; Paulstra CRC Corporation, Grand Rapids, Michigan; Sartomer Company, Inc., Exton, Pennsylvania; Total Lubricants USA, Inc., Linden, New Jersey; and Total Petrochemicals USA, Inc., Houston, Texas. The controlling entity for these seven proposed new members is Total Holdings USA, Inc., Houston, Texas;

(b) Shell Chemical LP, Houston, Texas; Shell Chemicals Americas, Inc., Calgary, Ontario, Canada; and Shell Oil Products Company LLC, Houston, Texas. The controlling entity for these three proposed new members is Royal Dutch Shell plc, The Hague, The Netherlands; and

(c) DeSantis & Associates, Inc., Missouri City, Texas;

2. Delete the following companies as ''Members'' of the Certificate: ConocoPhillips, Borger, Texas; Lyondell Chemicals Worldwide, Inc., Houston, Texas; and Pecten Chemicals, Inc., Houston, Texas; and

3. Change the name of the following Member: ''Resolution Performance Products, LLC, Houston, Texas'' to ''Hexion Specialty Chemicals, Houston, Texas'' (controlling entity: Apollo Management LP, New York, New York).

The effective date of the amended certificate is January 9, 2006. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 6, 2006.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E6–5430 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 980901228–6099–07]

Solicitation of Applications for the Minority Business Opportunity Center (MBOC) Program (Louisiana)

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Opportunity Center (MBOC) (formerly Minority Business Opportunity Committee) in the state of Louisiana. A prior solicitation in the **Federal Register** dated February 8, 2006 (71 FR 6449) for the Baton Rouge/New Orleans geographic service area was unsuccessful. The Minority Business Opportunity Center through its staff will provide brokering services and assistance to minority business enterprises (MBEs) that (a) Generate $500,000 or more in annual gross revenues; (b) are capable of creating significant employment and long-term economic impact (commonly referred to as ''rapid growth-potential'' MBEs); or (c) have been displaced from Louisiana due to Hurricanes Katrina and Rita. The MBOC will provide access to buyers of goods and services and procurement and financing opportunities within the public and private sectors. In addition, the MBOC will assist clients by identifying, matching and fostering strategic partners and joint ventures with firms outside the designated service area in order to build client capacity.

DATES: The closing date for receipt of applications is May 11, 2006. Completed applications must be received by MBDA no later than 5 p.m. Eastern Daylight Time at the address below for paper submission or at *http://www.Grants.gov* for electronic submission. The due date and time is the same for electronic submissions as it is for paper submissions. The date the applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is approximately forty-five (45) days from the date of publication of this notice. MBDA anticipates the award for the MBOC program will be made with a start date of June 1, 2006.

ADDRESSES:

1(a) Paper Submission—If Mailed: If the application is mailed/shipped overnight by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Completed application packages must be mailed to: Office of Business Development—MBOC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce delivery policies for Federal Express, UPS, and DHL overnight services require the packages to be sent to the address above.

1(b) Paper Submission—If Hand-Delivered: If the application is hand-delivered by the applicant or his/her representative, one (1) signed original plus two (2) copies of the application must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBOC Program (extension 1940), HCHB, Room 1874, Entrance #10, 15th Street, NW., Washington, DC. (Between Pennsylvania and Constitution Avenues).

U.S. Department of Commerce ''hand-delivery'' policies state that Federal Express, UPS, and DHL overnight

services submitted to the address listed above (Entrance #10) cannot be accepted. These policies should be taken into consideration when utilizing their services. MBDA will not accept applications that are submitted by the deadline but rejected due to Departmental hand-delivery policies. The applicant must adhere to these policies in order for his/her application to receive consideration for award.

(2) Electronic Submission: Applicants are encouraged to submit their proposal electronically at *http://www.Grants.gov*. Electronic submissions should be made in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/ForApplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For further information, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov*. Paper applications and Standard Forms may be obtained by contacting the MBDA National Enterprise Center (NEC) for the area where the Applicant is located (See Agency Contacts section) or visiting MBDA's Portal at *http://www.mbda.gov*. Standard Forms 424, 424A, 424B, and SF–LLL can also be obtained at *http://www.whitehouse.gov/omb/grants,* or *http://www.Grants.gov*. Forms CD–511, and CD–346 may be obtained at *http://www.doc.gov/forms.*

Responsibility for ensuring that applications are complete and received BY MBDA on time is the sole responsibility of the Applicant.

Agency Contacts:

1. Office of Business Development, 14th and Constitution Avenues, Room 5073, Washington DC 20230. Contact: Efrain Gonzalez, Program Manager at 202–482–1940.

2. Dallas National Enterprise Center (NEC) is located at 1100 Commerce Street, Suite 7B–23, Dallas, TX 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact: John Iglehart, Regional Director, Dallas NEC at 214–767–8001.

SUPPLEMENTARY INFORMATION:

Electronic Access: A link to the full text of the Federal Funding Opportunity (FFO) Announcement for the MBOC Program can be found at *http://www.Grants.gov* or by contacting the appropriate MBDA representative identified above. The FFO is also available at *http://www.mbda.gov*. The FFO contains a full and complete description of the MBOC program requirements. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO. Applicants will be able to access, download and submit electronic grant applications for the MBOC Program in this announcement at Grants.gov. MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

Funding Availability: The total award period is two years. The Federal funding share in year 1 (June 1, 2006—May 31, 2007) is $415,000. MBDA anticipates the Federal funding share in year 2 (June 1, 2007—May 31, 2008) will be $260,000 (subject to the availability of FY 2007 appropriations). MBDA anticipates funding only one (1) MBOC from this competitive Announcement.

MBDA anticipates that 75 percent of the Federal funding share must be allocated to key staff, such as the Executive Director and Senior Business Development person(s). Applicants must submit project plans and budgets for each of the two funding periods. Projects will be funded for no more than one year at a time. Project proposals accepted for funding will not compete for funding in the subsequent second budget period. Second year funding will depend upon satisfactory performance, availability of funds to support continuation of the project, and consistency with Department of Commerce and MBDA priorities. Second year funding will be granted at the sole discretion of MBDA and the Department of Commerce.

MBDA is soliciting competitive applications from organizations to operate one MBOC in the state of Louisiana. The maximum Federal Funding Amounts for each year are shown below.

Applicant location	Federal amount year 1 (June 1, 2006—May 31, 2007)	Federal amount year 2 (June 1, 2007—May 31, 2008)
1. Louisiana	$415,000	$260,000

MBOC applicants should have an established presence in the state of Louisiana. Established presence is defined to mean that the applicant has had an office in the location for approximately three (3) years preceding the date of this Announcement and has established working relationships with buying organizations. In light of Hurricanes Katrina and Rita, the definition for established presence is amended to include entities in operation since the beginning of 2003 (minimum) through August 2005. Applicants are encouraged to propose as large a service area as possible, which may extend beyond the state of Louisiana. Applicants will be required to operate a primary MBOC office in the city of New Orleans. Applicants are also encouraged to propose a secondary or satellite office accessible to residents of Baton Rouge, LA. Additional preference may be given to applicants proposing a secondary or satellite office(s).

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.803 Minority Business Opportunity Center Program.

Eligibility: For-profit entities (including sole-proprietorships, partnership, and corporations), and non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate MBOCs.

Program Description

In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting applications from organizations to operate a Minority Business Opportunity Center (MBOC) (formerly Minority Business Opportunity Committee). The Minority Business Opportunity Center through its staff provide will provide brokering services and assistance to MBEs that (a) Generate $500,000 or more in annual gross revenues; (b) are capable of creating significant employment and long-term economic impact (commonly referred to as ''rapid growth-potential'' MBEs); or (c) have been displaced from Louisiana due to Hurricanes Katrina or Rita . The MBOC will provide access to

buyers of goods and services and procurement and financing opportunities within the public and private sectors. The MBOC program's primary objective is to match pre-qualified MBEs with private and public sector contracting and financing entities. In addition, the MBOC will assist clients by identifying, matching and fostering strategic partners and joint ventures with firms outside the designated area in order to build client capacity.

The MBOC operator and executive director should have experience in and knowledge of the local minority business sector and demonstrated ability to gain access to key decision makers. The MBOC is supported by a volunteer advisory committee that assists the MBOC in implementing program requirements and providing contract and financing opportunities to MBEs. The program is primarily evaluated by MBDA based on the number and dollar value of contracts and financial transactions awarded to MBEs. The MBOC will be required to engage in the activities delineated in the FFO Announcement.

Match Requirements

Cost sharing of at least 15% for year 1 and 30% for year 2 is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement in (1) Cash contributions; (2) non-cash applicant contributions; and/or (3) third party in-kind contributions. Bonus points will be awarded for cost sharing exceeding 30 percent that is applied to the MBOC for year 1 and 2 only. Applicants must provide a detailed explanation of how the cost-sharing requirement will be met. While not a program requirement, the MBOC may charge client fees for brokering services rendered. Client fees may be used towards meeting cost share requirements. Client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives.

Selection Procedures

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent reviewers (all Federal employees) who will evaluate all applications based on the below evaluation criteria. Each reviewer will provide a score for each proposal. The National Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following:

1. Evaluations and rankings of the independent review panel;
2. Size of proposed service area. Applicants are encouraged to propose as large a service area as possible, which may extend beyond the defined service area of the state of Louisiana;
3. Proposal for a secondary or satellite office(s) accessible to residents of Baton Rouge, Louisiana;
4. The following funding priorities: a. Having an existing or recent client base that can be utilized for brokering contract and financial transactions;
   b. Having the ability to establish an MBOC that has an Industry specific(s) focus and that demonstrates the utility of economic clusters including, but not limited to, aerospace, manufacturing, construction, financial services, IT and/or automotive industries;
   c. Having the ability to assist in economic recovery following natural disasters through available economic opportunities;
   d. Having the ability to facilitate joint ventures and strategic partners between clients and firms outside of the designated service area; and
5. Availability of funding.

Evaluation Criteria

Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for *each* evaluation criterion, in order for the application to be considered for funding. The maximum total points that can be earned is 105 including the bonus points for related non-federal cost sharing as described below.

1. Applicant Capability (30 points)

The applicant's proposal will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- MBE Community—Experience and knowledge of the local minority business sector and established working relationships with buying organizations. This factor will be evaluated on whether or not the applicant has an established presence in the proposed geographic service area. Established presence is defined to mean that the applicant has had an office in the geographic service area for a minimum of three (3) years preceding this announcement and has established relationships with buying organizations. In light of Hurricanes Katrina and Rita, the definition for established presence is amended to include entities in operation since the beginning of 2003 (minimum) through August 2005.(10 points);
- *Business Acumen*—experience in and knowledge of coaching and mentoring techniques related to serving rapid growth-potential minority firms (3 points);
- *Financing*—experience in and knowledge of brokering techniques and facilitating large financial transactions (5 points);
- *Procurements and Contracting*—experience in and knowledge of the public and private sector contracting opportunities and gaining access to the buyers to facilitate and broker large deals (5 points);
- *Financing Networks*—Knowledge of the resources and professional relationships within the corporate, banking and investment community that can be beneficial to minority-owned firms (2 points);
- Experience and knowledge of particular industries and ability to gain access to industry leaders within the geographic service area (5 points).

2. Resources (25 points)

The applicant's proposal will be evaluated according to the following criteria:

- *Key Staff*—Discuss the experience of the staff that will operate the MBOC. In particular, an assessment will be made to determine whether key staff has the experience in working with high level key decision makers as relates to brokering and facilitating large dollar contracts and financial transactions, and coaching and mentoring. Proposed staff will be assessed to determine if they possess the expertise in utilizing information systems (10 points);
- *Resources*—discuss what resources will be utilized to accomplish the work requirements (not included as part of the cost-sharing arrangement). An assessment will be made to evaluate how well the plan establishes and maintains a network of resources. Discuss how the Advisory Committee and subcommittees will be recruited and what their role will be. Discuss how the committees will contribute to the performance measures as outlined in the FFO (10 points);
- *Equipment*—An assessment will be conducted to evaluate how well the plan fulfills the computer hardware and software requirements stated in the FFO (5 points).

3. Techniques and Methodologies (25 points)

The applicant's proposal will be evaluated as follows:

• *Performance Measures*—relate each performance measure to the financial, information and market resources available in the applicant's defined service area and how the goals will be met. Specific attention should be placed on the Dollar Value of Contract Awards and Financial Transactions (as described under Definitions in the FFO). Minimum goals should be based on the availability of Federal procurement dollars in the service area. The applicant should also consider existing market conditions and its strategy to achieve the goal. (10 points);

• *Plan of Action*—provide specific detail on how the applicant will start operations, including how the Advisory Committees and Subcommittees will be formed. The plan should include a detailed discussion of the nature of the advisory role and how the committee will work with Center staff to accomplish program objectives. Program Operators have thirty (30) days to become fully operational after an award is made. Fully operational means that the primary office must be opened in the city of New Orleans and (if applicable) secondary or satellite offices are opened, all staff is hired, all signs are up, all items of furniture and equipment are in place and operational, all stationery forms are developed and the Center is ready to open its doors to the public. Failure to have all staff on board within 30 days after award will result in a deduction of 10 points on the first semi-annual performance assessment report and may jeopardize continuation of the award. (5 points);

• *Work Requirements Execution Plan*—The applicant will be evaluated on how it plans to execute the Work Requirements (including implementation timelines) and how effectively and efficiently all staff will be used. Applicants should include a description for using an intra and interstate approach, depending on the geographic service area, for accomplishing the work requirements contained in the FFO (5 points).

• *Appropriateness of Applicant Defined Service Area*—The applicant will be evaluated based on the following: the size of the minority population and density of MBEs with revenues of $500,000 or rapid-growth potential in the applicant's defined service area or displaced Louisiana MBEs due to Hurricanes Katrina and Rita. The presence of significant federal and commercial contracting and financing opportunities, the size of the market, and the need for MBDA resources in the applicant's defined service area should also be discussed. (5 Points)

4. Proposed Budget and Supporting Budget Narrative (20 points)

The applicant must provide two separate budget narratives, one for each program year, reflecting the respective non-federal cost share requirements. The applicant's proposal will be evaluated on the following sub-criteria:

• Reasonableness, allowability and allocability of costs (5 points). MBDA anticipates that 75% of the funding level will be allocated to key staff, such as the Executive Director and senior business development persons.

• Proposed cost sharing of 15 percent is required for year 1 and 30 percent is required year 2 and must be documented, including whether client fees for brokering will be charged and applied to the cost share. Applicants choosing to charge fees should set forth a fee schedule in their proposals (5 points).

• Performance-based Budget. Discuss how the budget is related to the accomplishment of the work requirements and the Performance measures. Provide a budget narrative that clearly shows the connections. (10 points)

• Non-Federal Cost sharing exceeding 30 percent for year 1 and 2. (5 bonus points).

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

Applicants are hereby given notice that funds have been appropriated for this program for Fiscal Year 2006; however, funds have not yet been appropriated for FY 2007. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of standard forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid OMB control Number.

Executive Order 12866

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

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice for an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grant, benefits and contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the regulatory flexibility Act (5 U.S.C 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: April 7, 2006.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. E6–5429 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold the annual meeting of the Council Bottomfish Plan Team (BPT).

DATES: The meeting of the BPT will be held on April 25 through April 27, 2006. For specific times, and the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting of the BPT will be held at the Western Pacific Fishery Management Council conference room, 1164 Bishop Street, Suite 1400, Hololulu, HI.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on April 25 through April 27, 2006 to discuss the following agenda items.

April 25, 2006, 9 a.m. to 4 p.m.

1. Introductions, approval of draft agenda and assignment of rapporteurs
2. 2005 Annual Report
   a. Review 2005 Annual Report modules and recommendations for American Samoa, Guam, Commonwealth of the Northern Mariana Islands (CNMI), Administration, Protected Resources and Enforcement.
   b. 2005 Annual Report Region-wide recommendations
   c. Review of Annual Report Format and Structure
3. Maximum Sustainable Yield/ Overfishing
   a. Status of the Stock Report
   b. Stock Assessment Review Process
   c. Discussion and Recommendations

April 26, 2006, 8:30 a.m. to 4 p.m.

4. Status of Management Actions, Monitoring and Assessment
   a. Guam 50/50 Amendment
   b. CNMI 40/50 amendment
   c. Northwestern Hawaiian Islands (NWHI) Bottomfish Management
      i. NWHI Sanctuary Designation
      ii. Council Draft Regulations
   d. Main Hawaiian Islands Bottomfish Amendment and Supplementary Draft Environmental Impact Statement (DSEIS)
   e. Monitoring and Assessment Initiatives
      i. Bottom Camera Update
      ii. Genetic Research
      iii. Acoustic Tracking Projects
      iv. Cooperative Research
      v. Guam Offshore Bank Monitoring
   f. Discussion and Recommendations

April 27, 2006, 8:30 a.m. to 4 p.m.

5. Plan Team Recommendations
6. Other Business

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 7, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–5390 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040306A]

U.S. Climate Change Science Program Synthesis and Assessment Product Prospectus

ACTION: Notice of availability and request for public comments.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the draft Prospectus for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products (Products) for public comment. This draft Prospectus addresses the following CCSP Topic:

Product 3.3 Climate Extremes: Analysis of the Observed Changes and Variations and Prospects for the Future.

After consideration of comments received on the draft Prospectus, the final Prospectus along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by May 12, 2006.

ADDRESSES: The draft Prospectus is posted on the CCSP Program Office web site. The web addresses to access the draft Prospectus is:*http://www.climatescience.gov/Library/sap/sap3–3/default.htm*

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Vanessa Richardson, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3465.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: April 6, 2006.

Conrad C. Lautenbacher, Jr.,

Vice Admiral, U.S. Navy (Ret.), Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. E6–5409 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033006A]

Endangered Species; File No. 1572

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Amanda Southwood, Department of Biology and Marine Biology, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, North Carolina 28403, has applied in due form for a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 12, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1572.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of 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).

The purpose of the research would be to assess the physiological response of loggerhead, green, and Kemp's ridley sea turtles to entanglement in fishing gear, identify post-release mortality events, and integrate these data to assess the feasibility of using biochemical indices as predictors of post-release mortality. The research would also provide information on the movements of sea turtles utilizing the lower Cape Fear River. Researchers would annually capture up to 20 loggerhead, 20 green, and 5 Kemp's ridley sea turtles for a 3-year period using gillnets. Animals would be measured, weighed, blood sampled, passive integrated transponder tagged, satellite transmitter tagged, VHF tagged and tracked, have their cloacal body temperature taken, and be released. Up to 30 percent of the animals captured could die after release.

Dated: April 6, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–5407 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

April 7, 2006.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for blankets made from acrylic staple fiber.

SUMMARY: On March 24, 2006 the Chairman of CITA received a request from Biederlack of America alleging that acrylic staple fiber, not carded, combed or otherwise processed for spinning, classified in subheading 5503.30 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for blankets classified under HTSUS subheading 6301.40 should be modified to allow the use of non-North American acrylic staple fiber.

The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether acrylic staple fiber of HTSUS subheading 5503.30 can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by May 12, 2006 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the NAFTA, the member countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. See *Section 202(q) of the NAFTA Implementation Act*. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. *NAFTA Implementation Act, SAA, H. Doc. 103-159, Vol. 1, at 491* (1993). The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. *SAA at 491*. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification. See *section 202(q) of the NAFTA Implementation Act*.

On March 24, 2006 the Chairman of CITA received a request from Biederlack of America alleging that acrylic staple fiber, not carded, combed or otherwise processed for spinning, classified in subheading 5503.30 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for blankets classified under HTSUS subheading 6301.40 should be modified to allow the use of non-North American acrylic staple fiber. The petitioner requested that the modification be effective for entries made on or after January 24, 2006, the date they alleged production of all acrylic fiber that meets their specifications ended in North America.

CITA is soliciting public comments regarding this request, particularly with respect to whether acrylic staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than May 12, 2006. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that acrylic staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces fiber that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.E6–5405 Filed 4–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 12, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 6, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services Office of Management.

Office of English Language Acquisition

Type of Review: Revision.

Title: Title III Biennial Report Required of State Education Agencies Regarding Activities Under the NCLB Act of 2001.

Frequency: Biennially.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 156.

Abstract: State Directors of Title III of the No Child Left Behind (Elementary and Secondary Education) Act—Language Instruction for Limited English Proficient and Immigrant Students—are required to transmit their State Formula Grant Biennial Evaluation Report to the Secretary of Education every two years. The Department uses the information collected for the Secretary's Biennial Report to Congress and for the determination of State Title III accountability.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3024. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC_DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *IC_DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–5352 Filed 4–11–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement proposes a priority under the Magnet Schools Assistance Program (MSAP). The Assistant Deputy Secretary may use this priority for competitions in fiscal year (FY) 2007 and in later years. We intend this priority to encourage eligible applicants to focus on expanding their capacity to provide public school choice by using magnet schools to provide public school choice options to parents whose children attend schools that have been identified for school improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

DATES: We must receive your comments on or before May 12, 2006.

ADDRESSES: Address all comments about this proposed priority to Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202–5970. If you prefer to send your comments through the Internet, use the following address: *steve.brockhouse@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse. Telephone: (202) 260–2476 or via Internet: *steve.brockhouse@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the element of the proposed priority that each comment addresses.

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

During and after the comment period, you may inspect all public comments about this proposed priority in room 4W229, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

General Information

The MSAP provides grants to eligible local educational agencies (LEAs) and consortia of LEAs to support magnet schools that are part of an approved desegregation plan. For the purpose of the MSAP, a magnet school is a public elementary school, public secondary school, public elementary education center, or public secondary education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

Through the implementation of magnet schools, MSAP resources support objectives and activities that enable all elementary and secondary students to achieve to high standards, hold schools and LEAs accountable for ensuring they do so, and help schools and LEAs develop and design innovative educational methods and practices that support desegregation efforts to eliminate, reduce, or prevent minority group isolation and increase choices in public elementary and secondary schools.

Background on Proposed Priority

Consistent with the statutory purpose of the MSAP, magnet schools are designed to eliminate, reduce, or prevent minority group isolation in schools with substantial numbers or percentages of minority group students, bring students of different backgrounds together, assist LEAs in achieving systemic reforms, provide all students the opportunity to meet challenging State content standards and challenging State performance standards, and increase choices in public elementary and secondary schools.

The priority we are proposing, Expanding Capacity to Provide Choice, would provide eligible LEAs with an opportunity to continue to use magnet schools, consistent with their desegregation plan objectives for the elimination, reduction, or prevention of minority group isolation, to expand their capacity to provide public school choice to parents whose children attend schools identified for school improvement, corrective action, or restructuring.

The proposed priority would provide eligible applicants the flexibility to use either or both of two approaches to expanding their capacity to provide public school choice.

First, an eligible applicant could convert one or more schools identified for improvement, corrective action, or restructuring under Title I to magnet schools in order to improve the quality of teaching and instruction in these schools. Using this approach, conversion of a school to a magnet school would benefit students already attending the school by offering a magnet curriculum that would include subject matter or teaching methodology that is generally not available at other schools in the LEA and would be more challenging and innovative than the curricular program that the school had previously provided. The implementation of the magnet curriculum, along with resources such as equipment, supplies and staff development to support the implementation of the magnet curriculum, would also help the school reduce, eliminate, or prevent minority group isolation at the magnet school and/or at the sending schools by attracting other students, including higher-achieving students of different backgrounds, based on their interest in a curricular program that would not be available to them in the schools that they would otherwise attend.

Second, an eligible applicant could use higher-performing schools as magnet schools and, by doing so, significantly increase the opportunity for students attending schools identified for school improvement, corrective action, or restructuring to participate in public school choice by attending a higher-performing school. Using this approach, an eligible applicant would need to ensure that the magnet school would have sufficient space available to accommodate students who would likely be interested in transferring from schools identified for school improvement, corrective action, or restructuring. Additionally, the LEA would need to show how the enrollment of the magnet and/or sending schools

(*i.e.*, the schools identified for school improvement, corrective action, or restructuring from which students would transfer) would change in a manner that resulted in the elimination, reduction, or prevention of minority group isolation in those sending schools.

Under either approach, an applicant would be required to show how it would effectively inform parents whose children attend schools identified for school improvement, corrective action, or restructuring about the new choices made available to them in the magnet schools to be funded under the project.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, 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 priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive 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)).

Priority

Expanding Capacity to Provide Choice

This proposed priority supports applications that would—

(1) Help parents whose children attend low-performing schools (that is, schools that have been identified for school improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended) by—

(a) Selecting schools identified for school improvement, corrective action, or restructuring under Title I as magnet schools to be funded under this project and improving the quality of teaching and instruction in these schools; or

(b) Maximizing the opportunity for students in low-performing schools to attend higher-performing magnet schools funded under the project and thereby reduce minority group isolation in the low-performing sending schools; and

(2) Effectively inform parents whose children attend low-performing schools about choices that are available to them in the magnet schools to be funded under the project.

Note: For the purpose of selecting applications under this priority, *school improvement* has the meaning given in 34 CFR 200.32(a)(1), *corrective action* has the meaning given in 34 CFR 200.33(a), and restructuring has the meaning given in 34 CFR 200.34(a).

Executive Order 12866

This notice of proposed priority 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 the notice of proposed priority 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 notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant.

The benefit of the proposed priority is that it will help applicants prepare high-quality proposals that expand their capacity to provide public school choice to parents whose children attend schools that have not made adequate yearly progress.

Intergovernmental Review

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

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

Applicable Program Regulations: 34 CFR part 280.

Electronic Access to This Document

You may review 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*.

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.

You may also view this document in text at the following site: *http://www.ed.gov/programs/magnet/applicant.html*.

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 Number 84.165A Magnet Schools Assistance Program)

Program Authority: 20 U.S.C. 7231–7231j.

Dated: April 7, 2006.

Christopher J. Doherty,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E6–5438 Filed 4–11–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–297–A]

Application To Export Electric Energy; SESCO Enterprises Canada

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: SESCO Enterprises Canada (SESCO Canada) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 12, 2006.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy

Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 10, 2004, the Department of Energy (DOE) issued Order No. EA–297 authorizing SESCO Enterprises Canada (SESCO Canada) to transmit electric energy from the United States to Canada as a power marketer. That Order will expire on July 6, 2006.

On March 6, 2006, SESCO Canada filed an application with DOE for renewal of the export authority contained in Order No. EA–297 for an additional five-year term. SESCO Canada does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which SESCO Canada proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

SESCO Canada will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by SESCO Canada has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the SESCO Canada application to export electric energy to Canada should be clearly marked with Docket EA–297–A. Additional copies are to be filed directly with Carol Smoots, Esq., Perkins Coie LLP, 607 Fourteenth Street, NW., Washington, DC 20005 and Michael Schubiger, Chief Executive Officer, SESCO Enterprises, LLC, 120 Wood Avenue South, Suite 511, Iselin, NJ 08830.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's home page at *http://www.fe.doe.gov/programs/electricityregulation/* and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on April 6, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–5380 Filed 4–11–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–262-B]

Application To Export Electric Energy; TransCanada Power Marketing Ltd.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: TransCanada Power Marketing Ltd. (TCPM) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 12, 2006.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 4, 2002, the Department of Energy (DOE) issued Order No. EA–262 authorizing TCPM to transmit electric energy from the United States to Canada as a power marketer. On June 4, 2004, in Order No. EA–262–A, DOE renewed the TCPM authorization to export electric energy to Canada for a two-year term that expires on June 4, 2006.

On February 17, 2006, TCPM filed an application with DOE for renewal of the export authority contained in Order No. EA–262–A for an additional five-year term. TCPM proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Company.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the TCPM application to export electric energy to Canada should be clearly marked with Docket EA–262–B. Additional copies are to be filed directly with Angela Avery, Associate General Counsel, TransCanada Power Marketing Ltd., 450 First Street, SW., Calgary, Alberta T2P5H1, Canada.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is

made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's home page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the home page, scroll down and select ''Pending Proceedings.''

Issued in Washington, DC, on April 6, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–5381 Filed 4–11–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8158–1]

Science Advisory Board Staff Office; Notification of a Upcoming Meeting of a Subcommittee of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of a Subcommittee of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services (C-VPESS) to gather information related to ecological valuation activities of interest to EPA Region 5 in its work with Chicago Wilderness.

DATES: A public fact-finding meeting of the C-VPESS will be held from 10 a.m. to 12 p.m (Central Time) on April 28, 2006.

ADDRESSES: The meeting will take place in Room 61 of the Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information regarding the SAB C–VPESS subcommittee meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background

Background on the SAB C-VPESS and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of this fact-finding meeting is for the Subcommittee to gather information related to ecological valuation activities of interest to EPA Region 5 in its work with Chicago Wilderness.

The Subcommittee will evaluate this information in drafting a component of a planned report on application of methods for valuing the protection of ecological systems and services. This fact-finding activity is related to the Committee's overall charge: to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials

Materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab/* in advance of this meeting.

Procedures for Providing Public Input

Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Nugent, DFO, at the contact information noted above, by April 20, 2006, to be placed on the public speaker list for the April 28, 2006 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by April 20, 2006, so that the information may be made available to the Subcommittee for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Meeting Access

For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 7, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–5422 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0130; FRL–7773–2]

Pesticide Product; Registration Applications; Correction and Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of June 22, 2005, concerning Pesticide Product; Registration Applications. This document is being issued to correct the chemical name ''Ferric Sodium EDTA,'' and to replace it with ''Sodium Ferric Hydroxy EDTA.'' EPA is also reopening the comment period on this application for an additional 30–day period.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0130, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*. Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery. Public Information and Records Integrity Branch (PIRIB)

(7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0130. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 number EPA–HQ–OPP–2005–0130. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket. All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703 308–7224; e-mail address: *peterson.todd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket 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. What Does this Correction Do?

FR Doc. 05–12200 published in the **Federal Register** of June 22, 2005 (70 FR 36153) (FRL–7714–7) is corrected as follows:

On page 36154, in Unit II., Registration Applications, in paragraph ''1. File symbol: 42697-AR'', the active ingredient ''Ferric Sodium EDTA'' is corrected to read ''Sodium Ferric Hydroxy EDTA.''

List of Subjects

Environmental protection, Ferric Sodium EDTA.

Dated: March 31, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–5338 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0022; FRL–7767–7]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Dithianon in or on Pome Fruits and Dried Hops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the republishing of the initial filing of a pesticide petition proposing the establishment of regulations for residues of dithianon (5,10–dihydro–5,10–dioxonaphtho [2,3–b]–1,4–dithiin–2,3–dicarbonitrile) in or on pome fruits and dried hops. The initial filing was published on February 12, 1997 (62 FR 6521).

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA-HQ-OPP–2006–0022 and pesticide petition number (PP) 6E4781, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0022. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006––0022. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The 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 at regulations.gov, your e-mail address will be captured automatically 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 regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rosemary Kearns, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; 703–305–5611; e-mail: *kearns.rosemary@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket 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. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 6E4781. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle, Park, NC 27709–3528, proposes to establish tolerances for residues of the dithianon (5,10–dihydro–5,10–dioxonaphtho [2,3–b]–1,4–dithiin–2,3–dicarbonitrile) in or on food commodities pome fruits (apples and pears) at 5.0 parts per million (ppm); and dried hops at 100.0 ppm. The proposed analytical methods are high performance liquid chromatography (HPLC) methods with ultra-violet (UV) detection for pome fruits (apples and pears) and with electrochemical detection for quantitation for dried hops.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5200 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0275; FRL–7773–8]

Notice of Filing of a Pesticide Petition to Amend the Tolerance Exemption for Residues of Lepidoteran Pheromones to Include Indoor Post-Harvest Treatment in or on All Stored Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of the existing exemption from the requirement of a tolerance in 40 CFR 180.1153 for residues of the biochemicals classified as lepidopteran pheromones to include indoor post-harvest treatment in or on all stored food commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0275 and pesticide petition number (PP) 6F7044, by one of the following methods:

• *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0275. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006–0275. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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 regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division, (7511C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket 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. What Action is the Agency Taking?

EPA is printing a summary of this pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

Amendment to Existing Exemption from Tolerance

(PP) 6F7044. Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT 06810–4192, proposes to amend the existing exemption from the requirement of a tolerance in 40 CFR 180.1153 for residues of the biochemicals classified as lepidopteran pheromones, that are naturally occurring compounds or identical or substantially similar synthetic compounds designated by an unbranched aliphatic chain (between 9 and 18 carbons) ending in an alcohol, aldehyde, or acetate functioning group and containing up to 3 double bonds in the aliphatic backbone, to include indoor post-harvest treatment in or on all stored food commodities at a rate not to exceed 3.5 grams active ingredient (AI)/1,000 square feed/year (equivalent to 150 grams AI/acre/year) in accordance with good agricultural practices. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–5389 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0075; FRL–7775–5]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Fenazaquin in or on Apple, Pear, and Citrus Fruits Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of fenazaquin in or on apple, pear, and citrus fruits commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0075 and pesticide petition number (PP) 9E5059, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0075. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006–0075. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going at regulations.gov, your e-mail address will be captured automatically 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 regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Dan Peacock, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; phone number: 703–305–5407; e-mail address: *peacock.dan@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket 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. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 9E5059. Gowan Company, 370 S. Main St., Yuma, AZ 85364, proposes to establish a tolerance for residues of the insecticide fenazaquin in or on food commodities apples and pears at 0.2 parts per million (ppm); and citrus fruits at 0.5 ppm. A method for the determination of fenazaquin residues in raw and processed commodities has been developed and validated. The general method includes extraction with acetonitrile: water and partitioning into hexane. Cleanup is accomplished by solid phase chromatography using

florisel and aminopropyl cartridges. The final eluate is evaporated and the residue is reconstituted in trimethylpentane containing 1,4–dibromonapthlene, an internal standard. Residues of fenazaquin are quantified using gas chromatography/mass spectrometry (GC/MS) with selected ion monitoring. The limit of quantitation (LOQ) is 0.01 mg/kg for all matrices tested.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2006.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5393 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0149; FRL–7772–2]

Notice of Filing of Pesticide Petition for Establishment for Residues of Indoxacarb in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0149 and pesticide petition number PP 5E6991, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2005–0149. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. 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 number EPA-HQ-OPP–2005–0149. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The 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 at regulations.gov, your e-mail address will be captured automatically 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 regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

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

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 5E6991. The Interregional Research Project #4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the insecticide indoxacarb, (S)-methyl 7–chloro–2,5–dihydro–2–[[(methoxycarbonyl)[4–(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2e] [1,3,4]oxadiazine–4a(3H)- carboxylate and its R-enantiomer (R)-methyl 7–chloro–2,5–dihydro–2–[[(methoxycarbonyl)[4–(trifluoromethoxy) phenyl] amino]carbonyl]indeno [1,2–e] [1,3,4] oxadiazine–4a(3H)- carboxylate in a 75:25 mixture (DPX-MP062), respectively, in or on vegetable, cucurbit, group 9 at 0.5 parts per million (ppm); fruit, stone, group 12 at 1.0 ppm; and cranberry at 1.0 ppm. The plant residue enforcement method detects and quantitates indoxacarb by HPLC UV which is use to measure and evaluate the chemical residue.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5098 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0283; FRL–7774–1]

Notice of Filing of a Pesticide Petition for Establishment of Residues of Thiophanate-methyl on Sweet Corn

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of thiophanate-methyl in or on sweet corn.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0283 and pesticide petition number (PP) 2E6478, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0283. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805. 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 number EPA–HQ–OPP–2006–0283. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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 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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-6463; e-mail: *madden.barbara@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket 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.

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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. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

(PP) 2E6478. Interregional Research Project No. 4 (IR-4), Rutgers, The State University of NJ, 681 US Highway 1 South, North Brunswick, NJ 08902, proposes to establish a tolerance for residues of the fungicide thiophanate-methyl, and its metabolite MBC in or on food commodities corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; and corn, sweet, stover at 0.05 parts per million (ppm). High pressure liquid chromatography / ultraviolet (HPLC/UV) method is use to measure and evaluate the chemical residue(s).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5387 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0282; FRL–7773–9]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Myclobutanil in or on Hops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of myclobutanil in or on hops.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0282 and pesticide petition number (PP) 1E6265, by one of the following methods:

• *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0282. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805. 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 number EPA–HQ–OPP–2006–0282. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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 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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-6463; e-mail: *madden.barbara@epa.gov*.

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You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket 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.

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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. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated

the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

(PP) 1E6265. Interregional Research Project No. 4 (IR-4), Rutgers, The State University of NJ, 681 US Highway 1 South, North Brunswick, NJ 08902, on behave of the registrant Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN, proposes to establish a tolerance for the combined residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile, and its alcohol metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), in or on food commodity hops, dried cone at 10.0 parts per million (ppm). GLC using a Nitrogen/Phosphorus detector for myclobutanil and an Electron Capture detector for residues measured as the alcohol metabolite are used to measure and evaluate the chemical residue(s).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5388 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0181; FRL–7773–6]

Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0181 and pesticide petition numbers (PPs) 5E6965, 5E6966, and 5E6967, by one of the following methods:

• *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0181. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006–0181. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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 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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number (703) 308–3194; e-mail: *brother.shaja@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

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• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

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

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2. *Tips for preparing your comments.* When submitting comments, remember to:

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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.

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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. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

(PPs) 5E6965, 5E6966, 5E6967. Interregional Project Number 4, 681 Highway 1 South, North Brunswick, NJ 08902–3390, proposes to establish tolerances for residues of the insecticide diflubenzuron, (N-[[(4–chlorophenyl)amino]carbonyl]–2,6–difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron in or on the following food commodities:

1. *(PP) 5E6965* proposes to establish tolerances for barley, grain; oat, grain; and wheat, grain at 0.06 parts per million (ppm); barley, forage; oat, forage; and wheat, forage at 5.0 ppm; barley, hay; oat, hay; and wheat, hay at 2.0 ppm; barley, straw; oat, straw; and wheat, straw at 2.0 ppm; barley, aspirated barley fractions; oat, aspirated oat fractions, and wheat, aspirated wheat fractions at 3.0 ppm; and pummelo at 0.5 ppm.

2. *(PP) 5E6966* proposes to establish tolerances for brassica, leafy greens subgroup 5B; turnip at 8.0 ppm; eggplant at 1.0 ppm; and okra at 1.0 ppm.

3. *(PP) 5E6967* proposes to establish a tolerance for peanut at 0.2 ppm.

A practical analytical method for detecting and quantifying levels of diflubenzuron in or on food with a limit of detection that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in wheat and barley commodities.

Residues of the individual analytes are detectable and quantifiable using three separate analytical methods. Residues of diflubenzuron are extracted from wheat and barley with dichloromethane and are purified with deactivated florisil. An aliquot of the extract is hydrolyzed with phosphoric acid and the diflubenzuron is partitioned into hexane. The resulting extract is derivatized in heptafluorobutyric anhydride (HFBA). Quantification of diflubenzuron is accompanied by gas chromatography using electron capture detection.

The analytical method for quantitation of the 4–chlorophenylurea requires ethyl acetate extraction of the residue from the crop matrix. Column chromatography is utilized for clean-up of the extract immediately prior to derivitiation with HFBA. Derivatized extracts are analyzed by gas chromatography equipped with an electron capture detector.

Analysis for the determination of PCA residues in wheat and barley matrices utilizes an internal standard method. Samples of matrix to be analyzed are fortified with an internal standard. Residues of 14C-PCA and the internal standard are subjected to acid and base hydrolysis. The final extract is passed through a florisil column for clean-up and derivatized with HFBA in hexane. An aliquot of the derivatized extract is analyzed by gas chromatography equipped with Mass Spectrometry detection. Recovery of PCA is determined from the combined peak areas for the two mass spectral ions obtained from the derivatized PCA relative to the response factor derived from the combined areas of the corresponding two mass spectral ions of the internal standard.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2006

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5392 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0178; FRL–7773–3]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Pesticide Chemicals in or on Various Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of pesticide chemicals in or on various food commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0178 and pesticide petition number PP 5E6930, by one of the following methods:

• *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA-HQ-OPP–2006–0178. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006–0178. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov 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 at regulations.gov, your e-mail address will be captured automatically 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*.

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• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of the pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the homepage of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 5E6930. Interregional Project Number 4, 681 Highway 1 South, North Brunswick, NJ 08902–3390, proposes to establish tolerances for residues of the herbicide lactofen (1–(carboethoxy) ethyl 5–2–chloro–4–(trifluoromethyl)phenoxy–2–nitrobenzoate) in or on various food commodities vegetable, fruiting, group and okra at 0.01 parts per million (ppm). Adequate analytical methodology is available for detecting and measuring levels of lactofen in or on various food commodities with a limit of detection that allows monitoring of food with residues at or above the level of the proposed tolerances. The method, RM–28D, has been successfully radiovalidated in conjunction with a tomato metabolism study, has undergone a successful independent laboratory validation trial, and was successfully validated by the EPA Analytical Chemistry Laboratory using peanut nutmeats and cottonseed. In general, the analytical method has a limit of detection of 0.005 ppm and a limit of quantitation of 0.01 ppm in crops.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2006.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5394 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0180; FRL–7773–5]

Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0180 and pesticide petition number PP 4E6853, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0180. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 number EPA–HQ–OPP–2006–0180. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The 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 at regulations.gov, your e-mail address will be captured automatically 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 regulation.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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket 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. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/.* To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.New TolerancePP 4E6853. Interregional Project Number 4 (IR4), 681 Highway 1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the herbicide phenmedipham (3–methoxycarbonylaminophenyl–3–methylcarbanilate) in or on food commodity spinach at 4.0 parts per million (ppm). The summary petition was prepared by Bayer CropScience, P. O. Box 12014, Research Triangle Park, NC 27709. An analytical method has been developed and validated for the determination of phenmedipham in or on spinach. Phenmedipham is extracted from spinach, cleaned-up with florisil , and quantified by high performance liquid chromatography with ultra-violet detection (HPLC-UV). No analytical method for the determination of phenmedipham in animal is needed since tolerances for residues in meat, milk, poultry and eggs are not required. Therefore, adequate analytical methodology is available for enforcement purpose and it allows detection of residues at or above the proposed tolerances.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2006.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5397 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0179; FRL–7773–4]

Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues

of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0179 and pesticide petition number PP 6E7036, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0179. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006–0179. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov 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 at regulations.gov, your e-mail address will be captured automatically 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 regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers; Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail: *brothers.shaja@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket 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. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set

forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 6E7036. Interregional Project Number 4, 681 Highway 1 South, North Brunswick, NJ 08902–3390, proposes to establish a tolerance for residues of the fungicide tebuconazole, alpha-[2–(4–Chlorophenyl)ethyl]-alpha-(1,1–dimethylethyl)–1H–1,2,4–triazole–1–ethanol in or on food commodity asparagus at 0.02 parts per million. An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in PAM II. The animal method has also been approved as an adequate enforcement method.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2006.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5398 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2006–0024; FRL–7765 –7]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Difenoconazole in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of difenoconazole in or on various commodities.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2006–0024 and pesticide petition numbers (PPs) 9E5076, 0F6155, 6F4748, and 8F4953, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2006–0024. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. 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 number EPA-HQ-OPP–2006–0024. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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 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 at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Bazuin, Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; 703–305–7381; e-mail: *bazuin.john@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket 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. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petitions summary.

New Tolerances

1. *PP 9E5076.* Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish import tolerances for residues of the fungicide difenoconazole in or on food or feed commodities Grapes at 0.1 parts per million (ppm); and Pome fruit at 0.1 ppm.

2. *PP 0F6155.* Corn, sweet, forage at 0.01 ppm; Corn, sweet, kernel plus cob with husks removed at 0.01 ppm; and Corn, sweet, stover at 0.01 ppm;

3. *PP 6F4748.* Barley, forage at 0.05 ppm; Barley, hay at 0.05 ppm; and Barley, straw at 0.05 ppm;

4. *PP 8F4953.* Cotton, gin byproducts at 0.05 ppm; and Cotton, undelinted seed at 0.05 ppm.

For the above food commodities, Syngenta Crop Protection, Inc., has submitted a practical analytical method (AG–575B) for detecting and measuring levels of difenoconazole in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA has validated this method and copies have been provided to the U. S. Food and Drug Administration (FDA) for insertion into pesticide analytical manual (PAM) II. For livestock commodities, a practical analytical method (AG–544A) for detecting and measuring levels of difenoconazole in or on cattle tissues and milk, and poultry tissues and eggs with an LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA has validated this method and copies have been provided to FDA for insertion into PAM II. Tolerances in meat, milk, poultry or eggs were established for enforcement purposes.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5391 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0131; FRL–7773–1]

Ferric Sodium EDTA; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food in the **Federal Register** of June 8, 2005. The notice of filing was for Ferric Sodium EDTA. This document is being issued to correct the chemical name ''Ferric Sodium EDTA,'' and to replace it with ''Sodium Ferric Hydroxy EDTA,'' and to reopen the comment period for 30 additional days.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0131, by one of the following methods:

• *http://www.regulations.gov/.* Follow the on-line instructions for submitting comments.

• Mail. Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• Hand Delivery. Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801

S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0131. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 number EPA–HQ–2005–0131. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/.*

Docket. All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7224; e-mail address: *peterson.todd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through *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:

i. Identify the document by docket 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. What Does this Correction Do?

FR Doc. 05–11165 published in the **Federal Register** of June 8, 2005 (70 FR 33474) (FRL–7715–5) is corrected as follows:

Beginning on page 33477, under pesticide petition PP 5F6899, submitted by the Woodstream Corporation, the name of the active ingredient ''Ferric sodium EDTA'' is corrected to read ''Sodium Ferric Hydroxy EDTA'' throughout the petition summary.

List of Subjects

Environmental protection, Ferric Sodium EDTA.

Dated: March 31, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–5336 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0234; FRL–7770–1]

Gentamicin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture to use the pesticide gentamicin(CAS No. 1403–66–3) to treat up to 26,600 acres of apples to control streptomycin-resistant fire blight. The Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0234, by one of the followingmethods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Hand Delivery: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA.

Attention: Docket ID number EPA–HQ–OPP–2006–0234. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. 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 number EPA–HQ–OPP–2006–0234. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically 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/docket.htm/*.

Docket: All documents in the docket are listed in the regulation.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 734–9831; fax number: (703) 308–5433; e-mail address:*ertman.andrew@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, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111)
• Animal production (NAICS code 112)
• Food manufacturing (NAICS code 311)
• Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket 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

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Michigan Department of Agriculture has requested the Administrator to issue a specific exemption for the use of gentamicin on apples to control streptomycin-resistant fire blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that gentamicin is needed to control streptomycin-resistant strains of *Erwinia amylovora*, the causal pathogen of fire blight due to lack of available alternatives and effective alternative control practices. Without the use of gentamicin, the applicant states that up to 50% of the yield of susceptible apple varieties could be lost in 2006.

From a public health standpoint, gentamycin is an antibiotic used to treat infections cause by many different types of bacteria. At this time, gentamycin is not registered for use as a pesticide under FIFRA. However, the Agency, along with other public health agencies are evaluating appropriate policy approaches for materials used as both an antibiotic and a pesticide.

The Applicant proposes to make no more than three applications of a wettable powder formulation of Agry-Gent 10-W that would be used on 26,600 acres of apples during a use season between April 1, 2006 through May 31, 2006 in the state of Michigan. If all 26,600 acres are treated, 199,500 pounds of product will be used (19,500 pounds of active ingredient).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Michigan Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 29, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–5396 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0326; FRL–8056–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 13, 2006 to March 24, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before May 12, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) no. EPA–HQ–OPPT–2006–0326, by one of the following methods.

- *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–2006–0326. 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 Docket'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–2006–0326. 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 regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through regulations.gov or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 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 OPPT Docket is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific

entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

vi. Provide specific examples to illustrate your concerns, and suggested 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 13, 2006 to March 24, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 03/13/06 TO 03/24/06

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0348	03/10/06	06/07/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–06–0349	03/10/06	06/07/06	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–06–0350	03/10/06	06/07/06	CBI	(S) Intermediate	(G) Polyoxyalkylene ether
P–06–0351	03/13/06	06/10/06	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–06–0352	03/13/06	06/10/06	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–06–0353	03/13/06	06/10/06	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–06–0354	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of hydroxyethyl isocyanurate triacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate and isobornyl acrylate with .beta.-ketoester and dibutylamine.
P–06–0355	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of hydroxyethyl isocyanurate triacrylate, dipropylene glycol diacrylate, ethoxylated trimethylol propane triacrylate and isobornyl acrylate with .beta.-ketoester and dibutylamine.

I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 03/13/06 TO 03/24/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0356	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of hydroxyethyl isocyanurate triacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate and phenoxyethyl acrylate with .beta.-ketoester and dibutylamine.
P–06–0357	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of hydroxyethyl isocyanurate triacrylate, dipropylene glycol diacrylate, ethoxylated trimethylol propane triacrylate and phenoxyethyl acrylate with .beta.-ketoester and dibutylamine.
P–06–0358	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of hydroxyethyl isocyanurate triacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate and isobornyl acrylate with .beta.-ketoester and dibutylamine.
P–06–0359	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of hydroxyethyl isocyanurate triacrylate, dipropylene glycol diacrylate, ethoxylated trimethylol propane triacrylate and isobornyl acrylate with .beta.-ketoester and dibutylamine.
P–06–0360	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of bisphenol a epoxy diacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate, hydroxyethyl acrylate and cyloalkyl diisocyanate with .beta.-ketoester, .beta.-diketone, dibutylamine and phenoxyethyl acrylate
P–06–0361	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of bisphenol a epoxy diacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate, hydroxyethyl acrylate and cyloalkyl diisocyanate with .beta.-ketoester, dibutylamine and phenoxyethyl acrylate
P–06–0362	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of bisphenol a epoxy diacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate, hydroxyethyl acrylate and cyloalkyl diisocyanate with .beta.-diketone, dibutylamine and phenoxyethyl acrylate
P–06–0363	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of bisphenol a epoxy diacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate, hydroxyethyl acrylate and methylenedicycloaklyl diisocyanate with .beta.-ketoester, .beta.-diketone, dibutylamine and phenoxyethyl acrylate

I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 03/13/06 TO 03/24/06—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0364	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of bisphenol a epoxy diacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate, hydroxyethyl acrylate and methylenedicycloalkyl diisocyanate with .beta.-ketoester, .beta.-diketone, dibutylamine and phenoxyethyl acrylate
P–06–0365	03/13/06	06/10/06	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of bisphenol a epoxy diacrylate, hexanediol diacrylate, ethoxylated trimethylol propane triacrylate, hydroxyethyl acrylate and methylenedicycloalkyl diisocyanate with .beta.-ketoester, .beta.-diketone, dibutylamine and phenoxyethyl acrylate
P–06–0366	03/13/06	06/10/06	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–06–0367	03/13/06	06/10/06	CBI	(G) Seals and gaskets-manufactured with fluoroelastomers	(G) Fluoroelastomer
P–06–0368	03/14/06	06/11/06	CBI	(G) Ultra violet light stabilizer	(G) Hindered amine
P–06–0369	03/15/06	06/12/06	CBI	(G) Coating component	(G) Mixed metal oxide complex
P–06–0370	03/15/06	06/12/06	Degussa Corporation	(S) Softener for pvc	(S) Benzoic acid nonyl ester, branched and linear
P–06–0371	03/17/06	06/14/06	Firmenich Inc.	(S) Aroma chemical for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) Benzene, (3-methoxy-2,2,3-trimethylbutyl)-
P–06–0372	03/20/06	06/17/06	CBI	(G) Polymer additive	(G) Alkyl benzene sulfonate
P–06–0373	03/21/06	06/18/06	CBI	(S) Resins for inks, coatings and adhesives	(G) Polyether polyurethane
P–06–0374	03/22/06	06/19/06	CBI	(G) Open, non-dispersive use.	(G) Polyester urethane
P–06–0375	03/22/06	06/19/06	Struktol Company of America	(S) Lubricant	(G) Bis diamide
P–06–0376	03/22/06	06/19/06	CBI	(G) Open, non-dispersive use.	(G) Acrylic resin
P–06–0377	03/22/06	06/19/06	CBI	(G) Corrosion inhibitor (dispersive use)	(S) Phosphonic acid, octyl-, monosodium salt
P–06–0378	03/22/06	06/19/06	CBI	(G) Corrosion inhibitor (dispersive use)	(S) Phosphonic acid, octyl-, disodium salt
P–06–0379	03/24/06	06/21/06	CBI	(G) Adhesive additive	(G) Alkyl substituted carbobicycle acid anhydride
P–06–0380	03/24/06	06/21/06	CBI	(G) Adhesive additive	(G) Alkyl substituted carbobicycle acid anhydride
P–06–0381	03/24/06	06/21/06	CIBA Specialty Chemicals Corporation	(S) exhaust application to nylon fabrics utilizing	(G) Sulfonyl phenyl amino substituted triazine naphthalenedisulfonic acid azo phenyl hydroxyl naphthalene hydroxyl azo naphthalenesulfonic acid chromium compound

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 19 NOTICES OF COMMENCEMENT FROM: 03/13/06 TO 03/24/06

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0756	03/22/06	03/08/06	(G) Polyesterpolyol, reaction product of aliphatic alcohols and dicarboxylic acids
P–04–0742	03/14/06	02/12/06	(G) Caprylic / capric glycerides
P–04–0857	03/15/06	02/10/06	(G) Alkaryl sulfonic acid
P–04–0869	03/15/06	02/24/06	(G) Alkaryl sulfonic acid, metal salts
P–04–0922	03/15/06	02/24/06	(G) Alkaryl sulfonic acid, metal salts

II. 19 NOTICES OF COMMENCEMENT FROM: 03/13/06 TO 03/24/06—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0927	03/15/06	02/10/06	(G) Alkaryl sulfonic acid
P–05–0049	03/22/06	02/23/06	(G) Diglycidyl bisphenol a adduct
P–05–0372	03/15/06	03/09/06	(G) Acrylic polymer
P–05–0374	03/15/06	02/16/06	(G) Acrylic polymer
P–05–0407	03/13/06	02/13/06	(G) Polyester
P–05–0599	03/21/06	03/03/06	(G) Substituted heteropolycycliciminium, 2-[2-[2-chloro-3-[(substituted heteropolycyclic)ethylidene]-1-cyclohexen]-1-yl]ethenyl]-, iodide
P–05–0617	03/21/06	03/14/06	(G) Benzoic acid (substituted)-, alkyl vegetable oil derivitives
P–05–0681	03/10/06	02/06/06	(G) Polyoxyethylene alkyl phosphoether salt
P–05–0777	03/15/06	02/01/06	(S) 1,3-butadiene, 2-methyl-, homopolymer, maleated, 2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl esters
P–05–0778	03/15/06	02/01/06	(S) 1,3-butadiene, 2-methyl-, homopolymer, epoxidized
P–05–0780	03/22/06	02/21/06	(G) Alkyl methacrylate copolymer
P–06–0067	03/13/06	02/16/06	(G) Modified acrylic polymer
P–06–0125	03/21/06	03/14/06	(G) Benzoic acid (substituted)-, akyl vegetable oil derivatives
P–06–0162	03/21/06	03/12/06	(G) Isocyanate functional urethane prepolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 4, 2006.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–5395 Filed 4–11–06; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, April 19, 2006, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: *Open Session:*

1. Announcement of Notation Votes, and
2. Race and Color Discrimination: EEOC Compliance Manual Section, and Invited Panelists.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: April 10, 2006.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 06–3548 Filed 4–10–06; 11:49 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

April 4, 2006.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 12, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLMENTARY INFORMATION:

OMB Control Number: 3060–0573.

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

Form Number: FCC Form 394.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 2,000.

Estimated Time per Response: 1 hour to 5 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 7,000 hours.

Total Annual Cost: $375,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Cable operators use FCC Form 394 to apply to the local franchise authority (LFA) for approval to assign or transfer control of a cable television system. With the information provided by FCC Form 394, LFAs can restrict profiteering transactions and other transfers that are likely to have an adverse effect on cable rates or service in the franchise area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5272 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

April 5, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments June 12, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0790.

Title: Section 68.110(c), Availability of Inside Wiring Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,200.

Estimated Time Per Response: 1 hour.

Frequency of Response: Recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 1,200 hours.

Annual Cost Burden: $5,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) after this 60 day comment period as an extension (no change in requirements) in order to obtain the full three year clearance from them.

Section 68.110(c) requires telephone companies to provide building owners with all available information regarding carrier installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information must be provided by the telephone company upon request of the building owner or agent thereof. The information is needed so that building owners may choose to contract with an installer of their choice for inside wiring maintenance and installation service, or elect to contract with the telephone company to modify existing wiring or assist with the installation of additional inside wiring.

OMB Control No.: 3060–0791.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Response: 36 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 36 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) after this 60 day comment period as an extension (no change in requirements) in order to obtain the full three year clearance from them.

In March 1997, the Commission established accounting rules that require carriers to account for adverse federal antitrust judgments and post-judgments special charges. To receive recognition of its avoided cost of litigation, a carrier must demonstrate, in a request for special relief, the avoided costs of litigation by showing the amount corresponding to the additional litigation expenses discounted to present value, that the carrier reasonably estimates it would have paid if it had not settled. A carrier requesting recovery of the avoided costs of litigation must accompany its request with clear and convincing evidence that, without the settlement, it would have incurred the expenses it estimates. The evidence will vary according to the circumstances.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5273 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 5, 2006.

SUMMARY: The Federal Communications Commission, as required by the Paperwork Reduction Act (PRA) of

1995, Public Law 104–13, and as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 12, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0398.

Title: Equipment Authorization Measurement Standards, 47 CFR 2.948 and 15.117(g)(2).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 320.

Estimated Time per Response: 5 to 30 hours.

Frequency of Response: Recordkeeping; One-time, three year, and on occasion reporting requirement; Third party disclosure.

Total Annual Burden: 9,100 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission uses this information to ensure that data accompanying all requests for equipment authorization are valid, and that proper testing procedures are used. Testing ensures that potential interference to radio communications is controlled, and if necessary, the data may be used for investigating complaints or harmful interference, or for verifying the manufacturer's compliance with FCC rules. The Commission eliminated the necessity for manufacturers to file UHF noise figure data documenting the performance of TV receivers tested and marketed in the U.S. in ET Docket 95–144.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5274 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2766]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 24, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by April 27, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Water Mill and Noyack, New York) (MB Docket No. 03–44).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5039 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2767]

Petition for Reconsideration of Action In Rulemaking Proceeding

March 28, 2006.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by April 27, 2006. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.622(b), Table of Allotments, FM Broadcast Station (Johnstown and Jeannette, Pennsylvania) (MB Docket No. 05–52).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–5040 Filed 4–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement 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.: 009857–011.

Title: Florida-Caribbean Cruise Association.

Parties: Carnival Cruise Lines; Celebrity Cruises; Costa Cruise Lines;

Cunard Line, Ltd.; Disney Cruise Line; Holland America Line; MSC Cruises (USA) Inc.; Norwegian Cruise Line; Princess Cruises; Radisson Seven Seas Cruises; Royal Caribbean International; and Windstar Cruises.

Filing Party: Matthew Thomas, Esq.; Troutman Sanders LLP; 401 9th Street, NW.; Suite 1000; Washington, DC 20004–2134.

Synopsis: The amendment changes Radisson Seven Seas Cruises to ''Regent Seven Seas Cruises.''

Agreement No.: 010979–042.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd.; CMA CGM, S.A.; CP Ships USA, LLC; Crowley Liner Services, Inc.; Interline Connection, N.V.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Co., Ltd.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds a new Article 5.H to the Agreement that would authorize the members to enter into agreements with other persons or entities to form and administer a non-profit corporate entity to provide administrative services to the Agreement. It also deletes extraneous material and updates the addresses of three of the parties.

Agreement No.: 010982–038.

Title: Florida-Bahamas Shipowners and Operators Association.

Parties: Atlantic Caribbean Line, Inc.; Crowley Liner Services, Inc.; G&G Marine, Inc.; Pioneer Shipping Ltd.; Seaboard Marine, Ltd.; and Tropical Shipping and Construction Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds a new Article 5.8 to the Agreement that would authorize the members to enter into agreements with other persons or entities to form and administer a non-profit corporate entity to provide administrative services to the Agreement.

Agreement No.: 011938–001.

Title: HSDG/Alianca/CSAV/Libra/Montemar Cooperative Working Agreement.

Parties: Hamburg-Sud; Alianca Navegacao e Logistica Ltda. e CIA; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Montemar Maritima S.A.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The amendment would add authority for the parties to coordinate their sailing schedules through the establishment of a joint operations center. It would also rename and republish the agreement.

Agreement No.: 011953.

Title: Florida Shipowners Group Agreement.

Parties: Bernuth Lines, Ltd.; CMA CGM SA; CP Ships USA LLC; Crowley Liner Services, Inc.; Interline Connection, NV; Seaboard Marine, Ltd.; Tropical Shipping & Construction Co., Ltd.; Zim Intergrated Shipping Services, Ltd.; Atlantic Caribbean Line, Inc.; Crowley Liner Services, Inc.; G&G Marine, Inc.; Pioneer Shipping Ltd.; Seaboard marine, Ltd.; Tropical Shipping & Construction Co., Ltd.

Filing Party: Wayne R. Rhode, Esq.; Sher & Blackwell, 1800 M Street, NW. Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the formation of a legal entity to provide administrative services to the member agreements. It further authorizes that entity to provide such services to the member agreements.

By Order of the Federal Maritime Commission.

Dated: April 7, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–5428 Filed 4–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 013448N.
Name: Accel Transport Co., Inc.
Address: 2132–A East Dominguez Street, Long Beach, CA 90810
Date Revoked: March 21, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017713F.
Name: Bondex Air & Sea Logistic, Inc.
Address: 731 S. Garfield Ave., Ste. #B, Alhambra, CA 91801
Date Revoked: March 14, 2006.
Reason: Surrendered license voluntarily.

License Number: 018480N.
Name: California Export Line, Inc.
Address: 92 Corporate Park, C–242, Irvine, CA 92606
Date Revoked: March 8, 2006.
Reason: Failed to maintain a valid bond.

License Number: 013993N.
Name: Cargomar USA, Inc.
Address: 121 West Tazewell Street, Norfolk, VA 23510
Date Revoked: March 30, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018863N.
Name: Centrum Overseas Transport, Inc.
Address: 7916 Kern Lane, Fort Worth, TX 76137
Date Revoked: March 31, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018334F.
Name: Continental Logistic Service Inc.
Address: 325 W. 131st Street, Los Angeles, CA 90061.
Date Revoked: March 31, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004309F.
Name: East West North South Forwarding, Inc.
Address: 3511 NW 113th Court, Miami, FL 33178.
Date Revoked: March 29, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019592NF.
Name: George Mario Luna dba Four Points International.
Address: 16 Nantucket Court, Howell, NJ 07731.
Date Revoked: March 12, 2006.
Reason: Failed to maintain valid bonds.

License Number: 019464N.
Name: La Costa Logistics Services, Inc.
Address: 2842 Corte Papaya, Carlsbad, CA 92009.
Date Revoked: March 15, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018412NF.
Name: MBC Brokers Inc.
Address: 2905A North Sepulveda Blvd., #303, Manhattan Beach, CA 90266–2729.
Date Revoked: March 21, 2006.
Reason: Surrendered license voluntarily.

License Number: 003074F.
Name: Robert A. Carranza
Address: c/o United Customhouse Brokers, Inc., 5777 W. Century Blvd. Ste. 590, Los Angeles, CA 90045
Date Revoked: March 30, 2006.

Reason: Failed to maintain a valid bond.

License Number: 019271NF.

Name: Xima Freight Services, Inc.

Address: 8217 NW 66th Street, Miami, FL 33166

Date Revoked: March 31, 2006.

Reason: Failed to maintain valid bonds.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–5425 Filed 4–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
002833F	Barry International Forwarding, Inc., 88 Black Falcon Ave., Suite 167, Boston, MA 02210.	February 9, 2006.
003984F	Superior Shipping, Inc., 3039 N.E., Quayside Lane, Miami, FL 33138	June 2, 2005.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–5426 Filed 4–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

MTM International Logistics LLC, 9737 NW 41 Street, Suite 118, Doral, FL 33178.

Officers: Quillermo Sigfrio Carbi Haubold, Manager (Qualifying Individual); Mariano Ibanez Perez, Manager.

Jamteck Int'l Shipping Inc., 4633 Richardson Ave., Bronx, NY 10410.

Officers: Angela Banett Walker, President (Qualifying Individual); Donald Barnett, Vice President.

Sun Fine Systems, Inc., 12335 Denholm Drive, Unit C, El Monte, CA 91732.

Officers: David Sun, CEO (Qualifying Individual); Jie Chen, CFO.

Inter-Connect Transportation, Inc., 8901 S. La Cienega Blvd., #203, Inglewood, CA 90301.

Officer: Hew Hwon Kim, President (Qualifying Individual).

Sosua Shipping, Inc., 608 West 192nd Street, New York, NY 10040.

Officers: Juan Luis Sanchez, President (Qualifying Individual); Dianelly Rivas, Director.

International Shipping Express, Inc., 5110 Firestone Place, South Gate, CA 90280.

Officers: Catalina Eleana Cruz, CFO (Qualifying Individual); Gilbert Espinoza, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Sea Global Logisticss Inc., 21112 Figueroa Street, Suite #A–1, Carson, CA 90745.

Officers: Jeff Yang, President (Qualifying Individuals); Polly Yang, Secretary.

Hong Logistics, Inc., 852 Fairview Ave., #6.

Officer: Hong L, CEO, (Qualifying Individual).

Global Freight Inc., 975 East Nerge Road, Suite S–130, Roselle, IL 60172.

Officer: Sebastiano Uzielli De Mari, President (Qualifying Individual).

Global Logisstics Services, Inc., 9667 NW 33rd Street, Miami, FL 33172–1100.

Officers: Karla Rushton, Vice President (Qualifying Individual); Edward J. Boroski, President.

MK Freight Forwarding Inc., 160 Wallabout Street, Brooklyn, NY 11206–5418.

Officers: Vladimir A. Mirovitski, Managing Director (Qualifying Individual); Moshe Krause, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Continental Shipping Group Inc., 670 So. 21st Street, Irvington, NJ 07111.

Officers: Lawrence Serronico, Vice President (Qualifying Individual); Zdzislaw Lesniewski, President.

Shipping Services Italia Inc., 580 Broadway, Suite 712, New York, NY 10012.

Officer: Alessandra Fremura, CEO (Qualifying Individual).

USA Express Moving and Storage Inc., 701 Canal Street, Bristol, Pa 19007.

Officers: Dana Crosson, Sales Manager (Qualifying Individual); Yuval Rosenzweig, President.

OOCL Logistics (USA) Inc., 88 Pine Street, 5th Floor, New York, NY 10005.

Officers: Joseph P. Hogan, President (Qualifying Individual); Philip LaForgia, Jr., Vice President.

Global Services of Nevada, Inc., 1607 Guilford Drive, Henderson, NV 89014.

Officer: Tina A. Immormino, President (Qualifying Individual).

Dated: April 7, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–5427 Filed 4–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer — Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer — Mark Menchik––Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates

Agency form number: FR Y–8

OMB control number: 7100–0126

Frequency: Quarterly

Reporters: All top–tier bank holding companies (BHCs), including financial holding companies (FHCs), and foreign banking organizations (FBOs) that directly own U.S. subsidiary banks.

Annual reporting hours: 53,419 hours

Estimated average hours per response: Institutions with covered transactions: 7.8 hours; institutions without covered transactions: 1 hour

Number of respondents: 6,310

General description of report: This information collection is mandatory (section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)) and is given confidential treatment (5 U.S.C 552(b)(4) and (8)).

Abstract: This reporting form collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The primary purpose of the data is to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure banks' compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.

Discontinuation of the following reports:

1. Report title: Weekly Report of Eurodollar Liabilities Held by Selected U.S. Addressees at Foreign Offices of U.S. Banks

Agency form number: FR 2050

OMB Control number: 7100–0068

Effective Date: Respondents submitted their final data for the reporting week ending March 6, 2006.

Frequency: Weekly

Reporters: Foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 1,872 hours

Estimated average hours per response: 1.0 hour

Number of respondents: 36

General description of report: This information collection is voluntary (12 U.S.C.§§ 248(a)(2), 353 et seq., 461, 602, and 625). Individual respondent's data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: This reporting form collected data on Eurodollar deposits payable to nonbank U.S. addressees from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations. The data were used for the construction of the Eurodollar component of the monetary aggregates and for analysis of banks' liability management practices.

Current Actions: The Board of Governors of the Federal Reserve System announced on November 10, 2005, that it would cease publication of the M3 monetary aggregate on March 23, 2006. M3 does not appear to contain any additional information about economic activity that is not already embodied in M2. Moreover, the role of M3 in the monetary policy process has greatly diminished over time. The costs to the Federal Reserve and the private sector of collecting data and publishing M3 now outweigh the benefits. The discontinuation of this report will reduce private sector burden by 1,872 hours per year. On January 24, 2006, the Federal Reserve published a notice soliciting comments on the proposed discontinuance to the FR 2050 reporting form (71 FR 3844). The comment period ended on March 27, 2006. The Federal Reserve did not receive any comments on the discontinuance.

2. Report title: Report of Repurchase Agreements (RPs) on U.S. Government and Federal Agency Securities with Specified Holders

Agency form number: FR 2415

OMB Control number: 7100–0074

Effective Date: Weekly reporters submitted their final FR 2415 for the report week ending March 6, 2006. Quarterly reporters submitted their final data for the week containing the last calendar day of December 2005. Annual reporters submitted their final data for the week containing June 30, 2005.

Frequency: Weekly, quarterly, or annually

Reporters: U.S chartered commercial banks, U.S branches and agencies of foreign banks, thrift institutions, and credit unions

Annual reporting hours: 2,615 hours

Estimated average hours per response: 30 minutes

Number of respondents: 84 weekly, 128 quarterly, and 350 annually

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This reporting form collected one data item, repurchase agreements (RPs), in denominations of $100,000 or more, in immediately–available funds, on U.S. government and federal agency securities, transacted with specified holders. Depository institutions submitted the FR 2415 weekly, quarterly or annually depending on the volume of their RPs. In general, the larger the respondent's level of RPs, the more frequent the submissions. The weekly panel submitted daily data once each week; the quarterly panel files daily data for the four one–week reporting periods that contain quarter–end dates; the annual panel submitted daily data only for the week encompassing June 30 each year. The primary purpose of the data was for construction of the RP component of the M3 monetary aggregate and for analysis of depository institutions' funding practices.

Current Actions: The Board of Governors of the Federal Reserve

System announced on November 10, 2005, that it would cease publication of the M3 monetary aggregate on March 23, 2006. M3 does not appear to contain any additional information about economic activity that is not already embodied in M2. Moreover, the role of M3 in the monetary policy process has greatly diminished over time. The costs to the Federal Reserve and the private sector of collecting data and publishing M3 now outweigh the benefits. The discontinuation of this report will reduce private sector burden by 2,615 hours per year. On January 24, 2006, the Federal Reserve published a notice soliciting comments on the proposed discontinuance to the FR 2415 reporting form (71 FR 3844). The comment period ended on March 27, 2006. The Federal Reserve did not receive any comments on the discontinuance.

Board of Governors of the Federal Reserve System, April 7, 2006.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E6–5351 Filed 4–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Community Bank Shares of Indiana, Inc., and CBIN Subsidiary, Inc., both of New Albany, Indiana; to acquire 100 percent of the voting shares of The Bancshares, Inc., Scottsburg, Indiana, and thereby indirectly acquire voting shares of The Scott County State Bank, Scottsburg, Indiana.

In connection with this application, CBIN Subsidiary, Inc., New Albany, Indiana, has applied to become a bank holding company by acquiring 100 percent of the voting shares of The Bancshares, Inc., Scottsburg, Indiana, and thereby indirectly acquire voting shares of The Scott County State Bank, Scottsburg, Indiana.

Board of Governors of the Federal Reserve System, April 6, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5348 Filed 4–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 2006.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Franklin Financial Services Corporation, Chambersburg, Pennsylvania; to merge with Fulton Bancshares Corporation, McConnellsburg, Pennsylvania, and thereby indirectly acquire voting shares of The Fulton County National Bank and Trust Company, McConnellsburg, Pennsylvania.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Docking Bancshares, Inc., Arkansas City, Kansas; to acquire 100 percent of the voting shares of City National Bancshares, Inc., Guymon, Oklahoma, and thereby indirectly acquire voting shares of The City National Bank and Trust Company of Guymon, Guymon, Oklahoma.

2. Republic Corporation, Omaha, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of United Republic Bank, Omaha, Nebraska (in organization).

Board of Governors of the Federal Reserve System, April 7, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–5353 Filed 4–11–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator: American Health Information Community Meeting; Cancellation and New Meeting Date

SUMMARY: This notice announces the fifth meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to

achieve a common interoperability framework for health information technology (IT). The April 25, 2006 meeting has been canceled.

NEW DATE: May 16, 2006 from 8:30 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: A Webcast of the Community meeting will be availabe on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting please contact (202) 690–7151.

Kelly Cronin,

Director, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–3495 Filed 4–11–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Biosurveillance Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fourth meeting of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: April 26, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/bio_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 3, 2006.

Kelly Cronin,

Director, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–3496 Filed 4–11–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fourth meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: April 26, 2006 from 10 a.m. to 12 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ehr_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 3, 2006.

Kelly Cronin,

Director, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–3497 Filed 4–11–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fourth meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: April 24, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cc_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 3, 2006.

Kelly Cronin,

Director, Office of Programs and Coordination; Office of the National Coordinator.

[FR Doc. 06–3498 Filed 4–11–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the fourth meeting of the American Health Information Community Consumer Empowerment workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92—463, 5 U.S.C., App.).

DATES: April 25, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cc_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: April 3, 2006.

Kelly Cronin,

Director, Office of Programs and Coordination; Office of the National Coordinator.

[FR Doc. 06–3499 Filed 4–11–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Capacity-Building Assistance to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for Individuals with Known HIV-Positive Serostatus and Their Partners, PS 06–608

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

NAME: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Capacity-Building Assistance to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for Individuals with Known HIV-Positive Serostatus and Their Partners, PS 06–608.

TIMES AND DATES: 3 p.m.–5:40 p.m., May 3, 2006 (Closed) 9 a.m.–6 p.m., May 4, 2006 (Closed) 9 a.m.–12 p.m., May 5, 2006 (Closed)

PLACE: Atlanta Marriott North Central, 2000 Century Boulevard NE., Atlanta, GA 30345 Telephone 404.325.0000.

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 applications received in response to Capacity-Building Assistance to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for Individuals with Known HIV-Positive Serostatus and Their Partners, PS 06–608.

FOR MORE INFORMATION CONTACT: Beth Wolfe, Designated Federal Official, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE, MS E–07, Atlanta, GA 30333, Telephone 404.639.8531.

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 5, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5361 Filed 4–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention; National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Community and Tribal Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), The Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee meeting:

Name: Community and Tribal Subcommittee (CTS).

Time and Date: 8:30 a.m.–4:30 p.m., May 3, 2006.

Place: Century Center, 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 30 people.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the CTS will provide the BSC, NCEH/ATSDR with a forum for community and tribal first-hand perspectives on the interactions and impacts of NCEH/ATSDR's national and regional policies, practices and programs.

Matters to Be Discussed: The meeting agenda will include a discussion on Environmental Justice—development of a strategy and ideas for implementation within the agencies; a presentation of the Anniston, Alabama Community Resource Directory Project; a presentation of the Bell Gardens, California Asthma Study; and an update of tribal requested Projects.

Items are subject to change as priorities dictate.

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 NCEH/ATSDR.

Dated: April 5, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5358 Filed 4–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics

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), National Center for Health Statistics (NCHS) announces the following committee meeting.

NAME: Board of Scientific Counselors (BSC), NCHS.

TIMES AND DATES: 2 p.m.–5:30 p.m., May 4, 2006. 8:30 a.m.–2 p.m., May 5, 2006.

PLACE: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

PURPOSE: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

MATTERS TO BE DISCUSSED: The agenda will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below by April 21, 2006. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by April 21, 2006.

The agenda items are subject to change as priorities dictate.

FOR MORE INFORMATION CONTACT: Virginia S. Cain, PhD., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

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 6, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5359 Filed 4–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 23, 2006, from 9:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Nancy Wersto, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, ext. 144, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512526. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear a presentation explaining FDA's Critical Path Initiative and a presentation by the Office of Surveillance and Biometrics in the Center for Devices and Radiological Health outlining their responsibility for the review of postmarket study design. Subsequently, FDA will present key points for the committee to consider for the reclassification of full field digital mammography (FFDM) systems from Class III to Class II devices. The committee will discuss and make recommendations on the reclassification of FFDMs. Background information for this meeting, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel*.

Procedure: On May 23, 2006, from 10 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 9, 2006. Oral presentations from the public will be scheduled between approximately 11:45 a.m. and 12:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 9, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 23, 2006, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) on current and pending issues regarding radiological devices.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240–276–0450, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 5, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–5411 Filed 4–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 2, 2006, from 10 a.m. to 2 p.m.

Location: Omni Hotel at CNN Center, International Ballroom, 100 CNN Center, Atlanta, Georgia. The hotel phone number is 404–659–0000.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cliffordj@cder.fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–986, proposed trade name SPRYCEL (dasatinib) tablets, Bristol-Myers Squibb Co., with proposed indications for the: (1) Treatment of adults with chronic, accelerated, or blast phase chronic myeloid leukemia with resistance or intolerance to prior therapy including imatinib and (2) treatment of adults with Philadelphia chromosome–positive acute lymphoblastic leukemia, and lymphoid blast chronic myeloid leukemia with resistance or intolerance to prior therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 18, 2006. Oral presentations from the public will be scheduled between approximately 12 noon and 1 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 18, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the

agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Johanna Clifford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 5, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–5413 Filed 4–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2006–0014]

Advisory Committee Candidate Biographical Information Request (DHS Form 0001–1)

AGENCY: Office of the Executive Secretariat, DHS.

ACTION: Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies to comment on a new information collection request (ICR), DHS Advisory Committee Candidate Biographical Information Request Form (DHS Form 0001–1). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. Chapter 35), DHS is soliciting comments for the new information collection request.

DATES: Written comments should be received on or before June 12, 2006. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: If you desire to submit comments, they must be submitted by June 12, 2006. Comments must be identified by Docket Number [DHS–2006–0014] and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Office of the Executive Secretariat, 245 Murray Lane, SW., Bldg. #410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Georgia Abraham, 202–282–9150 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: A copy of this Information Collection Request may be obtained by calling the contact listed above, or by visiting the docket on-line, as described below.

Description: The Advisory Committee Biographical Information Request provides persons who express an interest in serving on a DHS Advisory Committee the opportunity to request appointment to the committee by completing an application form (DHS Form 0001–1).

Public Participation

The Department of Homeland Security and the Office of Management and Budget are particularly interested in comments which:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Instructions

All submissions received must include the agency name and docket number [DHS–2006–0014] for this Information Collection Request. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

Analysis

Agency: Department of Homeland Security, Office of the Executive Secretariat.

Title: Advisory Committee Candidate Biographical Information Request

OMB Control Number: 1601–NEW.

Frequency: On occasion.

Affected Public: Individuals or households.

Estimated Number of Respondents: 480.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 120.

Total Cost Burden: None.

Scott Charbo,

Chief Information Officer.

[FR Doc. E6–5349 Filed 4–11–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, May 18, 2006.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on May 18, 2006 at 7:00 p.m. at Sutton Town Hall, 4 Uxbridge Road, Sutton, MA for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Larry Gall, Interim Executive Director, John H. Chafee, Blackstone River Valley National Heritage, Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250. Further information concerning this meeting may be obtained from Larry Gall, Interim Executive Director of the Commission at the aforementioned addreses.

Larry Gall,

Interim Executive Director BRVNHCC.

[FR Doc. E6–5360 Filed 4–11–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Chiricahua Leopard Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Draft Recovery Plan for the Chiricahua Leopard Frog (Draft Recovery Plan) for public review. The species occurs in montane and river valley cienegas, springs, pools, cattle tanks, reservoirs, streams, and rivers in central and southeastern Arizona, west-central and southwestern New Mexico, and the sky islands and Sierra Madre Occidental of northeastern Sonora and western Chihuahua, Mexico, at elevations of approximately 3,000–9,000 feet. The Draft Recovery Plan recommends actions to lessen and alleviate threats to the species, and presents objective and measurable delisting criteria. The Service solicits review and comment from the public on this Draft Recovery Plan.

DATES: The comment period for this Draft Recovery Plan closes June 12, 2006. Comments on the Draft Recovery Plan must be received by the closing date to assure consideration.

ADDRESSES: Persons wishing to review the Draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. The Draft Recovery Plan may also be obtained from the Internet at *http://www.fws.gov/endangered* (type ''Chiricahua leopard frog'' in the Species search field). Comments and materials concerning this Draft Recovery Plan may be mailed to ''Field Supervisor'' at the address above.

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh, Arizona Ecological Services Field Office, at the above address; telephone (602) 242–0210, facsimile (602) 242–2513.

SUPPLEMENTARY INFORMATION:

Background

The Chiricahua leopard frog (*Rana chiricahuensis*) was listed as threatened on June 13, 2002, under authority of the Endangered Species Act of 1973, as amended (67 FR 40790). The range of the Chiricahua leopard frog (*Rana chiricahuensis*) is divided into two parts, including—(1) A southern group of populations (the majority of the species' range) located in mountains and valleys south of the Gila River in southeastern Arizona, extreme southwestern New Mexico, and Mexico; and (2) northern montane populations in west central New Mexico and along the Mogollon Rim in central and eastern Arizona. The distribution and status of the species in Mexico is not well understood. The threats facing the survival and recovery of this species include predation by non-native fish, amphibians, and crayfish; the fungal disease chytridiomycosis; climatic extremes (e.g., drought, floods); degradation and loss of habitat as a result of water diversions, groundwater pumping, catastrophic fire, mining, and some livestock management; disruption of metapopulation dynamics; increased chance of extinction resulting from small populations; and possibly environmental contamination.

The delisting criteria proposed in the Draft Plan recommend that the Chiricahua leopard frog should be considered for delisting when: (1) At least two metapopulations located in different drainages plus at least one isolated and robust population in each of eight recovery units exhibit long-term persistence and stability; (2) aquatic breeding habitats are protected; (3) additional habitat needed for population connectivity, recolonization, and dispersal is protected and managed; and (4) threats and causes of decline have been reduced or eliminated, and commitments of long-term management are in place in each recovery unit. High-priority recovery tasks to lessen and alleviate these threats include actions to protect remaining populations and habitat; restore unoccupied habitats and create new habitat; establish new populations and augment existing populations; monitor; and develop conservation efforts on private, public, and tribal land, and in Mexico.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and others also take these comments into account in the course of implementing recovery plans.

The Chiricahua Leopard Frog Draft Recovery Plan is being submitted for review to all interested parties, including independent peer review. After consideration of comments received during the review period, the recovery plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 15, 2006.

Benjamin N. Tuggle,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E6–5354 Filed 4–11–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Cowlitz Indian Tribe's Proposed 151.87 Acre Fee-to-Trust Transfer, Reservation Proclamation and Casino-Resort Project, Clark County, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Cowlitz Indian Tribe (Tribe), National Indian Gaming Commission, Federal Highway Administration, U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Washington Department of Transportation, Clark County, Clark County Sheriff's Office, Cowlitz County, City of La Center, City of Vancouver, City of Ridgefield, Port of

Ridgefield, City of Woodland, and City of Battle Ground as cooperating agencies, intends to file a Draft Environmental Impact Statement (DEIS) with the EPA for the proposed 151.87 acre fee-to-trust transfer, reservation proclamation, and casino-resort complex construction. This notice also announces two public hearings to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by July 14, 2006. The public hearings will be held June 14 and 15, 2006, starting at 6 p.m. and continuing until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Stanley Speaks, Director, Northwest Region, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232.

Both public hearings will be held at the Skyview High School, 1300 NW. 139th Street, Vancouver, Washington 98685. The BIA will be hosting these hearings.

The DEIS is available for public review at the following branches of the Ft. Vancouver Public Library: La Center Community Library, 1402 E. Lockwood Creek Road, La Center, Washington 98629; and Ridgefield Community Library, 210 North Main Avenue, Ridgefield, Washington 98642. General information for the Ft. Vancouver Public Library system can be obtained by calling (360) 695–1561. The DEIS is also available on the following Web sites: *http://analyticalcorp.com/ and http://www.cowlitz.org/.*

If you would like to obtain a copy of the DEIS, please write to Chuck James, Acting Regional Environmental Protection Specialist, at the address provided above for the Northwest Region, or call him at the number provided below.

FOR FURTHER INFORMATION CONTACT: Chuck James, (530) 231–6229.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take 151.87 acres of land into trust on behalf of the Tribe, for which the BIA would issue a reservation proclamation and on which the Tribe proposes to develop a casino-resort complex. The proposed project site encompasses eight contiguous tax lots in Clark County, Washington, near the cities of La Center and Ridgefield. The project site is located along NW. 319th Street between NW. 41st Avenue and NW. 31st Avenue, and adjacent to Interstate 5 (I–5) at the NW. 319th Street Interchange (the La Center Interchange).

The proposed casino-resort complex would include an RV park, wastewater treatment plant, Tribal offices, a cultural center and Tribal elder housing. Regional access to the project site would continue to be via I–5. The NW. 319th Street would provide primary access to local housing to the west of the site and to the casino-resort complex. It would, however, be re-routed to a more southerly location within the proposed project site to allow development of the casino and hotel facilities north of NW. 319th Street, without encroachment into wetlands and wetland buffer areas.

A range of project alternatives is considered in the DEIS, including: (1) Proposed casino-resort complex; (2) proposed casino-resort complex without re-routing NW 319th Street; (3) reduced intensity; (4) business park; (5) casino-resort complex at the Ridgefield Interchange Site; and (6) no action. Environmental issues to be addressed in the DEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, indirect effects and mitigation.

The BIA held a public scoping meeting on the project on December 1, 2004 in Vancouver, Washington.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 27, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–5383 Filed 4–11–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–MJ; HAG 06 0105]

John Day/Snake Resource Advisory Council: Notice of Public Meeting

AGENCY: Bureau of Land Management (BLM), Prineville District.

ACTION: Notice of Public Meetings—John Day/Snake Resource Advisory Council (RAC).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the Department of the Interior, BLM John Day Snake RAC will meet as indicated below:

The John Day/Snake RAC is scheduled to meet on May 3, 2006, at the Best Western Prineville Inn, 1475 NE 3rd Street, Prineville, Oregon 97754 and on September 13, 2006 at the Best Western John Day Inn, 315 W. Main, John Day, Oregon 97845. The meeting times will be from approximately 8 a.m. to 4 p.m. A public comment period will begin at 1 p.m. and end at 1:15 p.m. (Pacific Standard Time). The meetings may include such topics as off-highway vehicle and travel management, noxious weeds, planning, Sage grouse, and other matters as may reasonably come before the council.

Meeting Procedures: The meeting is open to the public. The public may present written comments to the RAC. Depending on the number of persons wishing to provide oral comments and agenda topics to be covered, the time to do so may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM representative indicated below. For a copy of the information to be distributed to the RAC members, please submit a written request to the BLM Prineville District Office 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake RAC may be obtained from Virginia Gibbons, BLM Public Affairs Specialist, Prineville District

Office, 3050 NE. Third Street, Prineville, Oregon 97754, (541) 416–6647 or e-mail *Virginia Gibbons@or.blm.gov.*

Dated: April 5, 2006.

A. Barron Bail,

District Manager.

[FR Doc. E6–5355 Filed 4–11–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 17, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International-Standards (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between November 2005 and February 2006, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on November 16, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 2005 (70 FR 72468).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–3494 Filed 4–11–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on March 16, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASUSTek Computer Inc., Taipei, Taiwan; DongGuan Evervictory Electronic Co., Ltd., DongGuan City, People's Republic of China; Duplium Corporation, Thornhill, Ontario, Canada; Exatel Visual Systems Ltd., Rehovot, Israel; General Motors Corporation, Detroit, MI; Gowell Electronic Limited, Guang Dong, People's Republic of China; Hon Hai Precision Industry, Co., Ltd., Taipei Hsien, Taiwan; Horizon Semiconductors Ltd., Herzliya, Israel; Metta Technology, San Jose, CA; Netflix Inc., Los Gatos, CA; Replimaster LTD Corporation, Moscow, Russia; Shenzhen MTC Multimedia Co., Ltd., Shenzhen, People's Republic of China; Sichuan Changhong Electric Co., Ltd., Sichuan, People's Republic of China; Unicorn Information System Co., Ltd., Seoul, Republic of Korea; X-Protect Technology GmbH, Bochum, Germany; and Zhongshan Worthy Electronics Industry Co., Ltd., Guangdong, People's Republic of China have been added as parties to this venture.

Also, ALi Corporation, Taipei, Taiwan; Bontec Co., Ltd., Seoul, Republic of Korea; Enlight Corporation, Taipei Hsien, Taiwan; Genesis Microchip Inc., Alviso, CA; and Mitac International Corp., Hsinchu, Taiwan have withdrawn as parties to this venture. In addition, Sea Star Industry Co., Ltd. has changed its name to ShenZhen Sea Star Technology Co., Ltd., Shenzhen, People's Republic of China.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on December 16, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 18, 2006 (71 FR 2960).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–3493 Filed 4–11–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications Of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 24, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 24, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S.

Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of April 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/27/06 and 3/31/06]

TA–W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
59085	Barry Controls Defense and Industrial (State)	Camden, AR	03/27/06	03/24/06
59086	Flynn, LLC (Wkrs)	Greenville, KY	03/27/06	03/24/06
59087	Falcon Footwear Company (The) (Comp)	Lewiston, ME	03/27/06	03/23/06
59088	Moore Wallace, Inc. (Comp)	Iowa City, IA	03/27/06	03/24/06
59089	Affiliated Computer Services, Inc. (Wkrs)	Dallas, TX	03/27/06	03/24/06
59090	Culp, Inc. (Comp)	Graham, NC	03/28/06	03/27/06
59091	Eaton Corporation (Comp)	Marshall, MI	03/28/06	03/27/06
59092	Rapid Precision Machining (Comp)	Victor, NY	03/28/06	03/24/06
59093	Dana—Fluid Routing Group (State)	Paris, TN	03/28/06	03/27/06
59094	U.S. Baird Corporation (State)	Stratford, CT	03/28/06	03/27/06
59095	Burlington House Finishing Plant (Comp)	Burlington, NC	03/28/06	03/27/06
59096	dj Orthopedics (Comp)	Vista, CA	03/28/06	03/21/06
59097	Wolverine Proctor and Schwartz (State)	Merrimac, MA	03/28/06	03/28/06
59098	York International (UAW)	York, PA	03/28/06	03/24/06
59099	Delta Technicall Operations (Wkrs)	Atlanta, GA	03/28/06	03/10/06
59100	Thomasville Furniture (State)	Conover, NC	03/29/06	03/28/06
59101	SGI (Wkrs)	Chippewa Falls, WI	03/29/06	03/16/06
59102	I.M.C. (Wkrs)	Chicago, IL	03/29/06	03/24/06
59103	Ceramo Co., Inc. (Comp)	Jackson, MO	03/29/06	03/27/06
59104	TRW Automotive (Comp)	Cookeville, TN	03/29/06	03/21/06
59105	Solo Cup (State)	St. Albans, VT	03/29/06	03/28/06
59106	Barcoview, LLC (State)	Duluth, GA	03/29/06	03/23/06
59107	Guilford Mills, Inc. (Comp)	Greensboro, NC	03/29/06	03/28/06
59108	Dresser-Rand Steam Turbine Business Unit (Comp)	Millbury, MA	03/29/06	03/28/06
59109	Fuji Photo Film, Inc. (Comp)	Greenwood, SC	03/29/06	03/28/06
59110	Sony Electronics (Wkrs)	Mt. Pleasant, PA	03/29/06	03/29/06
59111	Eastman Kodak Co. (Wkrs)	Rochester, NY	03/29/06	03/28/06
59112	Volex, Inc. (Comp)	Clinton, AR	03/29/06	03/29/06
59113	Sara Lee Branded Apparel (Comp)	Galax, VA	03/29/06	03/22/06
59114	King Louie International (Comp)	Grandview, MO	03/30/06	03/22/06
59115	Pleasant Hill Mfg. Co. (Comp)	Baxter Springs, KS	03/30/06	03/22/06
59116	Pro Fit Cap Co. (Comp)	Paola, KS	03/30/06	03/22/06
59117	Point Technologies (State)	Gibbon, Mn	03/30/06	03/23/06
59118	Thomson, Inc. (Wkrs)	Circleville, OH	03/30/06	03/24/06
59119	Nanston, Inc. (Wkrs)	Norcross, GA	03/30/06	03/07/06
59120	Fruit of the Loom (Comp)	Rabun Gap, GA	03/30/06	03/23/06
59121	Rhodia Pharma Solutions (State)	Deepwater, NJ	03/30/06	03/30/06
59122	LeSportsac, Inc. (Comp)	Dandridge, TN	03/30/06	03/30/06
59123	Solectron (Wkrs)	Creedmoor, NC	03/30/06	03/30/06
59124	Regency Plastics (Comp)	McAllen, TX	03/30/06	03/30/06
59125	Weyerhaeuser Corporation (UAW)	Elmira Heights, NY	03/30/06	03/28/06
59126	OTR Wheel Engineering, Inc. (Comp)	Quincy, IL	03/31/06	03/28/06
59127	Cridge, Inc. (Comp)	Fallsington, PA	03/31/06	03/22/06
59128	Value Line Textiles, Inc. (Comp)	Lenoir City, TN	03/31/06	03/30/06
59129	Fraser Papers Ltd. (USWA)	Gorham, NH	03/31/06	03/31/06
59130	Bari Jay Fashion (Wkrs)	New York, NY	03/31/06	03/17/06
59131	Penncost Corporation (Union)	Marietta, PA	03/31/06	03/24/06

[FR Doc. E6–5418 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,994]

Commercial Furniture Group, Inc., Formerly Known as Falcon Products, Inc., Morristown, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 10, 2005 in response to a petition filed on behalf of workers at Commercial Furniture Group, Inc., formerly known as Falcon Products, Inc., Morristown, Tennessee.

The petitioning worker group is covered by petition certification numbers TA–W–57,691 and 57,691A, amended on March 21, 2006, to reflect the company name change from Falcon Products, Inc., to Commercial Furniture Group, Inc.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of March, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5372 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of March 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations For Worker Adjustment Assistance And Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,510; Cooper Tools, Campbell Operations Hand Tools, York, PA: December 16, 2006.

TA–W–58,863; Nidec America Corporation, Fan Div., Norwood, MA: February 15, 2005.

TA–W–58,885; Essroc Cement Corporation, Nazareth, PA: February 17, 2005.

TA–W–58,974; Affinia Group, Brake Parts, Inc., North East, PA: March 7, 2005.

TA–W–59,032; Colson Caster Corp., Jonesboro, AR: March 14, 2005.

TA–W–58,974A; Affinia Group, Brake Parts, Inc., Erie, PA: March 7, 2005.

TA–W–58,993; Ark-Les Custom Products Corporation, New Berlin, WI: March 3, 2005.

TA–W–59,026; Oxford Foods, Inc., South Deerfield, MA: March 2, 2005.

TA–W–58,807; Panasonic Shikoku Electronics Corp. of America, (PSECA), Vancouver, WA: February 7, 2005.

TA–W–58,807A; Panasonic Shikoku Electronics Sales of America, (PSECSA), Portland, OR: February 7, 2005.

TA–W–58,859,; Midland Prints and Fabrics, Inc., Stenfield, NC: February 16, 2005.

TA–W–58,907; Vaughan Furniture Company, Inc., E.C. Dodson Plant, Galax, VA: February 24, 2005.

TA–W–59,009; Phillips Van Heusen Corporation, Dress Shirt Division, Ozark, AL: March 10, 2005.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,830; Lanier Clothes, Pattern Department, Greenville, GA: February 8, 2005.

TA–W–58,896; Reed Hycalog, Roller Cone Product Center Div., Houston, TX: February 2, 2005.

TA–W–58,906; Allianz Sweeper Co., Chino, CA: February 21, 2005.

TA–W–58,917; Mid-South Electronics-KY, Annville, KY: February 20, 2005.

TA–W–58,925; Eaton Corporation, ICD Sensors Business Unit, Everett, WA: February 14, 2005.

TA–W–58,928; ITT Jabsco Worldwide-Flojet, Subsidiary. Of ITT Industries, Foothill Ranch, CA: February 27, 2005.

TA–W–58,941; Delphi Connection Systems, Irvine, CA: February 27, 2005.

TA–W–58,959; ITT HydroAir, Brea, CA: February 2, 2005.

TA–W–58,962; Colgate-Palmolive Company, Jeffersonville, IN: February 28, 2005.

TA–W–58,981; Cardinal Brands, Inc., Adams Business Forms, Topeka, KS: April 7, 2006.

TA–W–59,014; Invista S.A.R.L, Athens, GA: March 10, 2005.

TA–W–58,831; Water Pik, Inc., Personal Healthcare Products, Appleone, Loveland, CO: February 10, 2005.

TA–W–58,890; C and J Jewelry, Narragansett Creations, Providence, RI: February 22, 2005

The following certification has been issued. The requirement of supplier to a trade certified firm and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,956; Sony Technology Center Pittsburgh, Direct View—CRT, Mount Pleasant, PA: March 3, 2005

The following certification has been issued. The requirement of downstream producer to a trade certified firm and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations For Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,945; Kramer Air Tool, Lansing, MI.

TA–W–59,015; King Bros Industries, Including Select Personnel & Sage Staffing, Valencia, CA.

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

TA–W–58,907A; Vaughan Furniture Company, Inc., E.C. Dodson Plant, Galax, VA.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,795; Jones and Vining, Walnut Ridge, AR.

TA–W–58,818; Masonite DorFab, Door Fabrications Services Div., Dickson, TN.

TA–W–58,868; Browne Ink, McMinnville, OR.

TA–W–58,884; Perras Lumber, Inc., Groveton, NH.

TA–W–58,892; Florida Components Corp., Subsidiary of Mini-Circuits, Hialeah, FL.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–58,997; Weyerhaeuser Corp., Packaging Div., Bedford Heights, OH.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,847; McGraw-Hill Companies, Columbus, OH.

TA–W–58,898; Tecumseh Power Co., Grafton, WI.

TA–W–58,977; Oce' Imagistics, Inc., Melbourne, FL.

TA–W–59,023; Ralph Barrow Automobiles, Eden, NC.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None

Affirmative Determinations For Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Negative Determinations For Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,945; Kramer Air Tool, Lansing, MI.

TA–W–59,015; King Bros Industries, Including Select Personnel & Sage Staffing, Valencia, CA.

TA–W–58,907A; Vaughan Furniture Company, Inc., E.C. Dodson Plant, Galax, VA.

TA–W–58,795; Jones and Vining, Walnut Ridge, AR.

TA–W–58,818; Masonite DorFab, Door Fabrications Services Div., Dickson, TN.

TA–W–58,868; Browne Ink, McMinnville, OR.

TA–W–58,884; Perras Lumber, Inc., Groveton, NH.

TA–W–58,892; Florida Components Corp., Subsidiary of Mini-Circuits, Hialeah, FL.

TA–W–58,997; Weyerhaeuser Corp., Packaging Div., Bedford Heights, OH.

TA–W–58,847; McGraw-Hill Companies, Columbus, OH.

TA–W–58,898; Tecumseh Power Co., Grafton, WI.

TA–W–58,977; Oce' Imagistics, Inc., Melbourne, FL.

TA–W–59,023; Ralph Barrow Automobiles, Eden, NC.

The Department as determined that criterion (1) of Section 246 has not been

met. Workers at the firm are 50 years of age or older.

TA–W–58,807A; Panasonic Shikoku Electronics Sales of America, (PSECSA), Portland, OR: February 7, 2005.

TA–W–58,859; Midland Prints and Fabrics, Inc., Stenfield, NC: February 16, 2005

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,925; Eaton Corporation, ICD Sensors Business Unit, Everett, WA: February 14, 2005

TA–W–58,959; ITT HydroAir, Brea, CA: February 2, 2005

TA–W–58,956; Sony Technology Center Pittsburgh, Direct View—CRT, Mount Pleasant, PA: March 3, 2005

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

I hereby certify that the aforementioned determinations were issued during the month of March 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 3, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–5369 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,001]

Corestaff, Boulder, Colorado; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2006 in response to a worker petition filed a state representative (Colorado) on behalf of workers at Corestaff, Boulder, Colorado.

The petitioning group of workers is covered by an active certification (TA–W–59,072) which expires on March 22, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of March 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5417 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,754A and TA–W–55,754H]

Dan River, Inc., 1325 Avenue of The Americas, New York, NY; Including an Employee of Dan River, Inc., Drexel Hill, PA; 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 on November 5, 2004, applicable to workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York. The notice was published in the **Federal Register** on December 9, 2004 (69 FR 71429). The certification was amended on February 16, 2005 and October 21, 2005 to include workers at other locations of the subject firm. The notices were published in the **Federal Register** on March 9, 2005 (70 FR 11700–11701) and November 4, 2005 (70 FR 67198–67199) respectively.

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that a worker separation occurred involving an employee of 1325 Avenue of The Americas, New York, New York of Dan River, Inc. located in Drexel Hills, Pennsylvania. Mr. Paul A. Brenner provided support services for the manufacture of home furnishing textiles produced by Dan River, Inc.

Based on these findings, the Department is amending this certification to include an employee of the 1325 Avenue of The Americas, New York, New York facility of Dan River, Inc. located in Drexel Hill, Pennsylvania.

The intent of the Department's certification is to include all workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York who were affected by a shift in production to China and Mexico.

The amended notice applicable to TA–W–55,754A is hereby issued as follows:

All workers of Dan River, Inc., 1325 Avenue of The Americas, New York, New York (TA–W–55,754A), including an employee of Dan River, Inc., 1325 Avenue of The Americas, New York, New York, located in Drexel Hill, Pennsylvania (TA–W–55,754H), who became totally or partially separated from employment on or after October 8, 2003, through November 5, 2006, 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 31st day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5410 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,972]

Elite Furniture MFG, High Point, North Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 7, 2006, in response to a petition filed by a company official on behalf of workers at Elite Furniture Mfg, High Point, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 31st day of March 2006

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5416 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this

notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 24, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 24, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of March 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/13/06 and 3/24/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58996	EneFco (Comp)	Auburn, ME	03/13/06	03/01/06
58997	Weyerhaeuser Corp. (Wkrs)	Bedford Heights, OH	03/13/06	03/10/06
58998	Action Apparel, Inc. (Comp)	Ramer, TN	03/13/06	03/10/06
58999	Kelly Services (State)	Boulder, CO	03/13/06	03/08/06
59000	Kelly Scientific (State)	Westminster, CO	03/13/06	03/08/06
59001	Corestaff (State)	Boulder, CO	03/13/06	03/08/06
59002	Visa Jewelry Corporation (Comp)	Central Falls, RI	03/13/06	03/01/06
59003	Wonder Color Corporation, Inc. (Wkrs)	Vermilion, OH	03/13/06	03/10/06
59004	Acco Chain and Lifting Products (Union)	York, PA	03/13/06	03/07/06
59005	Leggett and Platt (Union)	York, PA	03/13/06	03/07/06
59006	Spherion (State)	Rochester, MN	03/13/06	03/10/06
59007	Professional Distribution Services, Inc. (Comp)	Martinsville, VA	03/13/06	03/10/06
59008	Mr. LongArm, Inc. (State)	Greenwood, MO	03/13/06	03/10/06
59009	Phillips Van Heusen Corporation (Comp)	Ozark, AL	03/13/06	03/10/06
59010	Foamex (Comp)	Corry, PA	03/13/06	03/13/06
59011	Racequip, Inc. (Comp)	Columbus, OH	03/13/06	03/13/06
59012	Reitz Tool, Inc. (Comp)	Cochranton, PA	03/13/06	03/13/06
59013	Conopco, Inc., dba Unilever (Comp)	Asheboro, NC	03/13/06	03/13/06
59014	Invista S.A.R.L. (Comp)	Athens, GA	03/14/06	03/10/06
59015	King Bros Industries (State)	Valencia, CA	03/14/06	03/13/06
59016	Harve Benard (Union)	Clifton, NJ	03/14/06	03/13/06
59017	Ford Motor Company Atlanta Assembly (Wkrs)	Hapeville, GA	03/14/06	03/13/06
59018	Touch Flo Manufacturing (State)	Burbank, CA	03/14/06	03/13/06
59019	McCormick International USA, Inc. (State)	Pella, IA	03/14/06	03/13/06
59020	Sony Electronics, Inc. (State)	San Diego, CA	03/14/06	03/08/06
59021	3M Precision Optics (Wkrs)	Cincinnati, OH	03/14/06	03/03/06
59022	Lithonia Lighting (Wkrs)	Berkeley, CA	03/14/06	03/03/06
59023	Ralph Barrow Automobiles (Wkrs)	Eden, NC	03/14/06	02/16/06
59024	Agilent Technologies, GIO (Wkrs)	Palo Alto, CA	03/14/06	02/17/06
59025	Bauhaus USA (Wkrs)	Amory, MS	03/14/06	02/21/06
59026	Oxford Foods, Inc. (Wkrs)	South Deerfield, MA	03/14/06	03/02/06
59027	Kappler (Wkrs)	Guntersville, AL	03/14/06	02/26/06
59028	General Electric (Comp)	Hebron, OH	03/14/06	02/28/06
59029	American and Efird, Inc. (Wkrs)	Gastonia, NC	03/14/06	02/20/06
59030	Amital Spinning Corp. (Comp)	New Barn, NC	03/14/06	03/14/06
59031	Fraser Papers L.L.C. (USW)	Berlin, NH	03/15/06	03/14/06
59032	Colson Caster Corp. (State)	Jonesboro, AR	03/15/06	03/14/06
59033	BroadBus Technology (Union)	Boxborough, MA	03/15/06	03/14/06
59034	ExxonMobil Chemical Co. (Wkrs)	Macedon, NY	03/15/06	03/06/06
59035	Newstech PA, LP (Comp)	Northampton, PA	03/15/06	03/07/06
59036	Collins and Aikman (Co.)	El Paso, TX	03/16/06	03/15/06
59037	Delta Airlines (Wkrs)	Atlanta, GA	03/16/06	03/07/06
59038	Shure Electronics (Wkrs)	Douglas, AZ	03/16/06	03/09/06
59039	Nortel (Wkrs)	Research Triangle Park, NC.	03/16/06	02/17/06
59040	AH Schreiber Company (Co.)	Bristol, VA	03/16/06	03/15/06
59041	Kidde Fire Fighting (Co.)	Ranson, WV	03/16/06	03/14/06
59042	PF Papers (USW)	Park Falls, WI	03/16/06	03/14/06
59043	PTX Pentronix, Inc. (Co.)	Lincoln Park, MI	03/16/06	03/07/06
59044	Spencer's, Inc. (Co.)	Mt. Airy, NC	03/16/06	03/15/96
59045	Newstech NY (Co.)	Newton Falls, NY	03/16/06	03/16/06
59046	GE—Aviation Engine Services (Co.)	Ontario, CA	03/16/06	03/06/06

APPENDIX—Continued

[TAA petitions instituted between 3/13/06 and 3/24/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59047	Bluementhal Mills (Wkrs)	Marion, SC	03/16/06	03/01/06
59048	National Beding Co. (Wkrs)	Linden, NJ	03/16/06	03/01/06
59049	Arlee Home Fashions (Wkrs)	West Plains, MO	03/17/06	03/15/06
59050	Wise Industries (Wkrs)	Kings Mountain, NC	03/17/06	03/13/06
59051	EIC Corporation (State)	Santa Clara, CA	03/17/06	03/16/06
59052	Array Hartland (Co.)	Hartland, WI	03/17/06	03/07/06
59053	Sebastian Furniture, Inc. (Wrks)	Barling, AR	03/17/06	03/15/06
59054	Epson Portland, Inc. (Wrks)	Hillsboro, OR	03/17/06	03/14/06
59055	New England Confectionery Company (NECCO) (State)	Revere, MA	03/17/06	04/16/06
59056	Lolly Togs Ltd (Wrks)	Greensboro, NC	03/17/06	03/16/06
59057	Hickory Hardware (Comp)	Grandville, MI	03/17/06	03/17/06
59058	Jeffco Enterprises (State)	Hildebran, NC	03/20/06	03/17/06
59059	Flex-n-Gate Oklahoma (Union)	Ada, OK	03/20/06	03/17/06
59060	Lollytogs Ltd. (Wkrs)	Greensboro, NC	03/20/06	03/16/06
59061	Brake Parts, Inc. (Comp)	McHenry, IL	03/20/06	03/20/06
59062	Machined Products (Comp)	Lancaster, PA	03/20/06	03/12/06
59063	McLeod USA Telecommunications Services, Inc. (Comp)	Springfield, MO	03/20/06	03/15/06
59064	Gerber Legendary Blades (Comp)	Portland, OR	03/20/06	03/16/06
59065	Paris Accessories—Walnutport (UNITE)	Walnutport, PA	03/21/06	03/21/06
59066	Maine Neurology (State)	Scarborough, ME	03/21/06	03/17/06
59067	Coe Manufacturing (Wkrs)	Tigard, OR	03/22/06	03/21/06
59068	Federal Mogul Corporation (State)	Malden, MO	03/22/06	03/21/06
59069	Renee's Manufacturing, Inc. (State)	San Francisco, CA	03/22/06	03/21/06
59070	Tate Lumber Co., Inc. (Wkrs)	Red Oak, VA	03/22/06	03/21/06
59071	GrafTech International, Ltd. (Comp)	Wilmington, DE	03/22/06	03/21/06
59072	Point Technologies (State)	Boulder, CO	03/22/06	03/21/06
59073	Interkordsa-USA, Inc. (Wkrs)	Whiteville, NC	03/22/06	02/27/06
59074	Western Graphics Corporation (Comp)	Eugene, OR	03/23/06	03/21/06
59075	Kolpin Manufacturing (Wkrs)	Fox Lake, WI	03/23/06	03/22/06
59076	Technicolor Universal (State)	Pinckneyville, IL	03/23/06	03/22/06
59077	Greatbatch-Sierra, Inc. (Comp)	Carson City, NV	03/23/06	03/22/06
59078	Hexion Specialty Chemical (Wkrs)	High Point, NC	03/23/06	03/22/06
59079	Warren Industries (Comp)	Lafayette, IN	03/23/06	03/22/06
59080	Tech Sew Manufacturing (Wkrs)	New York, NY	03/23/06	03/16/06
59081	CFM Home Products (Comp)	Joplin, MO	03/23/06	03/17/06
59082	Trinity Pottery, Inc. (Comp)	Rice Lake, WI	03/23/06	03/21/06
59083	TI Automotive Systems (Comp)	Warren, MI	03/24/06	03/24/06
59084	Lady Ester Lingerie Corp. (Comp)	New York, NY	03/24/06	03/24/06

[FR Doc. E6–5373 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,817]

Fisher Controls, Pawcatuck, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2006 in response to a worker petition filed by an authorized representative on behalf of workers of Fisher Controls, Pawcatuck, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5370 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,057]

Hickory Hardware Belwith International Ltd., Grandville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 17, 2006 in response to a petition filed by a company official on behalf of workers at Hickory Hardware, Belwith International Limited, Grandville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 24th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5376 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,000]

Kelly Scientific, Westminster, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2006 in response to a worker petition filed by a state agency on behalf of

workers at Kelly Scientific, Westminster, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of March, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5374 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,999]

Kelly Services, Boulder, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2006, in response to a worker petition filed by the State of Colorado on behalf of workers at Kelly Services, Boulder, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5378 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,022]

Lithonia Lighting, Also Known as Peerless Lighting, a Subsidiary of Acuity Brands, Inc., Berkeley, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 14, 2006 in response to a worker petition filed on behalf of workers of Lithonia Lighting, also known as Peerless Lighting, a subsidiary of Acuity Brands Lighting, Inc., Berkeley, California.

The petitioning group of workers is covered by an active certification, (TA–W–56,988) which expires on May 4, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5375 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,676]

Mainzer Minton Company, Hackettstown, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Mainzer Minton Company, Hackettstown, New Jersey. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,676; Mainzer Minton Company, Hackettstown, New Jersey (April 4, 2006)

Signed at Washington, DC this 5th day of April 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–5414 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,088]

Moore Wallace, an RR Donnelley Company; Iowa City, Iowa; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 17, 2006 in response to a petition filed by a company official on behalf of workers at Moore Wallace, Inc., an RR Donnelley Company, Iowa City, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5419 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,043]

PTX–Pentronix, Inc. a Subsidiary of Gasbarre Products, Inc. Lincoln Park, Michigan; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 16, 2006 in response to a petition filed on behalf of workers at PTX–Pentronix, Inc., a subsidiary of Gasbarre Products, Inc., Lincoln Park, Michigan (TA–W–59,043).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of March, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5371 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,916]

Sony Electronics Inc., Display Device—San Diego, San Diego, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2006 in response to a petition filed by a company official on behalf of workers at Sony Electronics Inc., Display Device San Diego, San Diego, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 30th day of March, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5415 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,559]

T&H Sewing Company, San Francisco, CA; Notice of Revised Determination on Reconsideration

By application of March 23, 2006, Chinese Progressive Association requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 22, 2006, based on the finding that imports of women's and children's dresses and blouses did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on March 22, 2006 (71 FR 14549).

To support the request for reconsideration, the petitioner supplied additional information regarding the subject firm's customer. Upon further review of the facts during the initial investigation and information provided by the subject firm's major customer, it was determined that this customer increased its reliance on imports of sewn garments during the relevant time period.

Furthermore, the investigation revealed that there were substantial and increasing aggregate United States imports of women's and girls' dresses and blouses during the relevant period. The ratio of United States imports to United States shipments of women's and girls' dresses in 2005 exceeded 200 percent.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at T&H Sewing Company, San Francisco, California, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of T&H Sewing Company, San Francisco, California, who became totally or partially separated from employment on or after December 16, 2004 through two years from the date of this certification, 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 in Washington, DC this 5th day of April 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5412 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,989]

Thermalcast, LLC, Formerly Known as Kennedy Die Castings, Inc., Worcester, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 10, 2005 in response to a petition filed on behalf of workers of Thermalcast, LLC, formerly known as Kennedy Die Castings, Inc., Worcester, Massachusetts.

The petitioning worker group is covered by petition certification number TA–W–58,989, amended on March 23, 2006, to reflect the company name change from Kennedy Die Castings, Inc., to Thermalcast, LLC.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5377 Filed 4–11–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 06–025]

NASA Advisory Council; Science Committee; Science Subcommittees; Planning Conference

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a Planning Conference of the Science Subcommittees of the NASA Advisory Council (NAC). These Subcommittees report to the Science Committee of the NAC. The Conference will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, May 3, 2006, 8 a.m. to 6 p.m. and Thursday, May 4, 2006, 8 a.m. to 2:30 p.m., Eastern Daylight Time.

ADDRESSES: University of Maryland Inn and Conference Center, located at 3501 University Blvd. East, Adelphi, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa May, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2411 or *lisa.may@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Planning Conference will feature plenary session information briefings by NASA officials on science program status and plans and the NASA FY 2007 budget proposal. The plenary session will subsequently breakout into meetings of the Astrophysics Subcommittee, Earth Science Subcommittee, Heliophysics Subcommittee, and Planetary Sciences Subcommittee. The breakout sessions will focus on: (1) Research and Analysis plans and program mix options, and (2) science community involvement in preparing the NASA Science Plan.

The meeting will be open to the public up to the seating capacity of the rooms. Thirty minutes will be set aside for verbal comment by members of the general public, not to exceed three minutes per speaker, at 8 a.m. on May

4, 2006. Those wishing to speak must sign up at the meeting registration desk by 6 p.m. on May 3, 2006. Members of the public are also welcome to file a written statement at the time of the meeting. Verbal presentations and written comments should be confined to the subject of priorities and program mix in NASA's space and earth science programs. Findings and recommendations developed by the Subcommittees during the Conference will be submitted to the Science Committee of the NAC.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a visitor's register.

Dated: April 6, 2006.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E6–5420 Filed 4–11–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Proposed Collection, Comment Request, User Satisfaction With Access to Government Information and Services at Public Libraries and Public Access Computing Centers

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction of 1995 (PRA95) [44 U.S.C. 3508(2)(a)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning a survey to assess user satisfaction with access to government information and services at public libraries and public access computing centers.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 12, 2006.

IMLS is particularly interested in comments that help the agency to:

- 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 collocation of information including the validity of the methodology and assumptions used:
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Rebecca Danvers, PhD, Director of Research and Technology, Institute of Museum and Library Services, 1800 M St., NW., 9th floor, Washington, DC 20036, telephone: 202–653–4680, fax: 202–653–4625 or by e-mail at *rdanvers@imls.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Servicdes is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. This solicitation is to collect information via surveys on how satisfied the national public is in finding government information and what type of programs public libraries and community technology centers provide to help users.

II. Current Action

The core duties of the Institute of Museum and Library Services, as stated in its strategic plan, are to promote excellence in library services and to promote access to museum and library services for a diverse public. The E-Government Act of 2002 called for the promotion of access to the Internet to provide increased opportunities for citizen participation in government, and an interagency committee issued a report looking at disparities in Internet access across a demographic spectrum. Few studies, however, have looked at the kinds of assistance (training, tutorials, classes, reference services) that users are receiving when looking for federal, state, and local government information and services, whether via the Internet or through traditional means (walk-in, mail, telephone), and whether users are satisfied with the assistance that they are receiving from public libraries and public access computing centers. In order to address this critical information gap and to enhance the quality of library services nationwide, the Institute of Museum and Library Services (IMLS) has undertaken a study to better understand how users are accessing federal, state, and local government information and services and what kinds of assistance public libraries and other public access computing centers are offering to users seeking government information and services. IMLS is conducting a research study on how the part of the population with limited access to Internet resources (individuals who do not have broadband access from home, work, or school; who choose to access government services and information from locations other than home, work, or school; or who do so through traditional means of access) accesses federal, state and local government services and information, and whether such users are satisfied with the information and services they are able to access. Additionally, the study examines the ways that public libraries and public access computing centers provide assistance (e.g., reference services, tutorials, classes, training) to users seeking federal, state, and local government information and services.

Agency: Institute of Museum and Library Services.

Title: National Study of Users and Potential Users of Online Information.

OMB Number: n/a.

Agency Number: 3137.

Frequency: On time.

Affected Public: User Satisfaction with Access to Government Information and Services at Public Libraries and Public Access Computing Centers.

Number of Respondents: 5,700.

Estimated Time per Respondent: 15 or 20 minutes.

Total Burden Hours: 1630.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs: $40,792.

Contact: Rebecca Danvers, PhD, Director of Research and Technology, Institute of Museum and Library Services, 1800 M St., NW., 9th floor, Washington, DC 20036, telephone: 202–653–4680, fax: 202–653–4625 or by e-mail at *rdanvers@imls.gov.*

Dated: April 7, 2006.

Rebecca W. Danvers,

Director, Office of Research and Technology.

[FR Doc. 06–3487 Filed 4–11–06; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; NSB Election Committee; Sunshine Act Meeting

Date and Time: Thursday, April 27, 2006, 3 p.m.–4 p.m. (EDT).

Place: National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000. *www.nsf.gov/nsb.*

Status: This meeting will be closed to the public.

Agenda: Discussion of candidates for National Science Board Chairman, Vice Chairman and two vacancies on the Executive Committee.

Michael P. Crosby,

Executive Officer.

[FR Doc. 06–3532 Filed 4–10–06; 8:54 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

R.E. Ginna Nuclear Power Plant, LLC; R.E. Ginna Nuclear Power Plant; Draft Environmental Assessment and Finding of No Significant Impact Related To The Proposed License Amendment to Increase the Maximum Reactor Power Level

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Opportunity for Public Comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has prepared a Draft Environmental Assessment as part of its evaluation of a request by R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC) for a license amendment to increase the maximum steady state power level at the R.E. Ginna Nuclear Power Plant (Ginna) from 1520 megawatts thermal (MWt) to 1775 MWt. This represents a power increase of approximately 16.8 percent, which is considered an extended power uprate (EPU). As stated in the NRC staff's position paper dated February 8, 1996, on the Boiling-Water Reactor Extended Power Uprate Program, the NRC staff will prepare an environmental impact statement if it believes a power uprate will have a significant impact on the human environment. The NRC staff did not identify any significant impact from the information provided in the licensee's EPU application for Ginna or the NRC staff's independent review; therefore, the NRC staff is documenting its environmental review in an environmental assessment. Also, in accordance with the position paper, the Draft Environmental Assessment and finding of no significant impact is being published in the **Federal Register** with a 30-day public comment period.

Environmental Assessment

Plant Site and Environs

Ginna is located 6 km (4 mi) north of Ontario, New York, in the northwest corner of Wayne County and on the south shore of Lake Ontario. The immediate area around Ginna is rural, with the city of Rochester approximately 32 km (20 mi) to the west and Oswego, New York, 64 km (40 mi) to the east-northeast. The plant consists of one unit equipped with a nuclear steam supply system supplied by Westinghouse Electric Corporation, which uses a pressurized-water reactor (PWR) and a once-through cooling system for turbine exhaust condensor cooling and as the ultimate heat sink.

Identification of the Proposed Action

By letter dated July 7, 2005 (Agencywide Documents Access and Management System Accession No. ML051950123), Ginna LLC proposed an amendment to the operating license for Ginna to increase the maximum steady state power level by approximately 16.8 percent, from 1520 MWt to 1775 MWt. The change is considered an EPU because it would raise the reactor core power level by more than 7 percent above the currently licensed maximum power level. This proposed action would allow the heat output of the reactor to increase, which would increase the flow of steam to the main turbine-generator. This would result in the increase in production of electricity and the amount of waste heat delivered to the condenser, resulting in an increase in the temperature of the water being discharged into Lake Ontario.

The Need for the Proposed Action

Ginna LLC estimates the proposed action would result in approximately 85 additional megawatts-electric (MWe) being generated. This additional electricity generation could power approximately 95,000 homes and would contribute to meeting the goals and recommendations of the New York State Energy Plan. The EPU could be implemented for approximately one-fifth of the cost to construct two small (50-MWe) natural gas combustion turbine units, as recommended by the New York State Energy Planning Board, and would not cause the environmental impacts that would occur from construction of new power generation facilities to meet the region's electricity needs.

Environmental Impacts of the Proposed Action

At the time of issuance of the operating license for Ginna, the NRC staff noted that any activity authorized by the license would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of Ginna, which was issued March 1973. In addition, in February 2004, the NRC published its Supplemental Environmental Impact Statement (SEIS), NUREG–1437 Supplement 14, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 14, Regarding R.E. Ginna Nuclear Power Plant—Final Report,'' which evaluated the environmental impacts of operating Ginna for an additional 20 years. In the SEIS, the NRC determined that the adverse environmental impacts of license renewal would not be so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. This environmental assessment summarizes the radiological and non-radiological impacts in the environment that may result from the EPU.

Non-Radiological Impacts

Land Use Impacts

The potential impacts associated with land use for the proposed action include impacts from construction and plant modifications. The impacts from construction due to the proposed EPU are minimal. No expansion of roads, parking lots, equipment storage areas, or transmission facilities and no new building construction is anticipated to support the proposed EPU. Volumes of industrial chemicals, fuels, or lubricants are not expected to increase

substantially, and would not require additional onsite storage space.

Some plant modifications would be required to implement the proposed action. The modifications are listed in Table 4–1 of Ginna EPU, Supplemental Environmental Report (ER), submitted by Ginna LLC on July 7, 2005. The most significant modification to be conducted would be replacement of the high-pressure turbine rotor. Major modifications completed in the last 10 years that contribute to the increased power opportunities at Ginna are the re-tubing of the main condenser (1995), the replacement of the steam generators with an increased size design (1996), and replacement of the reactor vessel head (2003). None of the plant modifications listed above or in Table 4–1 of the ER will result in any changes in land use.

Historic and archeological resources should not be affected by the proposed EPU, because there are no modifications to land use. The proposed EPU would not modify land use at the site significantly over that described in the FES and NUREG–1437 Supplement 14. Therefore, the NRC staff concludes that the land use impacts of the proposed EPU are bounded by the impacts previously evaluated in the FES and NUREG–1437 Supplement 14.

Transmission Facility Impacts

The potential impacts associated with transmission facilities for the proposed action include changes in transmission line corridor right-of-way maintenance and electric shock hazards due to increased current. The proposed EPU would not require any physical modifications or changes in the maintenance and operation of existing transmission lines, switchyards, or substations. Ginna LLC's transmission lines right-of-way vegetation management would not change. There would be no change in voltage, but there would be an increase in the current flowing through the transmission facilities.

The National Electric Safety Code (NESC) provides design criteria that limit hazards from steady-state currents. The NESC limits the short-circuit current to ground to less than 5 milliamperes. The increase in current passing through the transmission lines is directly associated with the increased power level of the proposed EPU. In addition, the increased electrical current passing through the transmission lines would cause an increase in the electromagnetic field strength.

Based on information provided in the ER, the transmission lines at Ginna would continue to meet the applicable NESC recommendations for electric-field induced shock under the proposed EPU. Therefore, the risk of shock from the offsite transmission lines would not be expected to increase significantly over the current impact.

The impacts associated with transmission facilities for the proposed action would not change significantly over the impacts associated with current plant operations. There would be no changes to current transmission line right-of-way operation and maintenance practices; no physical modifications to the transmission lines, switchyards, or substations; and electric current passing through the transmission lines would increase slightly. Therefore, the NRC staff concludes that there would be no significant impacts associated with transmission facilities for the proposed action.

Water Use Impacts

Potential water use impacts from implementation of the proposed action would include hydrological alterations to Lake Ontario. Ginna uses a once-through condenser cooling system drawing water from Lake Ontario through a submerged offshore intake. Water used to cool the turbine condenser is discharged into the discharge canal. The heated water enters Lake Ontario at the shoreline. Total nominal flow of water for turbine condenser cooling and most secondary systems (*i.e.* service water and fire protection) is approximately 354,600 gallons per minute (gpm).

Lake Ontario serves as a principal water source for several local water supply systems in New York State's Monroe and Wayne Counties. All water required for plant operation, except potable water, is withdrawn from Lake Ontario. The rate of withdrawal would not increase as a result of the EPU. Therefore, operation of Ginna would not affect the availability of surface water. Groundwater is not used in plant operations; therefore, there are no impacts from onsite groundwater use. The NRC staff concludes that the proposed EPU would not have a significant impact on water use.

Discharge Impacts

Surface water and wastewater discharges to Lake Ontario from the plant are regulated by the State of New York via a State Pollutant Discharge Elimination System (SPDES) Permit (Number NY–0000493), effective February 1, 2003—February 1, 2008. This permit is reviewed and renewed by the New York State Department of Environmental Conservation (NYSDEC). It is expected that the EPU would increase the temperature of the water discharged to Lake Ontario as well as the thermal discharge plume, which would require modifications to the current SPDES permit.

The current SPDES permit allows a 28 °F rise in temperature of the discharge water over the ambient temperature of the lake water, and a maximum 320-acre mixing zone. The current permit also limits the discharge temperature to 102 °F. During current operating conditions, the difference between plant discharge temperature and ambient lake temperature is approximately 20 °F in the summer months, and 28 °F during the winter months. The larger temperature difference, which occurs in the winter months, is due to recirculation of heated water from the discharge canal to the screenhouse inlet forebay to assist in maintaining inlet water temperature and eliminating ice that may form in the inlet forebay. Under proposed EPU operating conditions, the difference in temperature would be approximately 28 °F and 35 °F in summer and winter months, respectively. In addition, the discharge temperature would at times exceed the current SPDES permit limits (102 °F).

The current SPDES permit limit for the Ginna thermal discharge plume mixing area is 320 acres. In 2004, Ginna LLC commissioned studies to determine the effect of the proposed EPU on water temperatures, temperature distribution in near-field and far-field areas associated with the discharge, and to assess the impacts on aquatic species. According to the information calculated by the near-field plume model (CORMIX) and far-field hydrodynamic and thermal model (ECOM), under existing plant operating conditions, the thermal plume mixing area is less than 300 acres in summer and winter months. An increased mixing zone of 360 acres would be needed to support operation under the proposed EPU operating conditions. The discharge environmental impacts of the proposed EPU conditions are described in the ''Impacts to Aquatic Biota'' section of the ER.

By letters dated March 8, April 2, and July 29, 2005, Ginna LLC submitted a permit modification request to NYSDEC regarding an increase in the Ginna Station Outfall 001 discharge temperature limit, intake-discharge Δ T, and the size of the mixing zone to accommodate the proposed EPU conditions described above. The NYSDEC sets limits on and regulates the amount of heat discharged to Lake Ontario. Approval from the NYSDEC for

these SPDES Permit modifications is currently pending.

Based on information provided in the ER and NUREG–1437 Supplement 14, the NRC staff has determined the thermal discharge environmental impacts to Lake Ontario under the proposed EPU conditions would not be significant.

Impacts on Aquatic Biota

The potential impacts to aquatic biota from the proposed action include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance. Aquatic organisms that are caught on a plant's intake debris screens made of mesh are considered impinged. The term entrainment applies to aquatic organisms (*i.e.* fish and shellfish) that are small enough to pass through a plant's intake debris screens and travel through the cooling system and be exposed to heat, mechanical, and pressure stresses and possibly biocidal chemicals, before being discharged back to the body of water. Ginna has intake and discharge structures on Lake Ontario. The aquatic species evaluated in this environmental assessment are in the vicinity of the Ginna intake and discharge structures.

Ginna LLC monitors entrained and impinged species as required by the current NYSDEC SPDES Permit. In 2004, Ginna LLC commissioned a biological assessment to analyze the effects of increased water temperature and mixing zone associated with the proposed EPU on Lake Ontario. The assessment included potential impacts to impingement and entrainment rates associated with the proposed EPU.

The most prominent fish species located in the shoreline area of Lake Ontario near Ginna are smallmouth bass, spottail shiner, American eel, alewife, yellow perch, threespine stickleback, brown trout, rainbow smelt, lake trout and rainbow trout. Ginna LLC reviewed these ten fish populations, which were identified by the NYSDEC as the ''Representative Identified Species,'' (RIS) occurring in the vicinity of Ginna. For the purpose of this environmental assessment, the identical ten fish species were reviewed.

Impingement and entrainment monitoring at Ginna has been investigated since the 1970's. Based on this historical data and requirements of the SPDES Permit, impingement and entrainment rates at Ginna are minimal, and according to the ER no significant adverse impact on the RIS populations would result due to the increased discharge temperatures. These conclusions are based on the following: (1) Ginna is not adjacent to or near habitat features or spawning/nursery areas preferred by or important to local fish populations; (2) cooler areas for refuge are readily available to fish that enter the cooling water discharge; (3) the thermal plume under proposed EPU conditions would generally extend no more than 1 to 3 feet below the surface, providing a zone of passage for fish; (4) Ginna does not have any known incidents of cold shock to aquatic biota and cold shock incidents for the RIS would be minimized due to gradual shutdown and reduction procedures in cooling water temperature; (5) fish will avoid portions of the lake that exceed their thermal preferenda; and (6) any impinged fish exposed to elevated temperatures (above their thermal preferenda) in the fish return system will be exposed only for a short duration (20–50 seconds). After reviewing the information presented in the ER, the NYSDEC SPDES permit modification demonstration submittal, and NUREG–1437 Supplement 14, the NRC staff concludes that the impact of the proposed EPU on aquatic biota would not be significant.

As discussed in the transmission facility impacts section of this environmental assessment, transmission line right-of-way maintenance practices would not change. Therefore, the NRC staff concludes that the impact of the proposed action to aquatic biota would not be significant.

On July 9, 2004, EPA published a final rule in the **Federal Register** (69 FR 41575) addressing cooling water intake structures at existing power plants whose flow levels exceed a minimum threshold value of 50 million gallons per day (gpd). The rule is Phase II in the Environmental Protection Agency's (EPA's) development of 316(b) regulations that establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at existing facilities that exceed the threshold value for water withdrawals. The national requirements, which are implemented through National Pollutant Discharge Elimination System (NPDES) permits, minimize the adverse environmental impacts associated with the continued use of the intake systems. In the case of Ginna, the SPDES permit is equivalent to the NPDES permit. Licensees are required to demonstrate compliance with the Phase II performance standards at the time of renewal of their NPDES permit. Licensees may be required as part of the NPDES renewal to alter the intake structure, redesign the cooling system, modify station operation, or take other mitigative measures as a result of this regulation. The new performance standards are designed to reduce significantly impingement and entrainment losses due to plant operation. Any site-specific mitigation would result in less impact due to continued plant operation.

Impacts on Terrestrial Biota

The potential impacts to terrestrial biota from the proposed action would be due to transmission line right-of-way maintenance. As discussed in the transmission facility impacts section of this environmental assessment, transmission line right-of-way maintenance practices would not change for the proposed action. Therefore, the NRC staff concludes that there are no significant impacts to terrestrial plant or animal species associated with transmission line right-of-way maintenance for the proposed action.

Impacts on Threatened and Endangered Species

Potential impacts to threatened and endangered species from the proposed action include the impacts assessed in the aquatic and terrestrial biota sections of this environmental assessment. These impacts include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance for aquatic species, and impacts due to transmission line right-of-way maintenance for terrestrial species.

There are four animal and two plant species listed as threatened or endangered under the Federal Endangered Species Act within Wayne County, New York. These species are the bog turtle (*Clemmys muhlenbergii*), bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), Indiana bat (*Myotis sodalis*), small-whorled pogonia (*Isotria medeoloides*), and prairie fringed orchid (*Plantanthera leucophaea*). There are no records of any of these species on the Ginna site. The nearest designated critical habitat is for piping plover (*C. melodus*), which lies 90 miles from the Ginna site on the eastern shore of Lake Ontario. No critical habitat or known occurrences of bog turtle (*C. muhlenbergii*), Indiana bat (*M. sodalis*), small-whorled pogonia (*I. medeoloides*), and prairie fringed orchid (*P. leucophaea*) have been reported within the Ginna site vicinity or within the transmission lines right-of-way. However, bald eagles (*H. leucocephalus*) are occasionally observed in the vicinity, usually during spring migration. The nearest known bald eagle nesting site is approximately 55 miles

southeast of the Ginna site, near Montezuma National Wildlife Refuge. It is not likely that the bald eagles would be impacted by the EPU because the birds are transient and do not nest at the Ginna site.

There are no Federally listed threatened or endangered aquatic species listed under the Endangered Species Act in the vicinity of Ginna or Wayne County, New York. There are two State-listed aquatic species known to occur in Wayne County: pugnose shiner (*Notropis anogenus*) and lake sturgeon (*Acipenser fulvescens*). However, neither species has been reported in the vicinity of Ginna. Therefore, the NRC staff concludes that there is no effect to threatened and endangered species associated with the proposed EPU based on the information provided in the ER, NUREG–1437 Supplement 14, and the staff's own independent review.

Social and Economic Impacts

Potential social and economic impacts due to the proposed EPU relate to potential changes to the size of the workforce at Ginna. The NRC staff has reviewed the information provided by Ginna LLC regarding socioeconomic impacts. Ginna LLC is a major employer in the community with approximately 436 people employed on a full-time basis and 167 long- and short-term contractors employed on a regular basis.

In January 2005, Ginna LLC, which acquired the plant in June 2004, entered into a payment agreement with the Town of Ontario, the Wayne County School District, and Wayne County as opposed to paying sales and property taxes. The agreement in place is a Payment In-Lieu of Taxes Agreement (PILOT). Under this agreement, Ginna's assessed value is set at $260,000,000. Annual payments in equal amounts will be paid to tax jurisdictions in an amount equal to the assessed value multiplied by the real property tax rate established by each tax jurisdiction for the applicable tax year. Estimates of what amounts are to be paid through 2009 can be found in Chapter 5 of the Ginna EPU ER.

Ginna LLC and its personnel contribute directly and indirectly to the surrounding communities of the plant. Taxes collected under the PILOT agreement are used to fund schools, police and fire protection, road maintenance, and other municipal services. In addition, Ginna LLC personnel and contractors contribute indirectly to the tax base by paying sales and property taxes, state income tax, and hotel and meal taxes.

The proposed EPU would not significantly affect the size of the Ginna workforce. Most EPU modifications were performed during the Spring 2005 Refueling Outage, with the remaining modifications scheduled to be completed during the 2006 Refueling Outage. During a regularly scheduled refueling outage, the workforce at Ginna increases by approximately 534 persons on average. The workforce needed for the 2006 Refueling outage will require additional workers above the usual 534 persons average. The supplemental workers are not expected to adversely affect area housing availability, transportation services, or the public water supply due to the short period of the demand.

The NRC staff expects that granting the EPU as proposed would improve the economic viability of Ginna, ensuring that it would continue to contribute positively to the surrounding communities.

As discussed above, granting the EPU as proposed would have little direct socioeconomic impact to the local and regional economies. Therefore, the NRC staff concludes that there are no significant social or economic impacts for the proposed action based on information in the ER and NUREG–1437 Supplement 14.

Summary

The EPU, if implemented as proposed, would not result in a significant change in non-radiological impacts in the areas of land use, water use, thermal discharges, terrestrial and aquatic biota, transmission facility operation, or social and economic factors. No other non-radiological impacts were identified or would be expected. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at Ginna.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	No significant land use modifications are expected.
Transmission Facilities	No physical modifications to the transmission lines; lines meet shock safety requirements; no changes to right-of-ways including vegetation management; small increase in electrical current and magnetic field.
Water Use	No physical modifications to intake structure; no increased rate of withdrawal; no water use conflicts.
Discharge	Increase in water temperature and mixing zone to Lake Ontario; application to increase SPDES permit discharge temperature and plume acreage submitted to New York State, decision pending.
Aquatic Biota	No adverse impact will occur to the RIS populations due to the following: Ginna Station is not near preferred/important spawning areas; cooler areas for refuge are readily available; thermal plume under proposed conditions would extend approximately 1 to 3 feet below the surface; cold shock incidents would be minimal due to gradual shutdown and reduction procedures; fish avoid areas that exceed their thermal preferenda; impinged species exposed to elevated temperatures (above thermal preferenda) will be exposed only for a short duration (20–50 seconds); EPU would have no additional impact on entrained species.
Terrestrial Biota	No change in transmission line maintenance; EPU would have no additional impact on terrestrial plant or animal species.
Threatened and Endangered Species	Six Federally listed species in Wayne County; No species have been identified on the Ginna site; EPU would have no effect on species.
Social and Economic	No significant change in size of Ginna Station work force required for plant operation; small increase in work force required for spring 2006 refueling outage to implement remaining plant modifications. EPU would have no effect on socioeconomics.

Radiological Impacts

Radioactive Waste Stream Impacts

Ginna uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of Part 20, ''Standards for Protection Against Radiation,'' and Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix I, of Title 10 of the *Code of Federal Regulations* (10 CFR). These radioactive waste streams are discussed in the FES. The methodology used in scaling the increase of radioactive content under the proposed EPU conditions were based on techniques in NRC's Calculations of Releases of Radioactive Materials in Gaseous and Liquid Effluents from Pressurized Water Reactors (PWR–GALE code), NUREG–0017, Revision 1. The proposed EPU would not result in any physical changes to the gaseous, liquid, or solid waste systems.

Gaseous Radioactive Waste and Offsite Doses

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the environment, including small quantities of noble gases, halogens, tritium, and particulate material. The gaseous waste management systems include the offgas system and various building ventilation systems. The Ginna Base Case Average Dose, an annual average dose from 1999 through 2003 to extrapolated 100-percent plant operating capacity, was less than 1 millirem (mrem) per year. Ginna LLC predicts that gaseous radioactive effluents would linearly increase as a result of the proposed EPU, approximately 17 percent. Even with a 17-percent increase from the peak dose of less than 1 mrem per year, the dose would still remain well below the regulatory standards in 10 CFR Part 50, Appendix I. Therefore, the increase in offsite dose due to gaseous effluent release following the EPU would not be significant.

Liquid Radioactive Waste and Offsite Doses

During normal operation, the liquid effluent treatment systems process and control the release of liquid radioactive effluents to the environment such that the doses to individuals offsite are maintained within the limits of 10 CFR Part 20 and 10 CFR Part 50, Appendix I. The liquid radioactive waste systems are designed to process the waste and then recycle it within the plant as condensate, reprocess it through the radioactive waste system for further purification, or discharge it to the environment as liquid radioactive waste effluent in accordance with State and Federal regulations. Ginna LLC predicts the offsite dose from liquid effluents would increase linearly, approximately 17 percent. The increase would not increase the volume of liquid radioactive waste, but the radioactivity levels in the reactor coolant. Even with an increase, the maximum annual total body and organ doses (all pathways) would be well below the regulatory standards contained in 10 CFR Part 50, Appendix I, as well as the doses bounded by the FES. Therefore, the NRC concludes that the increase in offsite dose due to liquid effluent release following the EPU would not be significant.

Solid Radioactive Wastes

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite and permanent disposal. Ginna produces dry active waste (paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal), sludge, oily waste, bead resin and filters. The increase in volume of solid waste would not be linear, because the proposed EPU would neither alter installed equipment performance nor require drastic changes in system operation or maintenance. In recent years (2003–2004), the solid waste volume generated by Ginna has been significantly above the 9-year non-outage average of 2,500 cubic feet, and outage year average of 5,000 cubic feet. This increase in volume is a result of the roof and reactor head replacement projects and mandated security upgrades.

Under the proposed EPU conditions, any increase in volume of solid waste would be due to increases in disposal of bead resins and filters. This increase would not be significant, although the amount of radioactivity in the waste would linearly increase. Even with such increases, Ginna LLC expects the results would remain below the generation volumes and doses in the FES. Therefore, the NRC concludes that there would be no significant impact to offsite dose due to solid waste disposal following the EPU.

In-Plant Radiation Doses

The proposed EPU would increase in-plant radiation dose rates linearly with the increase in core power level, by approximately 17 percent. These higher doses rates would not be expected to increase the annual average collective occupational doses more than 17 percent. Ginna LLC performed an analysis of the expected increased levels of radiation in the following four areas at Ginna: Areas near Reactor Vessel, In-Containment Areas Adjacent to the Reactor Coolant System, Areas near Irradiated Fuels and Other Irradiated Objects, and Areas outside Containment where the Radiation Source Is Derived from the Primary Coolant. Plant programs and administrative controls, such as conservatism used in the original design basis reactor coolant system source terms, conservatism used in designing plant shielding requirements, and the Ginna Station Radiation Protection Program would ensure that occupational doses would be maintained within regulatory limits of 10 CFR Part 20, with the expected 17-percent increase. Therefore, the NRC concludes that there would be no significant impact to in-plant radiation doses.

Direct Radiation Doses Offsite

Under the proposed EPU conditions, Ginna LLC predicted the increase to direct radiation doses offsite would be proportional to the uprate percentage increase, approximately 17 percent, from liquid and gaseous releases. Potential offsite doses were calculated using plant core power operating history, 1999–2003, reported gaseous and liquid effluent and dose data from 1999–2003, NUREG–0017 equations and assumptions, and a conservative methodology. The extrapolated and increased offsite dose calculations for the liquid and gaseous effluents were found to be well below the regulatory standards in 10 CFR Part 50, Appendix I, 40 CFR Part 190 and the FES. Therefore, the NRC staff concludes that there would be no significant impact of offsite direct radiation doses.

Postulated Accident Doses

As a result of implementation of the proposed EPU, there would be an increase in the source term used in the evaluation of some of the postulated accidents in the FES. The inventory of radionuclides in the reactor core is dependent upon power level; therefore, the core inventory of radionuclides could increase by as much as 17 percent. The concentration of radionuclides in the reactor coolant might also increase by as much as 17 percent; however, this concentration is limited by the Ginna Technical Specifications. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. This coolant concentration

is part of the source term considered in some of the postulated accident analyses. Some of the radioactive waste streams and storage systems evaluated for postulated accidents might contain slightly higher quantities of radionuclides. For those postulated accidents where the source term has increased, the calculated potential radiation dose to individuals at the site boundary (the exclusion area) and in the low population zone would be increased over values presented in the FES.

The NRC's acceptance criteria for radiological consequences analysis using an alternative source term are based on 10 CFR 50.67. Ginna LLC's assessment of new calculated doses following the EPU are well below the NRC regulatory standard described in Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Plants.'' The NRC staff is reviewing the licensee's analyses and performing confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The results of the NRC staff's calculations will be presented in the safety evaluation to be issued with the license amendment, and the EPU will not be approved by NRC unless the NRC staff's independent review of dose calculations under postulated accident conditions determines that dose is within regulatory limits. Therefore, the staff concludes if the doses from postulated accidents remained within the NRC regulatory limits of 10 CFR Part 50 and RG 1.183, the impacts would be small.

Fuel Cycle and Transportation Impacts

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic environmental assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to a higher burnup fuel cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S–3 and S–4 for fuel cycles with uranium enrichments up to 5-weight percent Uranium-235 and burnups less than 60,000 megawatt (thermal) days per metric ton of Uranium-235 (MWd/MTU). Ginna LLC has concluded that the fuel enrichment at Ginna would be increased up to 4.95 percent as a result of the proposed EPU. In addition, the expected core average exposure for the EPU would be approximately 52,000 MWd/MTU, with no fuel pins exceeding the maximum fuel rods limits. Therefore, the environmental impacts of the EPU would remain bounded by the impacts in Tables S–3 and S–4 and would not be significant.

Summary

The proposed EPU would not significantly increase the consequences of accidents, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts based on information provided in the ER and the NRC staff's independent review. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed EPU. Table 2 summarizes the radiological environmental impacts of the proposed EPU at Ginna.

TABLE 2:—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Gaseous Effluents and Doses	Small dose increase due to gaseous effluents; doses to individuals off-site would remain below NRC limits.
Liquid Effluents and Doses	No significant volume increase in liquid effluent generated would be expected; small increase of radioactive materials in liquid effluent; doses to individuals offsite would remain below NRC limits.
Solid Radioactive Waste	Volume of solid waste increased due to equipment replacement projects and security upgrades; increase in radioactive material would be expected; all increases (volume and dose) within NRC limits.
In-plant Dose	Occupational dose expected to increase by 17 percent overall; would remain within all NRC limits.
Direct Radiation Dose	Increase of 17 percent would be expected; doses would remain below NRC regulatory standards and those in the FES.
Postulated Accidents	Increase in the source term used in the evaluation of postulated accidents. New calculated doses must meet NRC regulations (10 CFR 50.67), which will be confirmed and presented in NRC safety evaluation.
Fuel Cycle and Transportation	Impacts in Tables S–3 and S–4 in 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' are bounding.

Alternatives to Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. The plant would continue to operate under its current licensing basis, possibly up to an additional 20 years. However, if the EPU were not approved, other agencies and electric power organizations might be required to pursue other means of providing electric generation capacity to offset future demand. The additional power not supplied by the Ginna site would likely be replaced by demand-side management and energy conservation, purchased power from other electricity providers, other alternative energy sources, or a combination of these options. The environmental impacts associated with the no-action alternative would also have positive impacts at Ginna (for example, increase in solid waste generation) would be eliminated.

The environmental impacts of alternative sources of producing electrical power are described in the FES and Chapter 8 of NUREG–1437 Supplement 14. Non-nuclear power generation technologies considered were coal-fired and natural-gas fired generation at the Ginna or at an alternative site. The construction and operation of a coal or natural-gas fired plant would create greater negative environmental impacts in areas such as air quality, land use, and waste management, than those identified for

the proposed Ginna EPU. Implementation of the proposed EPU would have less impact on the environment than the construction and operation of a new coal or natural-gas fired plant at an alternative site. In addition, the EPU does not involve environmental impacts that are significantly different from those presented in the 1973 FES for Ginna. Therefore, the NRC staff concludes that the impacts of the no-action alternative would be greater than the impacts of the proposed action based on information in the FES and NUREG–1437 Supplement 14.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES and NUREG–1437 Supplement 14.

Agencies and Persons Consulted

In accordance with its stated policy, on [xxxxxxxxxx], 2006, the NRC staff consulted with the State of New York official, [xxxxxxxx], of the Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had [xxxxxxx] comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that implementation of the action as proposed would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated July 7, 2005, as supplemented by letters dated August 15, September 30, December 6, 9, and 22, 2005, and January 11 and 25, and February 16 and March 3 and 24, 2006 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML051950123, ML052310155, ML052800223, ML053480388, ML053480362, ML053640080, ML060180262, ML060960416, ML060540349, ML060810218, and ML060940312, respectively). 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 O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the 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 at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

DATES: The comment period expires 30 days after publication. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration of comments received on or before 30 days after publication.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, 20852 from 7:30 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be electronically available at the NRC's Public Electronic Reading Room (PERR) link, *http://www.nrc.gov/reading-rm/adams.html,* on the NRC Web site or at the NRC's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. 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 at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is considering issuance of an amendment to Facility Operating License No. DPR–18 issued to Ginna LLC for operation of Ginna, located in Wayne County, New York.

FOR FURTHER INFORMATION CONTACT: Patrick Milano, Office of Nuclear Reactor Regulation, Mail Stop O–8C2, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–1457, or by e-mail at *pdm@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of April 2006.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–5384 Filed 4–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 169th meeting on April 18–20, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Tuesday, April 18, 2006

10 a.m.–10:15 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

10:15 a.m.–11:15 a.m.: Overview of Accelerator Mass Spectrometry (Open)—A faculty member of Purdue University (PRIME Lab) will brief the Committee on the methodology of accelerator mass spectrometry, including the statistical analysis of analytical results.

11:15 a.m.–12 Noon: Update on U.S. Department of Energy (DOE) Chlorine-36 Studies at Yucca Mountain (Open)—DOE representatives will update the Committee on the status of Chlorine-36 validation studies at Yucca Mountain, Nevada.

2 p.m.–4:30 p.m.: Briefing from National Academy of Sciences (NAS) on Its 2006 Report on the Transportation of High-Level Nuclear Waste (Open)—NAS representatives will brief the Committee on their recent report titled ''Going the Distance? The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States.'' A copy of this report is available on the NAS Web site at *http://www.nap.edu/catalog/11538.html.*

4:45 p.m.–5:15 p.m.: Proposed Rulemaking on Naturally Occurring or Accelerator-Produced Radioactive Materials (Open)—A representative from NRC's Office of Nuclear Material Safety and Safeguards (NMSS) will brief the Committee on the staff's proposed rulemaking to implement Section 651(e) of the Energy Policy Act of 2005 to include certain discrete sources of naturally occurring or accelerator-produced radioactive materials (NARM) in NRC's regulations for byproduct material.

5:15 p.m.–6:15 p.m.: Discussion of Draft Letters and Reports (Open)—The Committee will discuss proposed ACNW letters.

Wednesday, April 19, 2006

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening

remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Update on DOE Activities at the Yucca Mountain Site (Open)—DOE representatives will brief the Committee on recent activities related to the development of a proposed geologic repository at Yucca Mountain.

9:30 a.m.–11:30 a.m.: Update on Nye County Independent Early Warning Drilling Program (Open)—Representatives from Nye County and DOE will provide the Committee with an update of technical developments related to this independent ground water monitoring program.

1 p.m.–2 p.m.: Modeling Igneous Activity: Dynamic Controls on Summit and Flank Eruptions of Basalt (Open)—A faculty member of Cambridge University (an NMSS contractor) will brief the Committee on research regarding a theoretical model for the eruption of basalt through multiple vents originating from a common source. The discussion will address partitioning of flow between summit and flank vents. This work potentially applies to the proposed Yucca Mountain repository.

2 p.m.–3 p.m.: Modeling Igneous Activity: Magma Interactions with a Geologic Repository (Open)—An ACNW consultant from the Johns Hopkins University will present an analysis of the realistic effects of magma solidification during potential interactions with repository drifts and waste packages. This work potentially applies to the proposed Yucca Mountain repository.

3:15 p.m.–4:15 p.m.: DOE Performance Confirmation Program Plan: NRC Staff Perspective and Update (Open)—NMSS representatives will brief the Committee on the staff's preliminary views regarding the most recent update of DOE's Performance Confirmation Program Plan.

4:15 p.m.–5 p.m.: Physical Capacity of Yucca Mountain for the Emplacement of High-Level Waste (Open)—A representative from the Electric Power Research Institute (EPRI) will present a preliminary analysis of the physical capacity of Yucca Mountain for the disposal of additional commercial spent nuclear fuel.

5 p.m.–6 p.m.: Discussion of Draft Letters and Reports (Open)—The Committee will discuss proposed ACNW letters.

Thursday, April 20, 2006

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: NRC Radiation Research Program (Open)—Representatives of the Office of Nuclear Regulatory Research will brief the Committee on recent NRC-sponsored activities in the area of health physics research.

10:45 a.m.–4 p.m.: Discussion of Draft Letters and Reports (Open)—The Committee will discuss proposed ACNW letters.

4 p.m.–4:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2005 (70 FR 59081). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Michael R. Snodderly (Telephone 301–415–6927), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Snodderly as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Snodderly.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: April 6, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–5385 Filed 4–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on April 18, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 18, 2006—8:30 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (Telephone: 301/415–6927) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so

that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: April 4, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–5386 Filed 4–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on April 25–26, 2006, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 25, 2006—8:30 a.m. until the conclusion of business.

Wednesday, April 26, 2006—8:30 a.m. until the conclusion of business.

The Subcommittee will review the application by FirstEnergy for an 8% power uprate for the Beaver Valley Power Station, Units 1 and 2. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, FirstEnergy Nuclear Operating Company and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 5, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–5379 Filed 4–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on April 27, 2006, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Thursday, April 27, 2006—8:30 a.m. until the conclusion of business.

The Subcommittee will review the small break LOCA portion of the staff evaluation related to the Ginna Extended Power Uprate. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Constellation Energy, Westinghouse, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Signs will not be permitted in the meeting room.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 5, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–5382 Filed 4–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

Board Meeting: May 9, 2006—McLean, Virginia; The U.S. Nuclear Waste Technical Review Board will meet to discuss the Department of Energy's (DOE) proposed implementation of a canister system for transportation, aging, and disposal (TAD) of spent nuclear fuel.

Pursuant to its authority under 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in McLean, Virginia, on Tuesday May 9, 2006. The Board was charged in the Nuclear Waste Amendments Act of 1987 with conducting an independent review of the technical and scientific validity of U.S. Department of Energy (DOE) activities related to disposing of, packaging, and transporting spent nuclear fuel and high-level radioactive waste. At the May meeting, the Board will review DOE efforts to develop and implement a ''clean canister'' or ''TAD'' approach to waste management. If the TAD concept is adopted, nuclear utilities would seal spent fuel into canisters at reactor sites. The canisters could then be loaded into casks for transportation, aging, or disposal of the waste. Also on the agenda is a discussion of infiltration data and an update on Yucca Mountain surface-facilities-design.

A final meeting agenda will be available on the Board's Web site (*http://www.nwtrb.gov*) approximately one week before the meeting date. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will be held at the Hilton Tysons Corner; 7920 Jones Branch Drive; McLean, Virginia 22102; telephone 703–847–5000; fax 703–761–5100.

The meeting will begin at 8 a.m. with an overview of the Yucca Mountain program and the TAD canister concept by DOE representative and reactions to the TAD program by industry representatives. After lunch, additional presentations will discuss the technical analyses that support the TAD decision and the effects of adopting a TAD system on design of Yucca Mountain program and the TAD canister concept by DOE representatives and reactions to the TAD program by industry representatives. After lunch, additional presentations will discuss the technical

analyses the support TAD decision and the effects of adopting a TAD system on design of Yucca Mountain surface facilities. In addition to the TAD presentations, one or more presentations on other topics are expected, including a review of infiltration data.

Time will be set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in-table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meetings will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff, no later than June 1, 2006.

A block of rooms has been reserved for meeting participants at the Hilton Tysons Corner. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. Reservations should be made by April 17, 2006, to ensure receiving the meeting rate.

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; 703–235–4473; fax 703–235–4495.

Dated: April 5, 2006.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 06–3469 Filed 4–11–06; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

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 the following meeting during the week of April 10, 2006:

A Closed Meeting will be held on Thursday, April 13, 2006 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (8), (9)(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, April 13, 2006 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Regulatory matter concerning a financial institution;
Adjudicatory matters; and
Post-argument discussion.

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 7, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–3544 Filed 4–10–06; 11:31 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53603; File No. SR–CBOE–2005–112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Permanent Approval of a Pilot Program Relating to Access to the Exchange's Hybrid Automatic Execution System

April 5, 2006.

On December 30, 2005, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to make permanent the pilot program in CBOE Rule 6.13 relating to access to the Exchange's automatic execution system. The proposed rule change was published for comment in the **Federal Register** on March 6, 2006.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The pilot program the Exchange seeks to make permanent was initiated in July 2004, was subsequently extended twice, and is currently scheduled to expire on October 12, 2006.[4] Under the pilot program, pursuant to CBOE Rule 6.13(b)(i)(C)(iii), orders from market makers and specialists on an options exchange (''options Market Makers'') and stock exchange specialists,[5] with respect to their specialty securities, are eligible for automatic execution through the Exchange's Hybrid Trading System (''Hybrid''), subject to a 15-second limitation [6] on orders on the same side of the market in an options class for an account or accounts of the same beneficial owner. The Exchange believes that the pilot program has been successful and has helped to contribute to the maintenance of efficient markets and to attract volume to the Exchange.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [7] and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53377 (February 27, 2006), 71 FR 11250.

[4] *See* Securities Exchange Act Release Nos. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (approving the pilot program); 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (extending the pilot program until October 12, 2005); and 52494 (September 22, 2005), 70 FR 56943 (September 29, 2005) (extending the pilot program until October 12, 2006).

[5] By its terms, CBOE Rule 6.13(b)(i)(C)(iii) applies to orders eligible for submission pursuant to CBOE Rule 6.13(b)(i)(C)(ii), which relates to options Market Makers and certain stock exchange specialists.

[6] As allowed under CBOE Rule 6.13(b)(i)(C)(iii), the Exchange's floor procedure committees determined to shorten to five seconds (from 15 seconds) the period required between entry of multiple market maker orders (including non-CBOE market maker orders) on the same side of the market in an option class for an account or accounts of the same beneficial owner using Hybrid. This change went into effect on July 18, 2005 and was announced to the Exchange's membership via Regulatory Circular RG05–61. The Exchange clarified that such reduction in the time period to five seconds applies to all of the market participants subject to the pilot program under CBOE Rule 6.13(b)(i)(C)(iii). Telephone conversation between Jennifer M. Lamie, Managing Senior Attorney, Exchange, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on March 29, 2006.

[7] 15 U.S.C. 78f.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that prohibiting members from causing the entry into Hybrid of more than one order from options Market Makers or stock exchange specialists for the same beneficial account within a maximum 15-second period should help reduce the risk of exposure of CBOE market makers. The Commission notes that the 15-second restriction set forth in the rule provides a sufficient period to allow CBOE market makers to change their quotations following an execution, without placing an undue burden on market participants seeking to execute transactions on the Exchange.[10] The Commission further notes that market participants subject to the 15-second restriction will still be permitted to send orders to the Exchange for execution through the Intermarket Option Linkage pursuant to the terms of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2005–112) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5365 Filed 4–11–06; 8:45 am]

BILLING CODE 8010–01–P

[10] The Commission notes that the Exchange may not take punitive action against any non-member options market maker or stock exchange specialist who submits an order to a CBOE member for entry into Hybrid in the event that the CBOE member violates CBOE Rule 6.13(b)(i)(C)(iii).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53597; File No. SR–Amex–2005–112]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Prohibition of Trade Shredding by Members

April 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 27, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 3 (''General Prohibitions and Duty to Report'') by adding a new paragraph (i) to prohibit a member or member organization from splitting trading interest into multiple orders for any purpose other than seeking the best execution of the entire order. The text of the proposed rule change, as amended, appears below. Additions are *in italics.*

* * * * *

Rule 3. General Prohibitions and Duty To Report

(a) through (h)—no change.

(i) It shall be inconsistent with just and equitable principles of trade for a member or member organization to split trading interest into multiple orders for any purpose other than seeking the best execution of the entire order.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[3] *See* Form 19b–4 dated March 27, 2006 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

''Trade shredding'' is the practice of splitting large customer orders for securities into multiple smaller orders for the primary purpose of increasing the receipt of market data revenue by market centers that allow or encourage this practice. The practice is based on the fact that, as a result of the manner in which market data revenues are calculated, market centers can derive a greater share of market data revenue by increasing the number of trades they report to the consolidated tape. For example, Network B, which disseminates consolidated market information on securities listed on the Amex, allocates net income based solely on the number of trades reported by a self-regulatory organization (''SRO''), no matter how small each trade is.

The Amex has expressed its serious concern in the past over the practice of trade shredding. The Exchange believes that trade shredding is incompatible with just and equitable principles of trade. Among other things, it constitutes clearly misleading trade reporting in that it presents a false impression regarding the nature and extent of bona fide trading activity.

Some SROs provide incentives for trade shredding by sharing the increased market data revenue that results from the practice with the market participants, including non-members, who send in orders for execution. Such revenue sharing arrangements may create a conflict of interest between the customers and the market participants handling their orders if, for example, an order is routed to a market center based on such revenue incentives instead of the obligation to obtain best execution for the order.

The Commission has requested that each SRO adopt rule changes that would prohibit its members from trade shredding. Although the Amex does not rebate revenues from tape reporting to members or non-members and provides no other incentive for its order providers to engage in trade shredding on orders sent to the Exchange, the Amex is responding to the Commission's request by adding a new paragraph (i) to Amex Rule 3 (''General Prohibitions and Duty to Report''). This new paragraph would prohibit a member or member organization from splitting trading interest into multiple orders for any purpose other than seeking the best execution of the entire order.

2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on this proposal, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–112 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2005–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–112 and should be submitted on or before May 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5363 Filed 4–11–06; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53606; File No. SR–NASD–2006–028]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Allow Nasdaq To Take Certain Actions on Behalf of Its Issuers in Connection With Nasdaq's Transition to a National Securities Exchange

April 6, 2006.

On February 23, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 4130 to allow Nasdaq and its subsidiary, The Nasdaq Stock Market LLC (''Nasdaq Exchange''), to file an application with the Commission or another appropriate regulator on behalf of its issuers to register their listed securities under Section 12(b) of the Act,[3] or seek a temporary exemption from Section 12 of the Act, in connection with Nasdaq Exchange's operation as a national securities exchange. The Commission published the proposed rule change for comment in the **Federal Register** on March 2, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] The Commission believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78*l*(b).

[4] Securities Exchange Act Release No. 53362 (February 24, 2006), 71 FR 10734.

[5] In approving this rule proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

approved the Nasdaq Exchange's registration as a national securities exchange on January 13, 2006.[7] As noted in the Nasdaq Exchange Order, once the Nasdaq Exchange begins operations as a national securities exchange, a security will be considered for listing on the Nasdaq Exchange only of it is registered pursuant to Section 12(b) of the Act or is subject to an exemption. Further, in the Nasdaq Exchange Order, the Commission noted that Nasdaq had notified Commission staff that it intended to request appropriate regulatory relief to facilitate the efficient registration of its issuers' securities under Section 12(b) of the Act. Nasdaq also represented that it would seek an exemption for certain issuers that are currently not required to be registered under Section 12(g) of the Act.[8] The Commission noted in the Nasdaq Exchange Order that it expected Nasdaq to provide notice to the public and its issuers of any request and provide issuers with an opportunity to opt-out of the process. Nasdaq filed this proposed rule change to give it the authority to act on behalf of its issuers and to provide notice of its plans.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2006–028) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5364 Filed 4–11–06; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (Findings, Opinion, and Order of the Commission approving the application of the Nasdaq Stock Market LLC for registration as a national securities exchange) (''Nasdaq Exchange Order''). The Nasdaq Exchange may not operate as a national securities exchange until certain conditions have been satisfied. *See id.*

[8] 15 U.S.C. 78*l*(g).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53602; File No. SR-NYSE–2005–40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Exchange's Allocation Policy and Procedures (NYSE Rules 103A, 103B, 123E and 476A)

April 5, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 6, 2005, New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE. NYSE filed Amendment No. 1 to the proposed rule change on October 28, 2005.[3] NYSE filed Amendment No. 2 to the proposed rule change on February 9, 2006.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rules 103A, 103B, 123E and 476A with respect to the manner in which securities are allocated to specialist organizations.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rules 103A, 103B, 123E and 476A with respect to the manner in which securities are allocated to specialist organizations on the Exchange.

The Exchange proposes to amend its allocation policy and procedures by placing greater emphasis on performance measures that objectively assess specialist market-making in order to provide more meaningful information for the Committee's consideration. The Exchange represents that this would be accomplished by eliminating the Specialist Performance Evaluation Questionnaire (''SPEQ''), a subjective tool that has become less meaningful as a result of the sharp reduction in the number of specialist firms, and replacing it with a series of objective measures that compare specialist performance against defined standards based on actual trading data. Unlike the SPEQ, which provided tier rankings for firms only, the objective performance measures will permit comparisons by stock, panel, and post, as well as by firm, and thus, will more clearly distinguish between strong and weak performance. In addition, the objective performance measures will evaluate individual specialist performance as well as performance of the entire firm. The SPEQ is limited to an evaluation of firm-wide performance. The use of these measures will also enable specialist

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] In Amendment No. 1, the Exchange clarified certain aspects of the purpose section and rule text of the proposed rule change. Amendment No. 1 clarified that certain of the proposed amendments to NYSE Rules 103A, 103B and 123E are organizational changes that are intended to provide clarity with respect to the operation of the allocation policy and procedures. Amendment No. 1 also further explained the Exchange's decision to move from a subjective standard in the allocation process to an objective standard. Amendment No. 1 supersedes the original filing in its entirety.

[4] In Amendment No. 2, the Exchange further clarified certain aspects of the purpose section and rule text of the proposed rule change. Amendment No. 2 clarified that the proposed amendments to NYSE Rule 103B includes a requirement that specialist firms describe in their blanket allocation applications any contacts they, or any individual acting on their behalf, have had with any employee of the listing company, or any individual acting on behalf of that company, with regard to its prospective listing on the Exchange. In addition, Amendment No. 2 further explained the data that will be provided to the Allocation Committee (''Committee''). Amendment No. 2 supersedes Amendment No. 1 in its entirety.

firms to better manage and more easily improve performance.

The objective performance measures will improve the allocation process by preventing specialist firms from proposing sub-par performers as the designated specialist for new listings and may serve to disqualify entire specialist firms from the allocation process for a period of time based on continued poor performance. In this way, the new measures will serve as a potent incentive to improved market-making and encourage superior specialist performance.

The Exchange is also proposing additional changes to the allocation policy (NYSE Rule 103B) and related changes to the rules governing performance improvement actions (NYSE Rule 103A), the issuance of summary fines (NYSE Rule 476A), and specialist combination review policy (NYSE Rule 123E).[5]

Allocation Policy and Procedures

NYSE Rule 103B contains the Exchange's requirements with respect to allocation of securities to specialist member organizations (''Allocation Policy''). The Exchange represents that the intent of the Allocation Policy is: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between the specialist unit and security; and (4) to contribute to the strength of the specialist system.

The Exchange represents that decisions as to the allocation of securities on the Exchange are made by the Committee. This Committee is comprised of market professionals who use their judgment to make allocation decisions based on the allocation criteria specified in the Allocation Policy. The current allocation criteria includes the SPEQ, objective performance measures, listing company input, allocations received, capital, disciplinary history, and the Committee's professional judgment.

Elimination of SPEQ

The Exchange states that the SPEQ is a quarterly survey on specialist performance completed by Floor Broker members of the Exchange. The SPEQ requires Floor Brokers to rate and provide written comments on the performance of specialist firms with whom they deal regularly on the Floor. Floor Broker evaluations of specialist firm performance focuses on five functional areas—dealer, service, competitiveness, communications and administrative. Floor Brokers rate specialist firms on a 0% to 100% scale, in ten-point increments, that reflect the percentage of the time that the broker feels the specialist firm engaged in the described behavior. An evaluation of 100% is defined as ''always'' and an evaluation of 0% is defined as ''never''.

The Exchange represents that the SPEQ process uses a relative scoring methodology that combines Floor Broker scores for any one specialist firm to determine each firm's overall performance and performance in each of the five functional areas. The scores are then arrayed from highest to lowest, and the specialist firms receive a ranking for the overall score and within each function. Also, a range of ranks is determined that identifies where a firm stood in relation to other units whose scores were not statistically different. From these rankings, the specialist firms are aligned into tiers, up to a maximum of four, with each tier containing those specialist firms with similar rankings. The Committee receives information on SPEQ results only as to the tier classifications.

Although SPEQ has been an important mechanism for evaluation of specialist performance for both allocation and performance improvement action purposes, the Exchange represents that certain weaknesses in its use as an assessment tool have become apparent. For example, SPEQ evaluations are subjective, with ratings based on personal experiences rather than comparisons with accepted objective standards. Further, except for the written comments, which are not incorporated into the formula for SPEQ rankings, SPEQ does not focus on market-making by individual specialists. Importantly, as the number of specialist firms has decreased, SPEQ tier classifications have become tightly clustered with statistically insignificant differences among the firms.[6] Also, SPEQ participants recognize the limitations of SPEQ and have requested a more meaningful process for evaluating specialist performance. For these reasons, the Exchange proposes eliminating SPEQ and replacing it with the objective measures described below. The Exchange represents that by addressing the deficiencies of SPEQ in today's environment, these measures will enable a more meaningful comparison of specialist performance at all levels, based on truly objective criteria.

Expansion of the Use of Objective Measures

The Exchange also proposes to add objective measures designed to evaluate market quality using pre-determined standards of performance based on actual trading data. The measures will rate the performance of stocks, individual specialists and specialist firms overall. Data will be provided to specialists on a daily basis, and monthly and quarterly to the Committee. In addition, the performance information derived from the objective measures will be made available to listing companies to aid in their decision as to the choice of a specialist firm.

The Exchange proposes to add two new objective measures of specialist performance and to change an existing measure. The Exchange represents that one new measure is price continuity. Price continuity measures the absolute value of the price change, if any, from one trade to the next, in the same stock. Currently, price continuity is part of the existing near neighbor analysis,[7] which is among the information provided to specialists and the Committee. However, current continuity percentages are too tightly clustered because of tighter markets, making it difficult to derive useful data for comparison purposes. In addition, there are no trading standards specifically related to price continuity against which to measure performance. The Exchange proposes making price continuity an independent measure and has

[5] See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving SR-NYSE–2005–77) (''Merger Release''). The Merger Release contains conforming language changes to reflect the new entities that will exist as a result of the Exchange's merger with Archipelago Holdings, Inc. In addition, the Merger Release amended NYSE Rule 103B, with respect to the allocation of the proposed new NYSE Group stock to: (i) Give NYSE Group the right to determine the number and identity of specialist firms that will be included in the group from which it shall choose its specialist, provided the group consists of at least four specialist firms; and (ii) provide NYSE Group with the same material with respect to each specialist firm applicant as would have been reviewed by the Committee in allocating other securities. Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division of Market Regulation (''Division''), Commission on February 28, 2006.

[6] The Exchange states that there are currently seven firms registered as specialists in equity securities on the NYSE. As recently as 2000, there were 25 specialist firms.

[7] An explanation of the near neighbor performance measure was given in SR-NYSE–1995–05. See Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35764 (July 11, 1995); See also Securities Exchange Act Release No. 38158 (January 10, 1997), 62 FR 2704 (January 17, 1997) (making permanent the near neighbor pilot). Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on February 28, 2006.

developed appropriate benchmarks and standards to enable an objective comparison of each individual specialist's market-making as it relates to price continuity. The Exchange has also developed a system to identify acceptable and unacceptable performance for this measure.

The second new objective measure is depth. Depth refers to the price movement of a stock during a sequence of transactions totaling a particular volume. Currently, depth is measured over 3,000-share volume sequences and is also part of the near neighbor analysis. The Exchange is proposing to make depth an independent measure [8] and to add three new volume sequences—5,000, 10,000 and 25,000 shares—and has developed appropriate benchmarks and standards for this measure as well.

According to the Exchange, the benchmarks and standards developed for continuity and depth have been reviewed with two university professors from the Massachusetts Institute of Technology, with whom the Exchange consults on matters relating to allocation measures. For each measure, eligible securities [9] are grouped by price and non-block volume into categories. Eligibility requirements for securities include minimum average price, volume, and number of trades.[10] Each category has two performance benchmarks based on actual trading data. Each benchmark has upper and lower performance ranges. Each trading day, the performance of eligible securities will be compared with the upper and lower ranges for the two benchmarks used for each measure and assigned a classification of upper, middle or lower. Upper classifications are worth two points, middle classifications are worth one point and lower classifications are worth negative one point. The points earned for each of the two performance benchmarks within each measure will be combined to determine an overall score for the relevant measure. The overall scores for each measure are combined to determine the security's daily score. Scores range from four points (for upper classifications in both continuity and depth) to negative two points (for lower classifications in both continuity and depth). Daily scores will be provided to specialist firms at the end of each day, monthly scores at the end of each month and quarterly scores at the end of each quarter.[11]

The Committee will be provided with the monthly scores for each specialist firm. In addition, the Exchange will provide the Committee with average daily non-block volume and price activity and average continuity and depth scores for each of the maximum of twenty most active stocks [12] handled by the individual who is identified by his/her firm to be the designated specialist for the stock of the listing company. The information will include trading data for the current month through the week preceding the distribution of the security data sheet to the specialists plus the three preceding calendar months.

The existing measure to be changed is SuperDOT® turnaround for orders received by the specialist. Currently, this measure is based on the percentage of total post-opening market orders that are either executed or ''stopped'' within 60 seconds of the time they are received by the specialist. The Exchange proposes tightening this benchmark to 30 seconds to better reflect actual trading conditions and to focus performance on the individual post and panels rather than the firm overall performance.[13]

The Exchange believes that the use of these objective measures will provide for a more meaningful comparison of specialist performance and will promote better market-making as a result of the availability of more objective and detailed information and competition among the firms for allocations. Unlike the subjective criteria, which provided tier rankings for firms only, the objective performance measures will permit comparisons by stock, panel, and post, as well as by firm, and thus, will more clearly distinguish between strong and weak performance. The use of these measures will also enable specialist firms to better manage and more easily improve performance.

Although the Exchange believes that the objective measures provide the more meaningful comparison, it is also acknowledged that subjective input from the Floor brokers and off-Floor customers with direct knowledge of the performance of specialist firms and individual specialists, may serve a useful purpose in the evaluation process. To this end, the proposed rule change includes a provision for providing subjective information to the Committee. The Exchange continues to develop the specific format of how the subjective information will be provided to the Committee, in consultation with constituent committees [14] that have previously provided feedback on the allocation process.

In addition, the Exchange proposes a number of other changes to NYSE Rule 103B. In summary, these changes are as follows:

A. As noted above, the Committee will receive performance information regarding both the specialist firm and the individual designated by the firm to handle the security should the firm receive the allocation. Currently, the Committee only receives performance information with respect to the firm.

B. In order to provide an incentive to specialist firms to ensure quality performance, provisions will be added that poor performance may result in the inability of an individual specialist or a specialist firm from applying for or receiving allocations, as follows:

[8] Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on March 2, 2006.

[9] Eligible securities are all Exchange-listed domestic common stocks.

[10] An eligible security will be evaluated on any day when any of the following conditions exists: (a) The security's average trading price is between $1 and $200; (b) the security's Exchange non-block volume (trades under 25,000 shares) is at least 100 shares; or (c) the security had at least five depth sequences on the Exchange (for depth only) or at least five Exchange transactions (for continuity only); (d) an individual security's overall quarterly depth and continuity score will be calculated only if it had daily scores on more than 31 days in the quarter.

[11] Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on March 2, 2006.

[12] The Exchange represents that the average daily non-block volume is generally determined using data on the total number of shares traded during the most recent prior three months divided by the number of trading days in that period. The number of stocks is determined by creating a list of stocks traded most frequently by a specialist, ranked by average daily non-block volume. If the list contains less than twenty stocks, information on all stocks contained in the list is provided to the Committee. If the list contains more than twenty stocks, information on only the twenty most active stocks contained in the list is provided to the Committee. Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on April 4, 2006.

[13] The Exchange intends to review the continued applicability of this measure after the implementation of the NYSE HYBRID MARKET[sm]. *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (order approving the NYSE HYBRID MARKET[sm]).

[14] The Exchange represents that the constituent committees consist of the Institutional Traders Advisory Committee, the Upstairs Traders Advisory Committee, the Exchange Traders Advisory Committee, the Market Performance Committee and the proposed Hybrid Performance Committee. Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on March 2, 2006.

SPECIALIST FIRM

Criteria	Duration of criteria	Period of ineligibility
Overall depth or continuity score below 1.90 and more than one standard deviation below average score for all specialist firms.	Two consecutive months	One month.
Same as above	Three consecutive months	Two months.
Same as above	Three out of six months	Two months.
Overall 30-second DOT turnaround percentage below 90%	One month	One month.
Two panels at same post with 30-second DOT turnaround percentages below 75%.	One month	One month.

INDIVIDUAL SPECIALIST

Criteria	Duration of criteria	Period of ineligibility
Any of the assigned securities that the individual specialist handled most frequently during a month receive overall a depth or continuity score below 0.50[15].	Three consecutive months	Two months.
Same as above	Three out of five months	Two months.
Panel with 30-second DOT turnaround percentage below 75%	One month	One month.

[15] Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on April 4, 2006.

C. The composition of the nine-member Committee will be changed, as illustrated in the chart below, in order to equalize representation on the Allocation Panel and the Committee and to give non-Floor constituents a greater role in the allocation process.

Committee member type	Current rule	Proposed
Floor Broker	3 Governors (1 may be Independent)	4 At least 1 Floor Governor, Executive Floor Official or Senior Floor Official.
	3 Others (1 must be Independent).	
Allied Member	2	4 At least 1 Allied Member and at least 1 Institutional Representative.
Institutional	1.	
Chairperson	Floor Broker	1 Floor Broker or Allied Member/Institutional Representative.
		In alternating terms, an additional Floor Broker or Allied Member/Institutional Representative will be chosen for the Committee.
		The Committee members will select a chairperson from the dominant group on the Committee that term.
		No reappointments as chairperson until all members of Allocation Panel in same category have served a term as chairperson.

D. Each standing Committee will be selected one month before its term commences and will elect its chairperson at that time. Currently, the rule provides that the chairperson is elected two months before his/her term starts.

E. The requirement that the Committee chairperson be approved by the Quality of Markets Committee (''QOM'') of the Exchange Board of Directors will be eliminated. As a result of corporate governance changes in December 2003, the Exchange's Board of Directors no longer has an active QOM.

F. In order to encourage more participation from various constituent representatives on the Committee, the term of service for Committee members will be modified as follows:

Current terms of service	Proposed terms of service
4-month term	2-month term.
Terms staggered so that every 2 months, 4–5 members rotate off	No staggered terms.
Reappointment possible, provided a minimum of 2 months have passed since expiration of term.	No reappointment until all members of Allocation Panel in same category have served a term.

G. Provide standing Committee with quarterly information identifying the individuals designated in each allocation application and the number of allocations they received, to provide informational continuity among Committees.

H. As a mechanism to facilitate greater efficiency in the allocation process, the Committee quorum requirement is modified as follows:

Committee member type	Current rule	Proposed
Floor Broker	6, at least 2 Governors	Any 7 members of the standing Committee.
Allied Member	1.	
Institutional	None required.	

I. Increase the number of Allocation Panel members from 69+ to 75+ to encompass the need for added allied member and institutional representation on the Committee.

J. Modify the composition of the Allocation Panel:

Panel member type	Current rule	Proposed
Floor Broker	28	20
Floor Broker Governors	10	10
Sr./Exec. Floor Officials	5 (minimum)	5 (minimum).
Allied Members	15 including those on MPC[16]	20 including those on MPC.
Institutional	11 including those on MPC	20 including those on MPC.

[16] MPC stands for Market Performance Committee.

K. In order to make the process more efficient, the number of specialist firms selected for the interview pool under Option 2 of the Allocation Policy will be modified to four firms, including one firm designated as instrumental by the listing company. Currently, the rule provides that the pool may be composed of three, four or five firms.

L. Redefine the ''quiet period'' for specialist contact with a listing company so that it commences solely with the date that allocation applications are solicited for that issuer.

M. Extend the requirement that the specialist firm's designated specialist remain the primary specialist in an allocated security from six months to one year unless the listed company agrees to a change, in which case the specialist must provide written notice of the change and the listed company's agreement to the Committee and Market Surveillance.

N. Extend the ''Allocation Sunset Policy'' for initial public offerings (''IPOs'') from three months to six months and for Exchange traded funds (''ETFs'') from three months to one year. Updated information on objective performance measures and disciplinary data will be provided to companies after three months (IPOs) and six months (ETFs).

O. Provide the Committee with more disciplinary history:

Current rule	Proposed
Provided as to firms only	Provided for designated specialist and firm.
Informal discipline (Summary Fines and Admonition and Education letters) is reported as follows: market maintenance—12 months from time of issuance; non-market maintenance—6 months from time of issuance.	All informal discipline for 12 months from time of issuance.
Significant pending Enforcement matters once action is authorized	Same.
Hearing Panel decisions, for 12 months after they become final	Final Hearing Panel decisions, for three years after they become final.

P. Eliminate the provision that NYSE Rule 103A performance improvement action criteria (timeliness of openings, SuperDOTreg; turnaround, *etc.*) be reported to the Committee. Currently, the rule requires this information to be reported as a ''pass'' or ''fail''. The revised system will provide the Committee with more detailed information.

Q. In order to expedite the process, specialist firms will be required to designate an individual specialist for each listing, regardless of whether they apply for the allocation. Included in this requirement is the specialist firm's obligation to describe any contacts they, or any individual acting on their behalf, have had with any employee of the listing company, or any individual acting on behalf of that company, with regard to its prospective listing on the Exchange. This will enable staff to produce individual performance data in a timely manner for firms that may be selected for interview pools on a ''without prejudice'' basis.

R. Provide the listing company with the same objective performance measure information the Committee considered, with respect to the members of its interview pool. In addition, as noted in ''N'' and ''T'' herein, provide the listing company with disciplinary history for the firms in the interview pool and their designated specialists.

S. Preclude specialists, and anyone acting in their behalf, from offering to pay for or subsidize the cost of services or other incentives provided to a listing company in whole or in part by third parties in order to avoid even the semblance of impropriety.

T. Provide that interview pools for the allocation of closed-end funds by the same issuer will remain operative for a nine-month period following the selection of a specialist. Any further closed-end fund listings from the same issuer in the nine-month period will be able to select any specialist from this group or ask for the matter to be referred to the Committee, in which case the group dissolves. The fund will be given updated objective performance and disciplinary information before making its decision. If a specialist firm/individual is ineligible for an allocation, that firm will be dropped from the group. If an individual specialist is no longer with a firm at the time of a new allocation of a closed-end fund, the firm will be dropped from the group.

U. Delete references to QOM from NYSE Rule 103B.

V. Substitute the term ''admonition letter'' for ''cautionary letter.''

W. Eliminate the requirement that the Committee chair receive orientation from the QOM.

X. In order to provide an incentive for ongoing enhancement of performance

by specialist firms, add the following to the list of factors considered by a special committee consisting of certain members of the Committee, which determines the allocation of ETFs under this policy: The extent to which a specialist organization has supported in the past, and will continue to support, the Exchange's efforts to strengthen and expand its ETF market.

Y. Allow the issuer of a structured product to participate in the specialist interview via a senior official of its subsidiary participating in the issuance of the structured product.

Additionally, the following amendments are proposed to NYSE Rule 103A:

A. Delete references to SPEQ.

B. Provide new criteria for performance improvement actions, as follows:

i. SuperDOT® market order turnaround:

In any case where a firm:

(a) Does not turn around 90% of its DOT orders in 30 seconds or less (previously 60 seconds) during any quarter (previously two quarters) in a rolling four-quarter period; or

(b) Has two panels at the same post with 30-second turnaround percentages below 75% for any one quarter.

ii. Market Depth:

In any case where a firm has:

(a) An overall quarterly Depth score below 1.90 and more than one standard deviation below the average quarterly Depth score for all specialist firms for two consecutive quarters, or

(b) An overall quarterly Depth score below 1.90 and more than one standard deviation below the average quarterly Depth score for all specialist firms for two out of four consecutive quarters, or

(c) More than ten percent of its eligible stocks with overall quarterly Depth scores below 0.50 and the percent is more than one standard deviation above the Floor average for two consecutive quarters.

iii. Price Continuity

In any case where a firm has:

(a) An overall quarterly Continuity score that is below 1.90 and more than one standard deviation below the average quarterly Continuity score for all specialist firms for two consecutive quarters, or

(b) An overall quarterly Continuity score that is below 1.90 and more than one standard deviation below the average quarterly Continuity score for all specialist firms for two out of four consecutive quarters, or

(c) More than ten percent of its eligible stocks with overall quarterly Continuity scores below 0.50 and the percent is more than one standard deviation above the Floor average for two consecutive quarters.

Further, the Exchange proposes to eliminate references to SPEQ and add references to the proposed objective measures in NYSE Rule 123E (Specialist Combination Review Policy).

Finally, the Exchange proposes to add NYSE Rule 103B to the list of rules for which summary fines are available, specifically NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) to allow the Exchange to sanction members' and member organizations' less serious violations of NYSE Rule 103B pursuant to the minor fine provisions of NYSE Rule 476A.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act[17] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which securities are allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2005–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–40 and should be submitted on or before May 3, 2006.

[17] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5368 Filed 4–11–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53600; File No. SR–NYSEArca–2006–07]

Self-Regulatory Organizations; NYSE Acra, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Exchange Fees and Charges

April 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2006, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii),[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') in order to assess a royalty fee on options contracts traded on certain Exchange Traded Funds (''ETFs''). The text of the proposed rule change, as amended, is available on the Exchange's Web site at *http://www.nysearca.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule in order to assess a $0.10 royalty fee on options contracts traded on the following ETFs: the Russell 1000 Index Fund (IWB), The Russell 1000 Value Index Fund (IWD), the Russell 2000 Index Fund (IWM), the Russell 2000 Value Index Fund (IWN), the Russell 2000 Growth Fund (IWO), and the Russell Midcap Index Fund (IWR). The Exchange proposes to charge $0.10 per contract side on all market maker, firm and broker dealer transactions. According to the Exchange, consistent with the present Schedule, customers will not be assessed the royalty fee.

The Exchange also proposes to add additional language to footnote 6 of the Trade-Related Charges section of the Schedule. According to the Exchange, this language is being added to cross reference an existing section in the Schedule that contains information on how royalty fees associated with Options Strategy Executions are assessed. These fees are explained under the ''Limit of Fees on Options Strategy Executions'' section of the Schedule. The Exchange notes that the additional language to this footnote simply serves as a reference to the existing explanation.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] since it establishes or changes a due, fee or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[18] 17 CFR 200.30–3(a)(12).

[1] 1 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifying changes to the rule text and purpose section of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The effective date of the original proposed rule change is March 21, 2006, and the effective date of Amendment No. 1 is March 31, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 31, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–07. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2006–07 and should be submitted on or before May 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5366 Filed 4–11–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53612; File No. SR–Phlx–2006–15]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Registration Filing Requirements and Reporting Requirements

April 6, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On April 3, 2006, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On April 5, 2006, the Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to: (1) Amend Exchange Rules 600, 604, 620, 623 and 1024, Options Floor Procedure Advice (''OFPA'') F–25 and Equity Floor Procedure Advice (''EFPA'') F–25 to require all member and participant organizations, that do not already participate in Web CRD as a member of a participating exchange or the National Association of Securities Dealers (''NASD'') to submit Form U4, and Form U5, and amendments thereto to the Web Central Registration Depository (''Web CRD'')[5] as well as to submit fingerprint cards directly to the NASD; (2) amend Exchange Rule 1024 to require persons to be Registered Representatives[6] of a member or participant organization in order to solicit or accept customer orders for foreign currency options or in the alternative to require persons who have not successfully completed the Series 7 General Securities Representative Examination to submit an application for waiver of the Series 7 for approval; (3) amend Exchange Rules 600, 604, 620 and 1024 to add language specifying a timeframe in which to amend Form U4, Form U5 and Form BD; (4) amend its minor rule violation enforcement and reporting plan (''MRP'') by adopting two new floor procedure advices, EFPA F–34 and OFPA F–34, respectively, pursuant to Exchange Rule 970, for failures to timely submit amendments to Form U4, Form U5 and Form BD;[7] and (5) make other minor clarifying changes to certain of these rules. The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Phlx made clarifying and technical changes to the proposal.

[4] In Amendment No. 2, the Phlx made further clarifying and technical changes to the proposal.

[5] Web CRD is a web-based system that provides broker-dealers and their associated persons ''one-stop filing'' with the Commission, NASD, and other self-regulatory organizations and regulators. Web CRD is operated by NASD and is utilized by participating securities regulators in connection with registering and licensing broker-dealers and their associated persons.

[6] Registered Representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives. *See* Phlx Fee Schedule Appendix A at footnote 25.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create a more efficient, centralized registration process by migrating from a manual paper-based Exchange procedure to Web CRD for registration and NASD processing of fingerprints, with more defined deadlines and a more streamlined disciplinary process. The proposal also seeks to eliminate the Series 15 as a prerequisite for trading foreign currency options, which is rarely used. The proposal also makes other minor technical changes.

Web CRD

The Web CRD process would assist in maintaining all historical information related to associated persons of member and participant organizations in one central repository, as well as create efficient disclosure utilizing an online database, which can be accessed by

[7] Rule 19d–1(c)(1) under the Act, 17 CFR 240.19d–1(c)(1), requires any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final disciplinary action with respect to any person to promptly file a notice thereof with the Commission. However, rule violations resulting in a fine not exceeding $2,500 are not deemed final and therefore not subject to the same reporting requirements.

other exchanges and regulators. Additionally, the Web CRD process would track and capture information related to registration and continuing education. Finally, the Web CRD system would capture information related to fingerprinting and statutory disqualification, which would enable regulators and broker-dealers to make informed decisions concerning employment and membership.

Members, member and participant organizations would be required to submit Forms U4 and U5 (and amendments thereto) electronically through the Web CRD system. Currently, member and participant organizations submit Forms U4 and U5 in paper form to the Exchange. Although Form BD is required to be submitted to Web CRD, the proposed rule change codifies this requirement into Phlx Rule 600(c), and applies to amendments as well.[8]

Currently, members, member and participant organizations submit manual rolled fingerprint cards [9] to the Exchange, which then forwards the cards to the FBI, the fingerprint processing arm of the Office of the Attorney General of the United States. The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports (including the original fingerprint cards) to the Exchange. Upon receipt of the approved fingerprint cards, the Exchange sends this information to the member or participant organization, as applicable, and keeps a copy for its records. This proposed rule change would require the members, member and participant organizations to send the fingerprint cards to the NASD for processing. All trading floor personnel, including clerks, interns, stock execution clerks and other associated persons of member or participant organizations, who are not registered and only submit fingerprint cards to the NASD, will be classified as Non-Registered Fingerprint (''NRF'') filers.

The Exchange anticipates that the proposed migration to Web CRD will take place on April 10, 2006, at which time Web CRD will be available to process Phlx member and participant organization submissions electronically. On May 12, 2006, the use of Web CRD, pursuant to this proposed rule change becomes mandatory.[10] The Exchange will provide notification in writing to the membership of the effective date of the rule change.

Elimination of Series 15 Examination

The removal of the Series 15 Foreign Currency Options Examination and the requirement to be a Registered Representative to solicit or accept customer orders for foreign currency options would eliminate the need to allocate staff resources to maintaining the examination in the future.[11] The Series 7 General Securities Representative Examination covers many other financial instruments as well as the material covered by the Series 15 examination, such as questions regarding the sale and trading of listed foreign currency options.

From June 1986, the Series 7 examination has included questions regarding the trading of listed foreign currency options. For that reason, Registered Representatives who passed the Series 7 examination after June 1986 have been eligible to sell foreign currency options on the Phlx without taking the Series 15. In addition, in 1993,[12] the Exchange amended Rule 1024(a)(ii) to establish a procedure to waive the Series 15 examination which allows Registered Representatives who passed the Series 7 examination prior to June 1986 to sell Phlx foreign currency options based on the length and depth of their industry experience, in lieu of having to pass a separate Series 15 examination that relates solely to foreign currency options.

In this proposal, in addition to eliminating the Series 15 examination altogether, the Exchange proposes to establish the same criteria for waiver of the Series 7 examination, which requires a description of the applicant's options experience and certification of that experience by a current or former supervisor with knowledge of the registered representative's options experience.[13] The Director of Examinations will determine whether the applicant demonstrates sufficient knowledge of options to allow the applicant to sell foreign currency options without taking the Series 7 examination.

Additionally, other minor changes are being made to Exchange Rule 1024 for purposes of clarification. The Exchange is amending the language in Exchange Rule 1024(a)(i) to clarify the registration obligations of Options Principals.

Failures To Submit Timely Amendments to Form U4, Form U5 and Form BD

The Exchange is adding language to Exchange Rules 600, 604, 620 and 1024 as well as adding Floor Procedure Advices pursuant to the Exchange's minor rule plan and Exchange Rule 970 to clarify the timeframe within which member and participant organizations must amend Forms U4, U5 and BD to allow for prompt disclosure. The Exchange proposes a timeframe of 30 days from the time the filer knew or should have known of the facts which gave rise to the amendment to submit amended Forms U4, U5 and BD. By including this language in both the Exchange Rules and Advices, Exchange staff would retain the discretion to initiate formal disciplinary proceedings. The Exchange believes that the proposed Advices should encourage member organizations and participant organizations to timely submit Forms U4, U5 and BD and thereby timely disclose the information contained in those forms. The disclosure of this information should enable the Exchange and the public to receive current information on registered persons and entities.

Specifically, the Advices will authorize the Exchange to impose a fine on any member or participant organization without formal disciplinary action. Exchange staff will review the number and seriousness of the violation, as well as previous disciplinary history of the violator, to determine if a matter is appropriate for disposition under the minor rule plan. Once a member or participant organization is fined under the minor rule plan, the Exchange may issue progressively higher fines for all subsequent violations within a rolling 12 month period or initiate more formal disciplinary proceedings. The addition of these Advices to the Exchange's minor rule plan should allow Exchange staff the ability to impose more meaningful sanctions for violations that merely warrant a cautionary letter, for example, but do not necessarily rise to the level of a formal disciplinary proceeding pursuant to Exchange Rule 960. Additionally, the Advices would allow for disposition of minor or technical violations of Exchange rules by means of a less costly and less time consuming process as compared to a

[8] 17 CFR 240.15b–1.

[9] The NASD will accept Federal Bureau of Investigation (''FBI'') fingerprint results in lieu of fingerprint cards.

[10] The period from April 10–May 11, 2006 is intended as a phase-in and to permit manual filing in case there is a problem filing via Web CRD. Other than filing via Web CRD, the rule change takes effect April 10, 2006.

[11] Since 1999, the Series 15 examination has only been administered about 20 times.

[12] *See* Securities Exchange Act Release No. 32990 (September 30, 1993), 58 FR 52339 (October 7, 1993)(SR–Phlx–92–10).

[13] The supervisor must certify that the applicant understands options and has applied his or her knowledge in the course of trading and monitoring options positions over a period of no less than six months.

formal disciplinary process. Expediting resolutions for technical violations, while retaining the discretion to bring formal disciplinary action, should allow for efficient dispositions of rule violations.

Other

The language in Exchange Rule 604(e)(ii), related to off-floor traders currently engaged in off-floor trading activities, is being deleted because the language is no longer applicable. The term participant organization is being added for clarification in the various rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Sections 6(b) and 6(c) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing information to a central repository.

The Exchange believes that its proposal is consistent with Section 6(c)(3)(B) of the Act [16] in that it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with the Exchange's members, and member and participant organizations. In addition, under Section 6(c)(3)(B) of the Act,[17] the Exchange may bar a natural person from becoming a member or person associated with a member, if the person does not meet the standards of training, experience and competence as are prescribed in the rules of the Exchange.

Further, the Exchange believes that its proposal is consistent with Sections 6(b)(1),[18] 6(b)(6),[19] 6(b)(7) [20] and 6(d)(1) [21] of the Act, which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because existing Exchange Rule 970 provides procedural rights to a person fined under the MRP to contest the fine and permits a hearing on the matter, the Exchange believes the minor rule plan, as amended by this proposal, should provide a fair procedure for the disciplining of members and persons associated with members. Finally, the Exchange believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act [22] which governs minor rule violation plans. The Exchange believes that the proposed change to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where formal disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In addition, the Exchange believes that its proposal furthers the objectives of Section 6(b)(6) of the Act,[23] in that it provides that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–15 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–Phlx–2006–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–15 and should be submitted on or before May 3, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Commission believes that the proposed

[14] 15 U.S.C. 78f(b) and 78f(c).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(c)(3)(B).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.SC. 78f(b)(6).

[20] 15 U.S.C. 78f(b)(7).

[21] 15 U.S.C. 78f(d)(1).

[22] 17 CFR 240.19d–1(c)(2).

[23] 15 U.S.C. 78f(b)(6).

[24] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

rule change clarifies the Phlx registration process and promotes uniformity of registration in the industry. In addition, the proposed rule change should enhance the ability of regulators to monitor broker-dealers and their associated persons. Requiring firms that are only members of the Phlx to register through Web CRD will put them on a par with other Phlx member firms that are members of another SRO and, as such, are already registering through Web CRD.

The Commission also finds that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[26] which states that an Exchange may prescribe standards of training, experience and competence for persons associated with Exchange members. Further, the Commission believes that the procedures for obtaining a waiver of the Series 7 examination should help to ensure that only persons with adequate experience in options trading and knowledge of foreign currency options and the underlying markets will be granted a waiver of the Series 7 examination requirement.

The Commission also believes that the proposed rule change is consistent with Section 6(b)(6) of the Act [27] in that it provides for the appropriate discipline for violation of Phlx rules. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(7) of the Act [28] in that it provides a fair procedure for the disciplining of Phlx members. Finally, the Commission finds that the proposed rule change is consistent with Rule 19d–1(c)(2) under the Act,[29] which governs minor rule violation plans. The Commission believes it is reasonable for Phlx to be able to sanction late filings of amendments to Form U4, Form U5 and Form BD pursuant to its MRP.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. Accelerated approval of the proposed rule change should allow the Exchange to migrate to Web CRD, as scheduled, on April 10, 2006 and make regulatory information with respect to members and their associated persons more readily available to regulators. In addition, the Commission has approved similar rule changes implementing electronic registration for the Pacific Exchange, Inc. and the Chicago Board Options Exchange, Incorporated.[30] The Commission has also approved a similar rule change for NASD to include failures to timely submit amendments to Form U5 in its Minor Rule Violation Plan.[31] Finally, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[32] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Phlx–2006–15), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5362 Filed 4–11–06; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78f(c)(3)(B).

[27] 15 U.S.C. 78f(b)(6).

[28] 15 U.S.C. 78f(b)(7).

[29] 17 CFR 240.19d–1(c)(2).

[30] *See* Securities Exchange Act Release Nos. 51398 (March 18, 2005), 70 FR 15672 (March 28, 2005) (SR–PCX–2005–10) and 46308 (August 2, 2002), 67 FR 51905 (August 9, 2002) (SR–CBOE–2001–66).

[31] *See* Securities Exchange Act Release No. 50446 (September 24, 2004), 69 FR 58568 (September 30, 2004) (SR–NASD–2004–121).

[32] 15 U.S.C. 78s(b)(2).

[33] *Id.*

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53604; File No. SR–Phlx–2006–19]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Orders Marked Sell Short Entered Before the Opening

April 5, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on March 22, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Phlx has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act [4] and Rule 19b–4 thereunder,[5] proposes to interpret its rules to make certain market and limit orders in Short Sale Exempt Securities [6] received prior the opening pursuant to Phlx Rule 229, Supplementary Material .06 and .10(a)(iv), eligible for automatic execution, even though such orders are marked sell short.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to treat orders received over

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] The Commission's Division of Market Regulation (the ''Division'') issued two no-action letters (the ''Two No-Action Letters'') regarding broker–dealer marking requirements under Rule 200(g) of Regulation SHO. *See* Letter from James A. Brigagliano, Assistant Director, Securities and Exchange Commission, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated January 3, 2005 and letter from James A. Brigagliano, Assistant Director, Commission, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated April 15, 2005. As used in this proposed rule change, Short Sale Exempt Securities means those securities traded on the Phlx and described in one of the Two No-Action Letters.

PACE[7] prior to the opening in a manner consistent with the treatment expected by the member organizations entering the orders. Pursuant to Phlx Rule 229, Supplementary Material .06 and .10(a)(iv), certain market and limit orders received prior to the opening are eligible for automatic execution at the opening price of the New York market, unless, among other things, those orders are marked sell short.[8] According to the Phlx, the reason for not automatically executing orders marked sell short is to prevent a possible violation of the tick test in Rule 10a–1 under the Act[9] if an order marked sell short were executed on an impermissible tick. However, in 2005, the Division issued Two No-Action Letters, which allowed broker–dealers, such as Phlx member organizations, to mark sell short orders in Short Sale Exempt Securities that are not subject to any other exemption as ''sell short'' instead of ''sell short exempt'' if those orders were sent to exchanges which, among other things, ''have instituted procedures to 'mask' the short sale character of the transaction so they are executed as short exempt.''[10] The Phlx has implemented such procedures to mask the short sale character of transactions in Short Sale Exempt Transactions so they are executed as short exempt. The Phlx notes that, therefore, in reliance on the Two No-Actions Letters, Phlx member organizations can mark such orders ''sell short''.

Accordingly, in accordance with the Division's Two No-Action Letters, eligible sell short orders received prior to the opening in Short Sale Exempt Securities could now, by law, be automatically executed on the Phlx without applying the tick test. However, pursuant to Phlx's own rules, Phlx Rule 229, Supplementary Material .06 and .10(a)(iv), orders marked ''sell short exempt'' are eligible for automatic execution and orders marked ''sell short'' are not.

The Phlx now proposes to interpret Phlx Rule 229, Supplementary Material .06 and .10(a)(iv) to consider orders in Short Sale Exempt Securities that are marked sell short as if they were marked sell short exempt. The Phlx, therefore, notes that such orders in Short Sale Exempt Securities that are marked sell short, if otherwise eligible, would execute automatically, pursuant to Phlx Rule 229, Supplementary Material .06 and .10(a)(iv). The Phlx believes that this interpretation conforms to the intention of member organizations entering orders marked sell short in Short Sale Exempt Securities, because, relying on the Two No-Action Letters, such member organization would expect such order to be treated as if it were, in fact, marked sell short exempt.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by treating orders entered by member organizations in a manner consistent with their expectations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2006–19.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–19 and should be submitted on or before May 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5367 Filed 4–11–06; 8:45 am]

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[7] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. *See* Phlx Rule 229.

[8] *See* Securities Exchange Act Release No. 52495 (September 22, 2005), 70 FR 56961 (September 29, 2005) (SR–Phlx–2005–14).

[9] 17 CFR 240.10a–1.

[10] *See* the Two No-Action Letters.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5326]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Monday, May 1, 2006 in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of this meeting will be to finalize preparations for the 81st Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 10–19, 2006 at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions for the Maritime Safety Committee will be discussed. Among other things, the items of particular interest are:

—Adoption of amendments to SOLAS for long range identification and tracking of ships, amendments to the IMDG Code, amendments to the International Convention on standards of Training, Certification and Watchkeeping for Seafarers, amendments to the FSS Code, and amendments to the LSA Code;

—Passenger ship safety;

—Measures to enhance maritime security;

—Goal-based new ship construction standards;

—Formal safety assessment;

—Reports of nine subcommittees—Stability, load lines and fishing vessel safety, Dangerous goods, solid cargoes and containers, Training and watchkeeping, Fire protection, Radiocommunications and search and rescue, Ship design and equipment, Flag State implementation, Bulk liquids and gases, and Safety of navigation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Howard Hime, Commandant (G–PS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: April 5, 2006.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–5401 Filed 4–11–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–23781]

Agency Information Collection Activities; Request for Comment; Approval of a New Information Collection: Letter of Confirmation and Carrier Contact Information Sheets

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

ACTION: Notice and request for comments.

SUMMARY: FMCSA invites public comment on its plan to request the Office of Management and Budget's (OMB) approval to collect information on new forms entitled ''Carrier Contact Information Sheets.'' The information will be collected from United States and Canada-based motor carriers through the use forms, and used by FMCSA Safety Auditors and Safety Investigators to prepare in advance for Compliance Reviews (CRs) and New Entrant Program Safety Audits (NEPSAs); Pre-authority Safety Audits (PASAs) and CRs of certain Mexico-domiciled motor carriers; and NEPSAs and CRs of Non-North American motor carriers. FMCSA conducts CRs to determine motor carrier compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and other regulations overseen by FMCSA. In accordance with section 350 of the 2002 DOT Appropriations Act and the Agency's regulations, all Mexico-domiciled long-haul carriers must successfully complete a PASA before receiving authority to operate in the United States and must receive a CR within their first 18 months of operations in the United States. All other motor carriers receive CRs to determine their safety fitness.

FMCSA conducts NEPSAs in accordance with section 210 of the Motor Carrier Safety Improvement Act of 1999, which requires safety reviews of all new entrants during their first 18 months of operations.

The information collected from motor carriers will be used to assist safety investigators to become familiar with the motor carrier's operation prior to visiting the carrier's place of business. The information collected will include, but is not limited to, company information and contact persons, business type, insurance, type of cargo transported, vehicle and driver information and controlled substance testing information. Additional information will be collected from carriers who transport hazardous materials, household goods, and passengers or are domiciled in Mexico. This notice is required by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before June 12, 2006.

ADDRESSES: All comments should reference Docket No. FMCSA–2006–23781. You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493–2251; or submit electronically at *http://dms.dot.gov*. You may examine and copy all comments received at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you desire your comment to be acknowledged, you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

FOR FURTHER INFORMATION CONTACT: Mr. Arturo H. Ramirez, Division Chief, (202) 366–3181, Enforcement and Compliance Division, Federal Motor Carrier Safety Administration, 400 7th Street SW., Suite 8214, Washington, DC 20590. Office hours are from 7:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: Title: Carrier Contact Information Sheets.

OMB Control No: 2126-XXXX.

Background:

In 1999, the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Public Law 106–159,113 Stat. 1748 (December 9, 1999)] strengthened the motor carrier safety program by mandating more vehicle and driver inspections, and carrier compliance reviews. MCSIA also required safety reviews of all new entrants during the first 18 months of operations. Section 350 of the DOT Appropriations Act for Fiscal Year 2002 [Public Law 107–87, 115 Stat. 864 (December 18, 2001)] further strengthened the safety program for motor carriers by requiring safety audits of long-haul Mexico-domiciled carriers before they receive operating authority in the United States.

FMCSA conducts compliance reviews to ensure that motor carriers comply with the FMCSRs. To facilitate the timely completion of the compliance reviews in the future, FMCSA safety investigators will use the following two forms to collect information from motor carriers prior to conducting compliance reviews.

A ''Letter of Confirmation,'' will be used by the safety investigator to confirm an appointment with a carrier once a compliance review has been scheduled. The letter further informs the carrier the investigator will need access to all carrier records including, but not limited to, the following:

- A list of drivers used in the past 365 days, including date of hire, date of termination, Commercial Driver's License (CDL) State and license number, and date of birth;
- Driver qualification files and controlled substance testing records results and summaries for the past 365 days;
- Driver payroll records;
- Driver records of duty status (logs, time records, etc.) for the past 6 months;
- Driver trip reports, expense records, scale tickets, fuel receipts, toll receipts, bills of lading or any other pickup or delivery document for the past 6 months;
- Motor vehicle accident reports and accident register for the past 12 months;
- A list of motor vehicle equipment (company unit number, license number, State, year, make and gross vehicle weight rating (GVWR));
- Lease agreements, if applicable;
- Vehicle maintenance records for all vehicles owned or leased;
- Driver vehicle inspection reports for the last 90 days;
- All roadside inspections for the past 365 days;
- Company gross revenue for the last calendar or fiscal year, as applicable;
- Total fleet mileage for the last year;
- A copy of the motor carrier's MCS–90 or MCS–90B endorsement for its current policy; and insurance claim information for the past 365 days (Loss Run Report).
- Carriers of household goods must also provide all documents related to the movement of household goods, including estimates, orders for service, bills of lading, inventories, invoices and weight tickets.
- Carriers of hazardous materials must also provide, if applicable: a copy of the company's security plan; a list of any hazardous materials (HM or hazmat) incident(s) that may have occurred in the past 12 months (including spills, injuries or any type of release); HM shipping papers for the past 12 months; records related to the training of all hazmat employees and all documentation regarding the testing of any applicable specification cargo tanks.

Form MCSA–5540, ''Carrier Information,'' will be used for the collection of information from all motor carriers subject to the Federal Motor Carrier Safety Regulations. The information will be used by the safety investigator to assist him/her in conducting a compliance review of the motor carrier's operation. The information to be collected from the carrier includes, but is not limited to:

- The legal name and contact information (including telephone and facsimile numbers and e-mail addresses);
- Information regarding the motor carrier's type of business—for example, whether the business is a sole proprietorship, partnership, LLC (Limited Liability Company) or corporation;
- The motor carrier's gross revenue for the last complete fiscal year;
- The fleet mileage for the preceding 12 months;
- The motor carrier's employee identification number, social security number or Registro Federal de Causantes number (Mexican Federal Tax Identification number) (RFC) (if a Mexico-domiciled carrier);
- The motor carrier's insurance information, including name of insurance company, agent or contact information, insurance company's telephone number, coverage or policy number and whether the carrier has an additional umbrella policy. The form also requests that for-hire carriers and carriers of hazardous materials have available for the safety investigator's review a copy of Form MCS–90 or MCS–90B, as appropriate;
- Any reports of accidents in the proceeding 365 days;
- A description of the type of cargo transported and whether the carrier is a for-hire property carrier, a for-hire passenger carrier, private property carrier or private passenger carrier;
- The number of vehicles in the motor carrier's fleet including, if applicable, the number of straight trucks, truck tractors, trailers, hazardous material cargo tank trucks, hazardous material cargo tank trailers, school buses, motor coaches, and number of 9–15 passenger vehicles;
- The number of vehicles in its fleet that are owned, leased or trip leased;
- The number of interstate or intrastate drivers that operate commercial motor vehicles within a 100 air-mile radius or beyond a 100 air-mile radius;
- The number of non-CDL drivers operating commercial motor vehicles within a 150 air-mile radius;
- If applicable, the total number of trip leased and CDL drivers it employs per month;
- A description of the motor carrier's controlled substances and alcohol testing program for CDL drivers, including the name of any consortium in which it participates and relevant contact persons, addresses, and telephone numbers;
- A list of all drivers enrolled in the company's random alcohol and controlled substance testing program and a semi-annual aggregate statistical summary of the motor carrier's alcohol and controlled substance testing results;
- The name of the person(s) who hires drivers, oversees driver qualifications, monitors drivers hours-of-service, maintains trip related expense receipts, completes payroll, dispatches, oversees controlled substances testing, is responsible for the motor carrier's vehicle maintenance program, is responsible for maintenance records and is responsible for the motor carrier's accident records.

Additional forms set forth below will apply to carriers who transport household goods, hazardous materials and passengers, or are domiciled in Mexico. The forms are listed as Appendices, Forms A-E, respectively.

Appendix A (Household Goods Carriers)

Requests that carriers who transport household goods provide:

- General information including, but not limited to, the location of the motor carrier's sales office(s), the location where it maintains equipment or warehousing facilities and the name and phone number of these locations;
- If applicable, the name of prime agents that are not company owned, addresses and telephone number(s) and copies of any written agreements the carrier may have with them;
- If the carrier uses brokers, copies of any written agreements with the brokers;
- If applicable, information pertaining to the use of public or self-storage facilities the carrier may use to hold shipments that are in transit and the name, address and telephone number of each facility used in the past 12 months;
- Information pertaining to the motor carrier's arbitration program, the provider of the program (company name), contact person, date participation in the program began, address of provider, date the program was put into effect, estimating process and its complaint and inquiry processes;
- Information regarding tariffs, including name and identifying number of the tariff, the effective date of the tariff, whether the carrier participates in a tariff published by another party, if so, the date participation began and a copy of the motor carrier's tariff and all revisions in effect during the past 12 months;
- Information regarding production and distribution to their customers of the publication entitled ''Your Rights and Responsibilities When You Move'' prior to signing an order for service; and

Appendix B (Hazardous Materials Carriers)

Requests that a carrier of hazardous materials provide:

- A motor carrier's hazardous materials registration number, the class/division of the hazardous material the carrier transports and whether it transports placardable amounts;
- If applicable, the specification(s) of the cargo tanks the carrier uses to transport the hazardous material, the name of the facility it uses to inspect the cargo tanks and registration number (CT) number;
- Information pertaining to hazardous materials requiring a Hazardous Material Safety Permit and the permit number;
- Information about the motor carrier's security plan, whether the plan includes a written risk assessment and the name of the person in the company responsible for security;
- The name of the person(s) providing employees hazardous material training;
- Whether the motor carrier's employees have received general awareness training, security awareness training, function specific training or in-depth security training;
- A list of all employees that handle hazardous materials, including, but not limited to drivers, loaders, handlers, persons that prepare shipping papers; and
- The name of anyone responsible for hazardous materials safety.

Appendix C (Passenger Carriers)

Requires passenger carriers to identify whether they operate vehicles designed to transport: (1) Eight (8) passengers or less (including driver), (2) nine (9) to 15 passengers (including the driver[ar3]), or (3) 16 or more passengers (including the driver). The passenger carrier is also asked whether it operates in interstate commerce.

Appendix D (Mexico-domiciled Carriers)

Requests a Mexico-domiciled carrier to provide:

- Information regarding the transportation of interstate cargo during the preceding 12 months and the number of miles traveled in the United States only;
- The number of vehicles the carrier operates in commerce in the United States that have a Gross Vehicle Weight or Gross Combination Weight rating under 10,000 pounds, in excess of 10,000 pounds or in excess of 26,000 pounds;
- Whether the vehicles are housed in Mexico or the United States and the address of the location they are housed;
- Copies of its MX authority and a MCS–90 properly endorsed with required or adequate levels of insurance;
- The number of drivers operating in the United States-Mexico border commercial zone and beyond the commercial zone;
- Information regarding its process agent(s), including, but not limited to, the contact person, address of process agent, telephone, facsimile or cellular phone numbers and e-mail addresses, if applicable;
- For carriers with subsidiaries based in the United States, information regarding these subsidiaries, including, but not limited to, company name, contact person, address of company, telephone, facsimile and cellular numbers; and e-mail addresses.

Appendix E (Non-North American Carriers)

Requests a Non-North American carrier to[ar4] provide:

- Information concerning the transportation of interstate cargo during the preceding 12 months and the number of miles traveled in the United States only;
- The number of vehicles the carrier operates in commerce in the United States that have a Gross Vehicle Weight or Gross Combination Weight rating under 10,000 pounds, in excess of 10,000 pounds or in excess of 26,000 pounds;
- Whether the vehicles are housed in Mexico or the United States and the address of the location they are housed;
- Copies of all operating authorities (MX or other) and a MCS–90 properly endorsed with required or adequate levels of insurance;
- Information regarding its process agent(s), including, but not limited to, the contact person, address of process agent, telephone, facsimile or cellular numbers and e-mail address in applicable; and

For carriers with subsidiaries based in the United States, information regarding these subsidiaries, including, but not limited to, the contact person, address of process agent, telephone, facsimile or cellular numbers and e-mail address.

Respondents: United States, Canada-based and Mexico-domiciled motor carriers and Non-North American motor carriers.

Frequency: On occasion.

Estimated Average Burden per Response: The burden for the Letter of Confirmation is included in the burden for the Form MCSA–5540, ''Carrier Information''. The estimated time to read the Letter of Confirmation and complete the Form MCSA–5540 is 40 minutes, and Appendices A—E: is 20 minutes.

Estimated Total Annual Burden Hours: 23,384 hours [23,384 respondents x 40 minutes/60 minutes to complete the Letter of Confirmation and Form MCSA–5540 + 23,384 respondents x 20 minutes to/60 minutes complete Appendices A-E = 23,384 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: April 6, 2006.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. E6–5434 Filed 4–11–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–1 and Revenue Procedure 2006–3

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 Revenue Procedure 2006–1, and Revenue Procedure 2006–3, 26 CFR 601.201—Rulings and Determination Letters.

DATES: Written comments should be received on or before June 12, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.201—Rulings and Determination Letters.

OMB Number: 1545–1522.

Revenue Procedure Number: Revenue Procedures 2006–1, and 2006–3.

Abstract: The information requested in these revenue procedures are required to enable the Internal Revenue Service to give advice on filing letter rulings and determination letter requests and to process such requests.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 3,800.

Estimated Time Per Respondent: 80 hours, 19 minutes.

Estimated Total Annual Burden Hours: 305,230.

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 5, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–5344 Filed 4–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8594

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 8594, Asset Acquisition Statement.

DATES: Written comments should be received on or before June 12, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 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 Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Asset Acquisition Statement.

OMB Number: 1545–1021.

Form Number: 8594.

Abstract: Internal Revenue Code section 1060 requires reporting to the IRS by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. Form 8594 is used to report this information.

Current Actions: There are no changes being made to Form 8594 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 13,200.

Estimated Time Per Respondent: 16 hrs., 28 minutes.

Estimated Total Annual Burden Hours: 217,272

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 6, 2006.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E6–5345 Filed 4–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Tuesday, May 2, 2006.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Tuesday, May 2, 2006 from 3:30 p.m. ET to 4:30 p.m. ET via a telephone

conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Dated: April 5, 2006.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5346 Filed 4–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted in Denver, Colorado. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 4, 2006, Friday, May 5, 2006 and Saturday, May 6, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Thursday, May 4, 2006 from 1 p.m. Mountain Time to 4:30 p.m. Mountain Time; Friday, May 5, 2006 from 8:30 a.m. Mountain Time to 4:30 p.m. Mountain Time; and Saturday, May 6, 2006 from 8:30 a.m. Mountain Time to 11:30 a.m. Mountain Time at 1672 Lawrence Street, Denver, Colorado. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited space, notification of intent to participate in the meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: April 5, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5347 Filed 4–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2006–17]

Community Reinvestment Act; Questions and Answers Regarding Community Reinvestment; Notice

AGENCY: Office of Thrift Supervision (OTS).

ACTION: Notice and request for comment.

SUMMARY: This proposal would revise OTS guidance relating to the Community Reinvestment Act (CRA). Accompanying this proposal and published in the Rules and Regulations portion of today's **Federal Register**, is a Final Rule revising the definition of ''community development'' in OTS's CRA rule. This proposal addresses topics related to that Final Rule among others. Public comment is invited on the proposed guidance, as well as any other community reinvestment issues.

DATE: Comments on the proposed questions and answers are requested by June 12, 2006.

ADDRESSES: You may submit comments, identified by No. 2006–17, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail address: *regs.comments@ots.treas.gov.* Please include No. 2006–17 in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–17.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–17.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Celeste Anderson, Senior Program Manager, Operation Risk, (202) 906–7990; Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in today's **Federal Register**, OTS is publishing a final rule revising its CRA rule effective immediately. That final rule revises the definition of ''community development'' to include activities to revitalize and stabilize distressed or underserved, nonmetropolitan middle-income areas and designated disaster areas. It also makes a technical change to the lettering of the definitions in the CRA rule to conform to that used in the CRA rules of the other Federal banking agencies.

To help savings associations meet their responsibilities under the CRA and to increase public understanding of the CRA regulations, OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC) have previously published guidance in the form of questions and answers about the CRA regulations. That guidance is intended to provide the informal views of agency staff for use by examiners and other agency personnel, financial institutions, and the public, and is

supplemented periodically. *See* Interagency Questions and Answers Regarding Community Reinvestment, 66 FR 36620 (July 12, 2001) (2001 Interagency Q&As).

Today, OTS is issuing proposed questions and answers to provide additional guidance for savings associations. All of this additional proposed guidance is substantively identical to final guidance jointly issued by the OCC, Board, and FDIC on March 10, 2006 (71 FR 12424). However, OTS's proposal only includes questions and answers that pertain to its revised definition of ''community development'' and certain other provisions of the CRA rule that are common to all four agencies. It does not include questions and answers that pertain to additional revisions the OCC, Board, and FDIC made to their CRA rules in their August 2, 2005 rulemaking (70 FR 44256), since OTS has not adopted those revisions to date.

Just as in the 2001 Interagency Q&As, the proposed questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. As a result of technical changes made to the four federal banking agencies' CRA rules (70 FR 15570 (March 28, 2005)) and the recent revisions, some of the numbering in the 2001 Interagency Q&As no longer corresponds to the appropriate sections of the revised regulation. However, in the proposed questions and answers, if a reference is made to an existing question and answer, the number of the existing question and answer, as published in the 2001 Interagency Q&As, is given, even if the old reference does not accurately describe the current provision in the regulations. When the proposed questions and answers are adopted as final and the rest of the questions and answers are updated, the references in the questions and answers will be updated.

II. Proposed New Questions and Answers

OTS believes new questions and answers addressing its CRA regulation would be helpful. Therefore, it is publishing for comment ten new questions and answers.

A. New Questions and Answers on Revised ''Community Development'' Definition

Of the ten proposed new questions and answers, eight address the revised definition of ''community development,'' which includes activities that revitalize or stabilize a distressed or underserved, nonmetropolitan middle-income geography or a designated disaster area. Each of these questions and answers is discussed in the order that it appears in the text of OTS's proposed revisions.

1. *Is the same definition of community development applicable to all savings associations? (§ 563e.12(g)(4)–1)* The proposed guidance clarifies that the same definition of ''community development,'' which OTS is revising today, applies to all savings associations.

OTS's proposed guidance is worded somewhat differently from that used by the other federal banking agencies. The question that the other federal banking agencies used is, ''Is the revised definition of community development, effective September 1, 2005, applicable to all banks or only to intermediate small banks?'' OTS's revised definition becomes effective today, not September 1, 2005. Also, OTS has not, to date, adopted the intermediate small bank test and thus does not use that term. Further, OTS is concerned that using the term ''revised'' when referring to the definition of community development will cause confusion in future years once the revisions are no longer new. Instead, OTS focuses the question and answer on whether the same definition of community development applies to all savings associations.

2. *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved, nonmetropolitan middle-income geography or designated disaster areas? (§ 563e.12(g)(4)–2)* The proposed guidance clarifies that an activity that provides housing for middle-or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery.

OTS generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low-or moderate-income individuals or neighborhoods. For example, a loan solely for middle-or upper-income housing in a community in need of financing for low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. OTS will presume that an activity revitalizes or stabilizes such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan.

3. *What is a ''designated disaster area'' and how long does the designation last? (§ 563e.12(g)(4)(ii)–1)* The proposed guidance explains that the term ''designated disaster area'' refers to federally designated disaster areas. State disasters or emergencies are usually declared as a prerequisite for Federal disaster assistance. Thus, restricting the term to federally designated disaster areas would not appear to meaningfully limit the scope of that term.

Some Federal disaster area designations are solely for the purpose of providing short-term public assistance to address debris removal or emergency protective measures immediately following an incident—specifically, Federal Emergency Management Agency (FEMA) Public Assistance Emergency Work Category A (Debris Removal) and Category B (Emergency Protective Measures). OTS believes that designations for these purposes may not exhibit the type of conditions that would require sustained disaster recovery-related revitalization or stabilization activities.

Therefore, the proposed guidance states that a ''designated disaster area'' is a major disaster area designated by the Federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by FEMA, but exclude counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Although FEMA makes a public announcement of a disaster designation, FEMA generally does not announce an expiration of the disaster designation. Nor do its regulations provide for the designation's expiration. FEMA's regulations and practices entail different stages relevant to a disaster designation period, such as the incident period, the application period, the work completion deadlines, and the period that a joint field office is open, but these periods may vary from incident to incident, and may not be relevant to all designated disasters. FEMA's regulations establish a requirement that permanent public

assistance work relating to a major disaster must be completed within 18 months of the disaster designation (44 CFR 206.204(c)) unless FEMA grants an extension.

Accordingly, the proposed guidance states that OTS will consider disaster recovery-related activities that help to revitalize or stabilize a designated disaster area for 36 months following the date of designation by the Federal government. OTS proposes providing a uniform 36-month period following disaster designation to provide an adequate time period to address the variety of community revitalization or stabilization needs that may arise depending on the nature, extent, and severity of the particular disaster. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period could be extended.

Finally, OTS would plan to extend substantially the time periods for recovery-related activities in the Gulf Coast areas designated as disaster areas because of Hurricanes Katrina and Rita. The extension beyond 36 months from the dates of the disaster designations would be because of the demonstrated community need for long-term involvement by financial institutions in helping to address the widespread devastation caused by these hurricanes.

4. *What activities are considered to ''revitalize or stabilize'' a designated disaster area, and how are those activities considered? (§ 563e.12(g)(4)(ii)–2)* The proposed guidance states that OTS generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a *bona fide* government revitalization and stabilization plan or disaster recovery plan. OTS generally will consider all activities related to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low-or moderate-income individuals or neighborhoods.

The proposed guidance provides several examples of activities that will be considered to revitalize or stabilize a designated disaster area. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; activities that provide financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals.

5. *What criteria are used to identify distressed or underserved, nonmetropolitan middle-income geographies? (§ 563e.12(g)(4)(iii)–1)* The proposed guidance explains the criteria OTS will use to designate nonmetropolitan middle-income geographies that are distressed or underserved. Data source information along with the list of designated census tracts is published on the Federal Financial Institutions Examination Council (FFIEC) Web site (*http://www.ffiec.gov*).

6. *How often will the list of designated distressed or underserved, nonmetropolitan middle-income geographies be updated? (§ 563e.12(g)(4)(iii)–2)* The proposed guidance states that the list of designated distressed or underserved nonmetropolitan middle-income geographies will be updated annually and will be published on the FFIEC Web site (*http://www.ffiec.gov*). It also proposes a twelve-month lag period immediately after a census tract is reclassified as no longer distressed or underserved. During the lag period, revitalization and stabilization activities will receive consideration as community development if the activities would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

The list will be updated annually based on annual changes in source data and published continuously on the FFIEC Web site. The list will indicate which designated census tracts are in their lag periods.

OTS's proposed guidance contains an editorial, nonsubstantive difference from the final guidance of the other federal banking agencies. Whereas the other agencies use the terms ''twelve-month'' and ''one year'' interchangeably when referring to the duration of the lag period, OTS uses the term ''twelve-month'' throughout for consistency.

7. *What activities are considered to ''revitalize or stabilize'' a distressed nonmetropolitan middle-income geography, and how are those activities evaluated? (§ 563e.12(g)(4)(iii)–3)* The proposed guidance explains how revitalization and stabilization activities in designated distressed nonmetropolitan middle-income geographies will be evaluated. It is consistent with the similar proposed guidance applicable to savings associations' revitalization and stabilization activities in designated disaster areas. *See* proposed Q&A § 563e.12(g)(4)(ii)–2. The proposed guidance specifically states that examiners will give greater weight to those activities that are most responsive to community needs, including the needs of low-or moderate-income individuals or neighborhoods.

8. *What activities are considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income geography, and how are those activities evaluated? (§ 563e.12(g)(4)(iii)–4)* The proposed guidance includes a restatement of the standard that appears in the regulations, that is, that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including the needs of low-or moderate-income individuals. Activities such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration.

B. Other New Questions and Answers

Two new questions and answers address consideration of prior-period qualified investments and treatment of small savings associations' affiliates' activities. Each of these questions and answers is discussed in the order that it appears in the text of OTS's proposed revisions.

1. *When evaluating a qualified investment, what consideration will be given for prior-period investments? (§ 563e.12(t)–1)* The proposed guidance would explain that examiners consider qualified investments that were made during the prior evaluation period but that are still outstanding during the current evaluation period. This guidance would apply to savings associations of all sizes.

Qualitative factors affect the weight given to both current period and outstanding prior-period qualified investments. Although prior-period investments may receive consideration

in a savings association's current evaluation, examiners typically distinguish between current-period and prior-period investments when listing the amounts of a savings association's investments in the institution's performance evaluation. Further, examiners use qualitative factors to determine how much consideration a savings association receives for any given qualified investment. Greater weight is given to investments that are responsive to community needs, innovative, or complex.

2. *When evaluating a small savings association's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates? (§ 563e.26–1)* The proposed guidance would clarify that any small savings association may request that activities of an affiliate in the small savings association's assessment area(s) be considered in its performance evaluation. Those activities will be considered in the small savings association's performance evaluation subject to the same constraints that apply to large institutions' affiliate activities, including that the activities have not also been considered in the CRA evaluation of another institution.

OTS's proposed question is worded differently from the comparable question in the other federal banking agencies' final guidance. Their question refers to a ''small or intermediate small bank's performance.'' Since OTS has not, to date, adopted the intermediate small bank test, OTS's proposed question does not use that term.

III. Revisions to Existing Guidance

Proposed revisions to two existing questions and answers would address community development services and qualified investments. Each of these questions and answers is discussed in the order that it appears in the text of OTS's proposed revisions.

A. *What are examples of community development services? (§ 563e.12(i)–3)* The proposed guidance would revise the existing guidance from the 2001 Interagency Q&As (§ 563e.12(i)–3), which lists examples of community development services, to add two new examples. The first new example would state that providing financial services to low-or moderate-income individuals through branches and other facilities in low-or moderate-income areas is a community development service (unless the provision of such services has been considered in the evaluation of a savings association's retail banking services under § ____.24(d)).

The second new example of a community development service would be providing international remittance services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittance services in connection with a low-cost account). This example is consistent with guidance the four federal banking agencies previously provided in a letter responding to a question from a member of Congress.

B. *What are examples of qualified investments? (§ 563e.12(t)–4)* The proposed revision would change a bullet to the existing guidance from the 2001 Interagency Q&As that provides examples of qualified investments (§ 563e.12(r)–4). The revised bullet would indicate that an example of a qualified investment includes savings associations' investments in Rural Business Investment Companies (RBICs). The Rural Business Investment Program (RBIP), which is a joint initiative between the U.S. Small Business Administration and the U.S. Department of Agriculture, is intended to promote economic development by financing small businesses located primarily in rural areas. OTS reminds savings associations that they may establish and invest in RBICs or entities established to invest solely in RBICs so long as those investments do not exceed five percent of the capital and surplus of the association. 7 U.S.C. 2009cc–9.

IV. General Comments

Public comment is invited on the proposed new and revised questions and answers. Public comment is also invited on a continuing basis on any issues raised by the CRA and the Interagency Q&As. If, after reading this proposed guidance and the existing Interagency Q&As, financial institutions, examiners, community organizations, or other interested parties have unanswered questions or comments about OTS's community reinvestment regulations, they should submit them to OTS. OTS will consider addressing such questions in future guidance.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 212 of SBREFA, 5 U.S.C. 601 note, requires for each rule for which an agency prepares a final regulatory flexibility analysis, that the agency publish one or more compliance guides to help small entities understand how to comply with the rule. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certified that its proposed CRA rule would not have a significant economic impact on a substantial number of small entities. 69 FR 68257, 68265 (November 24, 2004). Likewise, OTS certified that its final rule published in today's **Federal Register** would not have a significant impact on a substantial number of small entities.

Nonetheless, as part of OTS's continuing efforts to provide clear, understandable regulations, the four Federal banking agencies have compiled the Interagency Q&As and OTS has compiled these proposed revisions. These materials serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small institutions.

The text of OTS's proposed revisions to the Interagency Questions and Answers Regarding Community Reinvestment follows:

Section 563e.12(g)(4) Activities That Revitalize or Stabilize

Section 563e.12(g)(4)—1: Is the same definition of community development applicable to all savings associations?

Yes, one definition of community development is applicable to all savings associations.

Section 563e.12(g)(4)—2: Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved, nonmetropolitan middle-income geography or designated disaster areas?

An activity that provides housing for middle-or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. OTS generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low-or moderate-income individuals or neighborhoods. For example, a loan solely to develop middle-or upper-income housing in a community in need of low- and moderate-income housing would be

given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (A housing-related loan is not evaluated as a ''community development loan'' if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. *See* 12 CFR 563e.12(h)(2)(i) and Q&A §§ ____.12(i) & 563e.12(h)—2.) OTS will presume that an activity revitalizes or stabilizes such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. *See* Q&As §§ ____.12(h)(4) & 563e.12(g)(4)—1 and §§ ____.12(i) & 563e.12(h)'4.

In *underserved* nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such underserved areas if the activities also provide housing for low-or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an underserved nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low-or moderate-income individuals.

Section 563e.12(g)(4)(ii) Activities That Revitalize or Stabilize Designated Disaster Areas

Section 563e.12(g)(4)(ii)—1: What is a ''designated disaster area'' and how long does the designation last?

A ''designated disaster area'' is a major disaster area designated by the Federal Government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (*http://www.fema.gov*), but exclude counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider savings association activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this period may be extended.

Section 563e.12(g)(4)(ii)—2: What activities are considered to ''revitalize or stabilize'' a designated disaster area, and how are those activities considered?

OTS generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a *bona fide* government revitalization or stabilization plan or disaster recovery plan. OTS generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low-or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employs local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (see, e.g., Q&As §§ ____.12(j) & 563e.12(i)'' 3; §§ ____.12(s) & 563e.12(r)'4; § ____.22(b)(2) &(3)—4; § ____.22(b)(2) &(3)—5; and § ____.24(d)(3)—1).

Section 563e.12(g)(4)(iii) Activities That Revitalize or Stabilize Distressed or Underserved, Nonmetropolitan Middle-income Geographies

Section 563e.12(g)(4)(iii)—1: What criteria are used to identify distressed or underserved, nonmetropolitan middle-income geographies?

Eligible nonmetropolitan middle-income geographies are those designated by OTS as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in § 563e.12(k), a geography is a census tract delineated by the United States Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of ten percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. OTS will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the United States Department of Agriculture.

Data source information along with the list of eligible nonmetropolitan census tracts will be published on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

Section 563e.12(g)(4)(iii)—2: How often will the list of designated distressed or underserved, nonmetropolitan middle-income geographies be updated?

The list will be reviewed and updated annually, as needed. The list will be published on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

To the extent that changes to the designated census tracts occur, OTS has determined to adopt a twelve-month lag period. This lag period will be in effect for the twelve months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

Section 563e.12(g)(4)(iii)—3: What activities are considered to ''revitalize or stabilize'' a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?

An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract

new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a *bona fide* government revitalization or stabilization plan. OTS generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low-or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. *See* Q&As §§ ____.12(h)(4) & 563e.12(g)(4)—1 and §§ ____.12(i) & 563e.12(h)—4.

Section 563e.12(g)(4)(iii)—4: What activities are considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income geography, and how are those activities evaluated?

The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low-or moderate-income individuals. Activities such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low-or moderate-income individuals, would be a new or expanded hospital that serves the entire county, including low- and moderate-income residents; an industrial park for businesses whose employees include low-or moderate-income individuals; a new or rehabilitated sewer line that serves community residents, including low-or moderate-income residents; a mixed-income housing development that includes affordable housing for low- and moderate-income families; or a renovated elementary school that serves children from the community, including children from low- and moderate-income families. Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle-or upper-income housing development while bypassing a low-or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As §§ 563e.12(g)(4)(ii)—2 and 563e.12(g)(4)(iii)—3.

Section 563e.12(i) Community Development Service

§ 563e.12(i)—3: What are examples of community development services?

[*proposed revision to existing answer]:* Examples of community development services include, but are not limited to, the following:

- Providing financial services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of a saving association's retail banking services under § 563e.24(d);
- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing;
- Establishing school savings programs and developing or teaching financial education curricula for low-or moderate-income individuals;
- Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low-or moderate-income individuals;
- Providing international remittance services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittance services in connection with a low-cost account); and
- Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including ''Electronic Transfer Accounts'' provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low-or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

- Serving on a loan review committee;
- Developing loan application and underwriting standards;
- Developing loan processing systems;
- Developing secondary market vehicles or programs;
- Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- Furnishing financial services training for staff and management;
- Contributing accounting/bookkeeping services; and
- Assisting in fund raising, including soliciting or arranging investments.

Section 563e.12(t) Qualified Investment

Section 563e.12(t)—1: When evaluating a qualified investment, what consideration will be given for prior-period investments?

When evaluating a savings association's qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weighting given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

Section 563e.12(t)—4: What are examples of qualified investments?

[proposed revision to existing answer]: Examples of qualified investments include, but are not limited to, investments, grants, deposits, or shares in or to:

• Financial intermediaries (including, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low-or moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;

• Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;

• Organizations, including for example, Small Business Investment Companies (SBICs), specialized SBICs, and Rural Business Investment Companies (RBICs), that promote economic development by financing small businesses or small farms;

• Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;

• Projects eligible for low-income housing tax credits;

• State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;

• Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and

• Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

Section 563e.26 Small Savings Association Performance Standards

Section 563e.26—1: When evaluating a small savings association's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments of affiliates, or community development services of affiliates?

Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small institutions. *See* Q&A § ____.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in a savings association's assessment area.

This concludes the text of OTS's proposed revisions to the Interagency Questions and Answers Regarding Community Reinvestment.

Dated: March 31, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 06–3471 Filed 4–11–06; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Funds Availability (NOFA): Inviting Applications for Section 601 Loan Guarantees for Multifamily Transitional Housing

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: This NOFA announces the availability, submission requirements, and deadlines to submit applications for the VA Multifamily Transitional Housing Loan Guarantee Program. This is a pilot program, which authorizes VA to guarantee up to 15 loans with an aggregate value of $100 million to develop or implement housing and supportive services for homeless veterans. This Notice describes the commitment of program dollars, application process, eligibility requirements, minimum underwriting criteria, and evaluation criteria that VA will employ to select applications to receive a guarantee under the program. The program is authorized under Title 38 U.S.C. 2051, *et. seq.*

A detailed manual outlining the standard operating procedures for the program and other program information can be found on the VA Web site: *http://www1.va.gov/homeless/page.cfm?pg=8.*

DATES: Applications will be accepted on an ongoing basis throughout the year until all funds available under the program have been committed. The application process is a two-staged process commencing with the submission of a Stage 1 application. After review and analysis of each Stage 1 application received, VA will invite those applicants who have demonstrated both eligible and feasible projects to submit the Stage 2 application.

VA will not accept facsimile or postage-due applications. VA recommends delivery by overnight carrier.

For the purposes of this NOFA, words used in the singular may include the plural, and the plural may include the singular. VA reserves the right to cancel or withdraw this NOFA at any time.

For a Copy of the Application Package: Stage 1 and 2 applications may be downloaded from the VA Multifamily Transitional Housing Loan Guarantee Program Web site at *http://www1.va.gov/homeless/page.cfm?pg=8.* Hard copies may be obtained from VA by calling the program hotline at (202) 273–7462 (This is not a toll free number) or e-mailing *Multifamily.Loan@va.gov.*

VA will be holding free informational sessions to inform the public of the program periodically throughout 2006. Details regarding the sessions can be found on the VA Multifamily Transitional Housing Loan Guarantee Program Web site at *http://www1.va.gov/homeless/page.cfm?pg=8.* Applications may also be obtained at these events.

Submission of Application: Applicants must submit an original completed and collated Stage 1 application plus four copies to the following address: Office of Mental Health Services (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

VA will invite applicants with eligible and feasible proposals to submit Stage 2 applications.

FOR FURTHER INFORMATION CONTACT: The Department of Veterans Affairs will be holding free informational sessions to introduce its new Loan Guarantee Program for Multifamily Transitional Housing. The program offers a 100 percent loan guarantee on program funds financed through the Federal Financing Bank (FFB). Loan proceeds can be used for combination construction and permanent financing or a permanent loan. Informational sessions are being held on the following days: Chicago, IL—May 11, 2006; Washington DC—June 2006. Register by calling (202) 273–7462 today or by e-mail at *Multifamily.Loan@va.gov.* For more information about the Program, access the VA Program Web site

mentioned above or contact the VA Program at (202) 273–7462. Please note: ''telephone numbers are not toll free.''

Note: This is not a single family housing Program.

SUPPLEMENTARY INFORMATION:

Background

VA's Multifamily Transitional Housing Loan Guarantee Program statute, 38 U.S.C. 2051 *et seq.*, authorizes VA to establish a pilot program to guarantee up to 15 project loans, subject to total aggregate of $100 million program cap. The purpose of this program is to promote the development and continued operation of supportive multifamily transitional housing for homeless veterans in geographic areas of greatest need. It is anticipated that this pilot program will positively impact the national goal to end chronic homelessness. Although VA already has committed two loan guarantees totaling $7.9 million, this is the first NOFA issued for the remaining projects in this pilot program. This NOFA applies to proposals for new projects nationwide. The VA selection process will weigh heavily the size of the chronically homeless veteran population in a given location, as well as a sponsor's capacity to deliver supportive services to veterans, as evidenced by a comprehensive local network of service providers and professional staff. VA, at its sole discretion, may guarantee more than one loan in each metropolitan statistical area. All eligible loan applications will be considered.

The Federal Financing Bank (FFB), an arm of the U.S. Treasury (*http://www.ustreas.gov/FFB*) will fund the program loans, and VA will guarantee up to 100 percent of the maximum FFB loan amount. The maximum FFB loan amount may not exceed 80 percent of the total development cost of the project and in many cases may be significantly less. Project sponsors are required to obtain additional sources of funding or the provision of substantial property or services from State or local governments or nongovernmental entities. Examples of such funding, property, or services include, but are not limited to, grants, real estate, private loans, capital contributions, and low-income housing tax credits.

Definitions

Applicant—The sponsor, or its authorized agent, who is applying for a loan guarantee under the program.

Borrower—A single purpose entity, that, (i) receives funds in the form of a program loan, (ii) has the obligation of repaying the program loan in full, with interest, (iii) is responsible for satisfying all other requirements of the program, and (iv) maintains continuing control over a multifamily transitional housing project. The Borrower must be comprised in full or in part by the Sponsor or its authorized agent and must be bankruptcy remote.

Chronically Homeless—An unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or has had at least four (4) episodes of homelessness in the past three (3) years.

Homeless veteran—A veteran who is a homeless individual.

Homeless Individual—An individual who lacks a fixed, regular, and adequate nighttime residence; also, an individual who has a primary nighttime residence that is: (a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term homeless individual does not include any individual imprisoned or otherwise detained pursuant to an act of the Congress or a state law.

Metropolitan statistical area—A geographic area designated by the U.S. Census Bureau for purposes of collecting and disseminating demographic information.

Multifamily transitional housing—A supportive housing facility that provides transitional housing to homeless veterans. Multifamily transitional housing may be single room occupancy, but must, at a minimum: provide supportive services at the facility site with the goal of assisting residents in becoming self-sufficient; require each resident to seek to obtain and maintain employment; charge a reasonable fee for occupying a unit; and maintain strict guidelines regarding sobriety as a condition of residency.

Program—The VA Multifamily Transitional Housing Loan Guarantee Program established under subchapter VI, chapter 20, of title 38, United States Code, and implemented by VA.

Program Funds—Funds loaned to the borrower by FFB and guaranteed by VA for the purposes of the program.

Project—A project under the auspices of one or more sponsors for the development, financing, construction (including renovation or rehabilitation), operation, and management of multifamily transitional housing, authorized by, and approved and conducted under the program.

Resident—A homeless veteran who is currently residing in multifamily transitional housing provided under the program. Resident may also include veterans who are not homeless and homeless individuals who are not veterans, if VA, in its sole discretion, has determined that the transitional housing needs of homeless veterans in the project area have been met and that the housing needs of any such veteran or homeless individual can be met in a manner compatible with program requirements.

Sober—A person's body is free of alcohol or controlled substance unless such substance is being used under the direction of a physician.

Sponsor—An artificial person or legal entity that is (i) created by or under the authority of the laws of a State, territory, or possession of the United States, (ii) comprised of officers, members, managers, partners, and/or shareholders who are U.S. Citizens or permanent legal residents, (iii) responsible for the coordination of the project's financing and construction and, through the borrower, has the primary responsibility for a project's long-term operation and management, including the coordination and implementation of a supportive services program. (**Note:** A project must have one or more sponsors.)

Supportive housing facility—A facility that assists homeless individuals to transition from homelessness to permanent housing by providing short-term housing (generally not to exceed 24 months) and supportive services. A supportive housing facility may also be referred to as ''facility'' in this NOFA.

Supportive services—Services that may be designated by the sponsor that address the needs of homeless veterans to be served by the facility and provide appropriate services or assist such persons in obtaining appropriate services. Supportive services include: Conducting outreach activities; providing food, nutritional counseling, health care, mental health treatment, alcohol and other substance abuse services, and case management services; where applicable, establishing and operating child care services for dependents of residents; providing supervision and security arrangements for the protection of residents and for homeless veterans using the services; providing assistance in obtaining permanent housing; providing education, employment counseling, and job training; establishing and operating

an employment assistance program; providing assistance in obtaining other Federal, State and local assistance available for facility residents including mental health benefits, employment counseling, veterans' benefits, medical assistance, and income support assistance such as Supplemental Security Income benefits, Temporary Assistance to Needy Families, General Assistance, Food Stamps, etc.; and providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care does not qualify as a supportive service.

Veteran—A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as defined in section 101(2) of title 38, United States Code, for purposes of that title.

Eligible Uses of Funds

Program funds may be used for acquisition of land, or construction of or rehabilitation of multifamily transitional housing or for refinancing an existing loan therefore. Loan proceeds may include reasonable amounts for financing the acquisition of furniture, equipment, supplies, or materials for the project; or, except in the case of a refinance, for supplying the borrower with working capital relative to the project. The project may include space for neighborhood retail services or job training programs.

Eligible Geographic Areas

Projects must be located within the United States, its territories or possessions to be eligible for VA loan guarantees under the program.

General Program Information

Program Purpose: The program is intended to maintain and increase the supply of supportive transitional housing for homeless veterans by providing low-cost loans guaranteed by VA.

Eligible Financing Sources: Any Federal, State, local, and conventional sources of financing may be used in conjunction with the loan guarantee, including Home Investment Partnership Program (HOME) grant funds, Community Development Block Grant (CDBG) funds, low income housing tax credits, and private financing such as that provided by banks, donations and capital contributions to the extent allowed by these providers. (The VA guarantee applies only to program funds.)

Maximum Guarantee: The maximum VA guarantee for a permanent or combination construction/permanent loan will be 100 percent of the unpaid principal balance and interest on program funds.

Maximum Loan Amount: Program funds may not exceed 80 percent of total project cost. VA anticipates that program funds will be considerably less than 80 percent and most likely between 20 to 40 percent of total project costs depending upon the specifics of a transaction.

Interest Rate: The basic interest rate applicable to each advance of program funds shall be established by FFB at the time the respective advance is made on the basis of the determination made by the Secretary of the Treasury. The interest rate is determined on the date of the disbursement of funds. During the permanent financing period, the interest rate is set at the time of loan closing and is fixed for the term of the loan. During the construction period, the interest rate will be set at the time the funds are drawn. The disbursement of funds (amount and timing) will be governed by the draw schedule established between the borrower and VA. If the draw schedule identifies multiple draws, each draw will be considered a separate disbursement and will be assigned a new interest rate. The interest rate on each draw will be determined by the interest rate environment at the time of that disbursement. The borrower will have the ability to purchase an interest rate cap, through FFB, to help mitigate the expected volatility in interest rates. The price of the interest rate cap will depend on the cap rate and term specified by the sponsor in the application.

Term: The term of the loan shall not exceed 40 years and shall be based on VA's perception of the reliability of the project income stream. Determination of the term will be at VA's sole discretion.

Debt Service Coverage Ratio: The targeted minimum debt service coverage ratio on the loan is 1.10; however, 1.15 or better is preferred.

Program Fees

Assumption Fee: A non-refundable review fee in the amount of $3,000 and a transfer fee equal to one percent of the outstanding indebtedness due immediately prior to the transfer or sale of the project.

Application Fees: No application fee will be charged.

Interest Rate Fee: A fee of one-eighth of one percent per annum will be charged (calculated based on the outstanding principal balance owed to FFB), in addition to the interest amount. (This fee will not be included in the interest rate to be paid to FFB; it is a separate charge added by the loan servicer and remitted to VA.)

Late Fee: If any monthly installment payment is not received by VA prior to the 11th calendar day after the same is due (without regard to any applicable cure and/or notice period), borrower shall pay to VA upon demand an amount equal to the lesser of (a) four percent (4 percent) of such unpaid sum; or (b) the maximum amount permitted by applicable law to defray the expenses incurred by VA in handling and processing such delinquent payment, and such late fee shall be secured by the loan documents.

Sponsors will be responsible for paying for all direct costs required by the application process including costs associated with third party reports, construction drawings, and site control. Should the sponsor be successful in obtaining a VA Loan Guarantee, these costs may be funded through the loan as mortgaged expenses.

Authority: The program was enacted by section 601 of Public Law 105–368 and is codified at 38 U.S.C. 2051, *et seq.* Funds made available under this Notice are subject to the requirements of that law, as well as applicable VA and FFB requirements and procedures. (See VA's Program Manual found on the program Web site at *http://www1.va.gov/homeless/page.cfm?pg=8.*)

Allocation: VA is authorized to guarantee up to 15 loans or $100 million, whichever first occurs, under the program. Funding under the program is currently available for up to thirteen (13) remaining program loans, to be committed on a first-come, first-served basis, or until the remaining $91.9 million in program funds has been guaranteed.

Funding Priorities: Loan guarantees will be awarded via commitment letter on a first-come, first-served basis upon successfully completing the two-stage application process. Although all applications will be evaluated equally in accordance with the methodology noted below, greater weight will be given to those applications that best demonstrate a strategy and ability to help VA achieve all of the following goals: (1) Increase the number of community beds for homeless veterans nationally by at least 5000; (2) help homeless veterans transition to permanent housing by providing supportive services and by requiring that residents take personal responsibility to remain sober, maintain employment, and pay monthly rent; (3) determine whether a Federal loan guarantee program is an effective tool

for facilitating the development of transitional supportive housing for homeless veterans.

Methodology: The application process will occur in two stages. In Stage 1, sponsors will submit preliminary proposal information to VA. VA will evaluate applications for eligibility and feasibility. VA will invite sponsors who submit proposals that meet the evaluation criteria to submit Stage 2 applications. At Stage 2, VA will conduct a comprehensive feasibility assessment of the applications on the basis of their feasibility and their performance on the evaluation criteria defined in this Notice.

Evaluation Process

VA will have sole discretion to make guarantees under the program. As noted above, VA will use a two-stage evaluation process that includes two sets of criteria per stage. VA will invite those projects that meet Stage 1 requirements to submit Stage 2 applications.

1. Stage 1 Application Evaluation

a. *Eligibility Criteria.* Eligibility Criteria assess whether a proposal can meet the requirements outlined in the program authorizing legislation;

b. *Feasibility Criteria.* Feasibility Criteria set minimum standards for financial and practical viability, development team and service provider capacity, and services plan appropriateness;

2. Stage 2 Application Evaluation

a. *Feasibility Criteria.* VA will prioritize those proposals that are eligible and feasible based on a number of factors including the strength of the services plan; minimum standards for site control, commitments of support, site suitability and conformance with applicable laws, design appropriateness, funding commitments, construction costs, availability of transportation, and project management.

b. *Evaluation Criteria.* VA will evaluate the sponsor's creditworthiness, the project's repayment ability, and the Sponsor's readiness to proceed.

Following are detailed explanations of the evaluation criteria:

Stage 1 Eligibility Assessment

A proposal must satisfy all eligibility criteria in order to advance to consideration under the feasibility criteria.

Number	Eligibility Criteria—Proposals Must Meet ALL Criteria
1.	The application is complete and on time. • The application package includes all required information and requested attachments and reports.
2.	To be considered eligible, the sponsor must meet the following requirements: • The sponsor must certify that it is an artificial person or legal entity that is (i) created by or under the authority of the laws of a state, territory, or possession of the United States, (ii) comprised of officers, members, managers, partners, and/or shareholders who are U.S. Citizens or permanent legal residents, (iii) is responsible for the coordination of the project's financing and construction and, through the borrower, has the primary responsibility for a project's long-term operation and management, including the coordination and implementation of a supportive services program. • The sponsor must agree to establish before loan closing a single-asset entity to serve as borrower. • The sponsor must certify that it is able to, and intends to, maintain and operate the project in accordance with program objectives and requirements identified in the authorizing legislation, in this Notice and in any other applicable rules, regulations and program guidelines. • The sponsor must be in compliance with all legal and regulatory requirements and not be in default with respect to any VA program and any Federal debt. In addition, the sponsor and its principals, as well as the development team members and their principals, must meet the following requirements: • Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; • Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or an offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; • Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the immediately preceding paragraph; and • Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default. Sponsors will be considered ineligible if they or any of their principals have any outstanding VA audit findings. No organization may receive assistance that has an outstanding obligation to VA that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit is overdue or unsatisfactory.
3.	The proposed project is for an allowable purpose. See NOFA section titled ''Eligible Uses of Funds'' for a list of allowable purposes.
4.	The sponsor has committed to running the proposed facility as multifamily transitional housing for a period of 20 years from the date of loan closing or until the loan pays off, whichever is longer or until such time as VA determines that transitional housing for homeless veterans is no longer necessary in the particular location. In no event will the facility be used for something other than multifamily transitional housing so long as any portion of the FFB note remains outstanding.

Number	Eligibility Criteria—Proposals Must Meet ALL Criteria
5.	The sponsor has committed to providing on-site supportive services with the goal of assisting the residents in becoming self- sufficient. See definition of supportive services at the beginning of the NOFA for guidance.
6.	The Sponsor has committed to requiring each resident to seek to obtain and maintain employment.
7.	The Sponsor will charge a reasonable residential occupancy fee, not to exceed thirty percent (30 percent) of a resident's gross monthly income. The project must meet one of the following criteria, as applicable: 1. Projects with rent subsidies charge the minimum rent required by the subsidy program. 2. Projects without rent subsidies charge rents that when combined with other sources of project revenue allow the project to cover operating costs and debt service. Sponsor must demonstrate that such rents will be affordable to the intended residents.
8.	The sponsor has committed to maintaining strict guidelines regarding sobriety as a condition of residency.
9.	The Sponsor has committed to seek funding or the substantial provision of property or services by a state or local government or a nongovernmental entity. Such funding or assistance is in addition to the contemplated program funds. Eligible support by a state or local government or a nongovernmental entity includes, but is not limited to: • Commitment of development funds including, but not limited to, low-income housing tax credits, CDBG, HOME, and the Federal Home Loan Bank's Affordable Housing Program funds. • Commitment of rent or operating subsidies. • Commitment of supportive services funding. • Donations that reduce total development costs, including land, leasehold interests, labor, buildings, infrastructure or site improvements, services, furnishings, and other items included in the development budget, or the provision of these at below-market cost. • Donation of operating services or the provision of these at below-market cost. • Donation of supportive services or the provision of these at below-market cost. • Significant local or state government fee or tax waivers. • Private financing such as bank loans, capital contributions or donations.

Stage 1 Feasibility Assessment

VA will perform a Stage 1 feasibility assessment that comprises a number of factors, including the following six criteria:

A proposed project must satisfy all feasibility criteria in order to advance to consideration under Stage 2. The following table explains each criterion in detail.

Number	Stage 1 Feasibility Criteria—Proposals Must Meet ALL Criteria
1.	The development team has a proven track record in supportive housing facility development and operation. At a minimum, the development team includes a sponsor and an architect. The sponsor will coordinate the project's financing and construction and will have primary responsibility for its long-term operation and management, including the coordination and implementation of a supportive services program. Sponsors who lack experience developing affordable supportive housing facilities must retain a development consultant with affordable supportive housing facility development expertise. A. The core development team is in place. B. The sponsor and/or sponsor's development consultant has a sufficient development track record. To meet this requirement, the Sponsor or its development consultant must have completed and placed in service at least one currently operating affordable supportive housing facility of comparable or larger size. If the Sponsor seeks a VA construction loan guarantee, the Sponsor or development consultant must have experience managing construction. VA will rate proposals relative to others from the same metropolitan statistical area, based on the number of facilities sponsors have placed in service and are successfully operating, with facilities in service for more than three years receiving greater preference than those in service for three years or fewer. To receive consideration under this subsection for facilities in existence for more than three years from the filing deadline for the application, the sponsor must submit a certification from a certified public accountant that the facilities have maintained a positive cash flow for the year in which each development's last financial statement has been prepared (must be no earlier than one year prior to application deadline) and demonstrate funded reserves. Sponsors who retain a development consultant must provide track record information for both themselves and the consultant.

Number	Stage 1 Feasibility Criteria—Proposals Must Meet ALL Criteria
	VA will also consider in its evaluation whether any of the sponsor's facilities or those of its consultant has defaulted within two years of being placed in service, and whether any of the sponsor's facilities did not complete construction because of cost overruns or other factors directly within the control of the Sponsor or its consultant. C. The Sponsor has a demonstrated track record of working constructively with local and/or state governments to develop housing. Evidence may include securing government housing-related funding (including tax credits), property donation, reduction or dismissal of liens on property to be developed as affordable housing, and tax relief. Other compelling evidence will be considered as well. D. The Sponsor demonstrates the financial capacity to undertake development and operation of the project. E. The Sponsor demonstrates stability in the composition of its board (if applicable) and staff. F. The architect has local experience designing affordable housing communities. G. The Sponsor has successfully managed at least one supportive housing facility of similar or larger size during the last five years; OR, if management will be contracted, The property management firm has successfully managed at least two supportive housing facilities during the last five years, one of which is of comparable or larger size.
2.	The supportive services plan is appropriate for the target population. A.The sponsor has conducted a needs assessment that identifies the needs of homeless veterans in the metropolitan statistical area and estimated the demand for a project. The needs assessment should reflect the findings of the most recent VA CHALENG report. VA will use the CHALENG findings to evaluate the needs assessment. To access this report electronically, go to *http://www.va.gov/homeless/page.cfm?pg=17.* B.The supportive services plan addresses needs identified in the needs assessment and includes a comprehensive, realistic strategy to foster self-sufficiency in the residents. The plan must: • Identify an ongoing outreach plan for identifying and screening potential residents that ensures the facility is fully occupied; • Discuss how residents will be involved in making facility decisions that affect their lives, including how they will be involved in selecting supportive services, establishing individuals goals, and developing plans to achieve these goals so that they achieve greater self-determination; • Include an employment program designed to help the residents attain long-term employment once they leave the facility. • Clearly identify how residents will attain and transition to permanent housing. • Identify which supportive services will be provided on-site and off-site, as well as who will provide them. • Include a realistic budget and a strategy for obtaining funding. • Include a realistic staffing plan that identifies staff qualification requirements. • Identify how residents will be provided necessary follow-up services to help them achieve stability when transferred to permanent housing; • Identify how the service needs of residents will be assessed on an ongoing basis; • Discuss how residents will be assisted in assimilating into the community through access to neighborhood facilities, activities and services; • Discuss how and when the progress of residents toward meeting their individual goals will be monitored and evaluated; • Discuss how and when the effectiveness of the overall project in achieving its goals will be evaluated and how program modifications will be made based on those evaluations; and • Discuss how the proposed project will be implemented in a timely fashion.
3.	The service provider has the resources and experience to implement the supportive services plan. A.The service provider has experience operating a services plan of size and scope similar to the plan being proposed, with maximum operating efficiencies. B.The service provider demonstrates ability to obtain government program or private subsidy funds for services for homeless and/or other special-needs populations. C.The service provider demonstrates ability in other fundraising activities to ensure continued organizational operations with relative fiscal stability. D.The service provider demonstrates stability in the composition of its board and its staff. E.The service provider demonstrates ability in assessing and monitoring the housing and relevant supportive service needs of homeless veterans and/or other special-needs populations.
4.	The financial model is viable. A.The sources and uses budget is adequate to implement the development program. B.The uses budget includes reasonable preliminary estimates for potential environmental remediation and geotechnical work. C.The uses budget funds an operating escrow account to carry the project until occupancy is sustained. D.The development sources are at least equal to uses. E.Rents are affordable to the target population. F.The operating budget adequately covers costs and includes adequate replacement reserves. G.The services budget is adequate for the proposed services plan. H.The applicant's financing model reflects the requirements of VA's term sheet, included in the application package. I.All key trending, income, expense, and vacancy assumptions are realistic and justified.
5.	Disbursement of the developer fee is structured to help ensure that the project will be completed and leased up as planned. At a minimum, disbursement of the developer fee must be tied to developer's completion of project milestones, with a 10 percent holdback until three months of stabilized occupancy.
6.	The market supports the proposed development program. A comprehensive market study conducted by a disinterested third party demonstrates that the proposed number and type of units meet an existing and identified need and can be readily absorbed by existing need in the local area if and when homelessness among veterans is no longer a problem.

Stage 2 Feasibility Assessment

At Stage 2, the sponsor must inform VA of any changes to the information submitted at Stage 1. VA will review the changes for their impact on the feasibility of the project. Changes that maintain or improve the feasibility of the project under Stage 1 feasibility criteria are encouraged. Any changes that make the project infeasible under Stage 1 feasibility criteria will disqualify the application from further consideration.

VA will review Stage 2 applications for feasibility based on a number of factors, including the criteria summarized below.

A facility must satisfy all Stage 2 feasibility criteria to be considered for funding.

Number	Stage 2 Feasibility Criteria—Proposals Must Meet ALL Criteria
1.	The sponsor has site control. The sponsor must provide evidence that it has and will maintain control of the property for which the VA Loan Guarantee is requested through the anticipated closing date. Acceptable forms of site control may be any one of the following: • Deed or other proof of ownership • Executed contract of sale • Executed capital lease agreement • Executed option to purchase or lease.
2.	The sponsor has secured commitments for funding or the substantial provision of property or services by a State or local government or a nongovernmental entity. See Eligibility Criterion Number 9 for a list of acceptable contributions. Sponsor must have a commitment for at least one of these contributions.
3.	The site is suitable for the proposed project, and the project complies with all applicable laws and codes. A. The proposed project has all required zoning approvals needed by State and local authorities. B. The proposed project complies with all applicable Federal, state, and local codes, laws, ordinances, zoning requirements, and health and safety standards. C. The site has utilities and infrastructure that are adequate for the needs of the project and that meet all local building and zoning requirements. D. Soil and geological conditions are suitable for the type of construction proposed. E. The site layout adequately addresses environmental issues.
4.	The project's design is appropriate for the tenant population and the neighborhood. A. The project design is appropriate given community standards, surrounding neighborhood, and site characteristics. B. The design features secure, well-designed unit interiors. C. The design features security and crime prevention measures, which may include but are not limited to strategically placed fencing, keyless entry systems, and security cameras. D. The design accommodates resident privacy needs to the maximum extent feasible given the development program. E. The project design provides adequate space for the supportive services program. The design must consider space needs for case management of residents, meeting and/or classroom space for service and program provision, and integrated community living space.
5.	The project construction cost is reasonable and construction budget is realistic and cost-efficient, based on local norms. The construction budget must include adequate funding to address all identified and reasonably foreseeable environmental and geotechnical issues.
6.	The project provides ready access to transportation. The sponsor must demonstrate fulfillment of at least one of the following three criteria: • Project is located within reasonable distance of public transportation such as a bus or subway stop. • Project provides regular shuttle service to and from public transportation, either directly or through a partnership with a service provider. • In areas without adequate public transportation, Sponsor must provide a plan for how residents will be able to meet their transportation needs and have ready access to services provided in the local community.
7.	The property management plan is comprehensive and workable. The sponsor must submit a plan for managing the project that defines the roles and responsibilities among the sponsor, borrower, property manager, and social services coordinator, and any other key players in project operations, and provides a workable plan for performing the functions of property, financial, and resident management. VA will assess proposals relative to those from the same metropolitan statistical area based on length of property management experience and number of properties managed. Properties managed for more than three years will receive greater preference than properties managed for three years or fewer.
8.	The proposed project increases the supply of transitional housing available to homeless veterans. VA will assess proposals based on the number of new beds for homeless veterans, prioritizing those with the greatest number of new beds.
9.	The supportive service plan includes coordination with other homeless and veterans service groups. VA will prioritize projects whose sponsors most clearly demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless individuals in the planning and operation of supportive services. Sponsors are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. Higher priority will be given to those sponsors who can demonstrate that they are part of an ongoing community-wide planning process that is designed to share information on available resources and reduce duplication among programs that serve Homeless Veterans; and that they have consulted directly with other providers regarding coordination of services for project residents In assessing the strength of the sponsor's coordination with other veterans and homeless groups, VA will give greatest priority to those proposals that have the greatest portion of their supportive services program in place, either through partnership or funding commitments. Sponsors who wish to receive points under this criterion must submit documentation of supportive service resources.

Stage 2 Evaluation

VA will evaluate all feasible Stage 2 applications and make a decision to issue a loan commitment based on a number of factors, including the evaluation criteria summarized below.

VA will give greatest consideration to the sponsor's capacity to develop and implement the program, the sponsor's ability to ensure repayment of the loan, and the sponsor's readiness to proceed. VA reserves the right not to issue any loan guarantees.

Number	Evaluation Criteria
1.	The proposal demonstrates strong repayment ability. VA will prioritize those proposals that represent the least risk of default to the Federal government. VA will evaluate a number of factors, including the following, to assess repayment ability: A.The sponsor shows strong financial capacity through net worth. B.The sponsor has a strong track record of timely debt repayment. C.The project funding sources include a large amount of equity (through sponsor contributions, tax credits, grants, and the like) and cash-flow-based debt. D.The project shows a prolonged debt service coverage ratio in excess of 1.10.
2.	The sponsor demonstrates readiness to proceed. Proposals that are closer to start of construction will receive priority. Proposals that do not include construction and do not require public reviews or approvals will be evaluated only on the extent to which they have secured financing commitments. A.Alternative Funding is in place. VA will prioritize proposals with the greatest share of alternative funding in place. Award letters signed by the awarding entity/authority/institution, indicating rate and term and that the commitment is not subject to any condition outside the control of the developer, will be the only acceptable evidence to receive consideration under this criterion. B.Construction financing is in place. VA will prioritize proposals with the greatest share of construction financing in place. Award letters signed by the awarding entity/authority/institution, indicating rate and term and that the commitment is not subject to any condition outside the control of the developer, will be the only acceptable evidence to receive consideration under this criterion. C.All necessary public reviews and approvals are complete except building permits. The sponsor must provide written evidence from appropriate officials.

Applications will be reviewed as they are received. Loan guarantees will be awarded on a first-come, first-served basis in accordance with the methodology noted above until all remaining program loan guarantees or program funds have been awarded.

Timeline

Number	ACTION	ESTIMATED TIMING [1]
1.	VA issues NOFA.	Day 1
2.	Completed Stage 1 applications are submitted.	Rolling Basis
3.	VA reviews completed applications for eligibility and feasibility and notifies Stage 1 applicants of questions or comments..	Within 60 days of submission
4.	Revised Stage 1 applications are due to VA.	Within 60 to 90 days from date of notification.
5.	VA either rejects the Stage 1 application or issues a conditional commitment and requests Stage 2 applications for facilities determined eligible and feasible..	Within 60 days of receipt of revised application.
6.	Stage 2 applications are due to VA.	Within 90 to 120 days of receipt of request for Stage 2 application
7.	VA reviews and evaluates completed Stage 2 applications and notifies applicants of questions or comments..	Within 60 days of receipt of Stage 2 application
8.	Revised Stage 2 applications are due to VA.	Within 60 to 90 days of notification
9.	VA reviews and evaluates completed Stage 2 applications and recommends funding action to the Secretary..	Within 60 days of receipt
10.	VA either rejects the Stage 2 application or issues a guarantee commitment.	Within 60 days of submission to Secretary.

[1] The timing we propose is based on the timing of the first two pilot loans.

Application Requirements: The specific application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in this NOFA as well as the Program Manual found on the VA Web site. Applicants will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions required in making a loan

guarantee under this program within the specified time frame, VA reserves the right to not award a commitment and select another applicant.

Dated: April 7, 2006.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. 06–3528 Filed 4–7–06; 4:45 pm]

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Federal Register

Wednesday,
April 12, 2006

Part II

Election Assistance Commission

2005 Voluntary Voting System Guidelines; Notice

ELECTION ASSISTANCE COMMISSION 2005

2005 Voluntary Voting System Guidelines

AGENCY: United States Election Assistance Commission.

ACTION: Notice; publication of final 2005 Voluntary Voting System Guidelines.

SUMMARY: The Help America Vote Act of 2002 (HAVA) Section 231 directs the U.S. Election Assistance Commission (EAC) to provide for the testing, certification, decertification and recertification of voting systems. HAVA Section 221 mandates the development of voluntary voting system guidelines to support this process. In 2004, the EAC formed the Technical Guidelines Development Committee (TGDC) to create an initial set of recommendations for the guidelines. The Director of the National Institute of Standards and Technology (NIST) chairs the TGDC and NIST staff provides technical support for the TGDC's work. This committee of fifteen experts began their work in July 2004 and submitted their recommendations to the EAC in May 2005. EAC reviewed and revised these recommendations and published its proposed Voluntary Voting System Guidelines in June 2005, 70 FR 37378 (June 29, 2005), beginning the ninety-day public comment period. The Commission adopted the 2005 Voluntary Voting System Guidelines on December 13, 2005. The Guidelines published here will be used to test voting systems for national certification.

FOR FURTHER INFORMATION CONTACT: Brian Hancock (Election Research Specialist), Washington, DC, (202) 566–3100, Fax: (202) 566–3127.

SUPPLEMENTARY INFORMATION:

Public Comment Process

HAVA requires publication of the proposed guidelines for public comment. HAVA further mandates a public hearing about the proposed guidelines. In addition, the guidelines must be reviewed by the EAC Board of Advisors and the EAC Standards Board.

EAC posted the proposed guidelines on its Web site and made the document available to the public in hardcopy and CD–ROM. Notice of the public comment period was published in the **Federal Register**. Both the **Federal Register** notice and the Web site provided instructions for submitting comments on-line, as well as by e-mail, postal mail and facsimile. EAC conducted three public hearings in the following locations: New York City; Pasadena, California: and Denver, Colorado. At these hearings, testimony was received from state and local election officials, the vendor community, the testing laboratories, public interest groups, academics, voting system experts, and members of the general public. All comments received were posted on the EAC Web site. The document was distributed to the Board of Advisors and the Standards Board. Each board conducted a two-day meeting to formulate recommendations.

Discussion of Comments

The EAC received 6,576 comments on the guidelines. Of this number, 4,300 were emails requesting that EAC to require voter verifiable audit trail capability for all electronic voting systems. The remaining 2,276 comments covered various sections of the document. Of this set, the majority were submitted by individuals—776 comments. The next largest number of comments (684) came from system vendors, testing laboratories, and other corporate entities. Public interest groups submitted 436 comments. Election and other government officials submitted 218 comments, and 162 comments were submitted by academics.

Some comments were of a general nature that did not specifically relate to the Guidelines document. The comments from the testing laboratories, system vendors and other corporate entities addressed voting system functional requirements and independent dual verification systems. Public interest groups focused their attention predominantly on usability and accessibility requirements for voting systems and for voter verifiable paper audit trails. Election officials commented on a variety of topics including accessibility, security, wireless communications, and voter verifiable paper trails. The academic community commented principally on security.

Volume 1, Voting System Performance Guidelines, received a total of 1,660 comments. The subject area that received the most comments was security (471), followed by the glossary (367), usability and accessibility (361), and voting system functional requirements (267). Volume 2, National Certification Testing Guidelines, received a total of 167 comments on a variety of topics: software testing (31), documentation (24), and hardware testing (11).

Consideration of Comments

The EAC reviewed and considered each comment. In some instances, EAC also gathered more information and performed additional research regarding the suggestions. There were 404 comments requiring extensive research that were forwarded to the TGDC for future consideration.

Similarly, many comments (73) dealt with election administration and procedural matters, which fall outside the scope of the VVSG. These comments were forwarded to EAC's Management Guidelines Working Group, which is developing a companion document covering these topics.

Changes to VVSG

The VVSG have been enhanced in response to comments received. The document has been reorganized and reformatted. Usability and accessibility requirements were removed from the functional requirements section and placed in a separate section. The glossary was revised to clarify definitions. Information about independent verification systems was incorporated into the security section to provide context for the voter verifiable paper audit trail requirements. Best Practices for Election Officials (Appendix C in the proposed guidelines) was removed and forwarded to the Management Guidelines Working Group for consideration.

The substantive changes made to the functional requirements section brought the language into conformance with HAVA requirements and clarified the technical specifications regarding environmental standards. Many comments about this section were carried over for future TGDC consideration because they related to complex topics such as specific testing protocols and software coding standards.

The principal substantive changes to security requirements were as follows: clarification of language regarding software distribution and generation of reference information; clarification of wireless communication discussion and requirements language; revision to VVPAT requirements related to the topics of ''Approve or Spoil the Paper Record,'' ''Equipment Security and Reliability,'' ''Preserve Voter Privacy,'' and ''Electronic and Paper Record Structure.''

The most significant changes overall were on the topics of usability and accessibility. These requirements were placed in their own section to reflect their importance and in anticipation that they will continue to expand over time. Usability requirements were placed first in the new section because these requirements apply to all voting systems. Alternative language requirements were placed under the

usability heading because these apply to all voting systems.

Several requirements regarding system navigation and controls were made mandatory for usability, as well as the requirement for vendors to conduct and document summative usability testing during system development. Requirements for accessible voting systems, including the use of personal assistive devices, buttons and controls, speech quality for audio ballots, limited dexterity accessibility, and voter verifiable paper audit trail accessibility were changed from permissive to mandatory. In addition, summative accessibility testing and documentation by vendors was made mandatory. A complete discussion of how comments to the VVSG were handled can be found on the EAC Web site at *www.eac.gov.*

Effective Date

The guidelines will take effect in December 2007 (24 months), at which time voting systems will no longer be tested against the 2002 Voting System Standards (VSS) developed by the Federal Election Commission (FEC). However, states may decide to adopt these guidelines before the effective date and EAC anticipates being prepared to certify voting systems before the effective date. The effective date was adopted to provide testing laboratories time to prepare to test to the VVSG, give states time to change their respective laws and statutes reflecting EAC's role in the certification process and in recognition of efforts to develop voting systems that will meet the requirements of the VVSG.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

Voluntary Voting System Guidelines

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Voluntary Voting System Guidelines

Volume I

Voting System Performance Guidelines

Voluntary Voting System Guidelines Overview

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Voluntary Voting System Guidelines Overview

The United States Congress passed the Help America Vote Act of 2002 (HAVA) to modernize the administration of federal elections, marking the first time in our nation's history that the federal government has funded an election reform effort. HAVA provides federal funding to help the states meet the law's uniform and non-discretionary administrative requirements, which include the following new programs and procedures: (1) Provisional voting, (2) voting information, (3) statewide voter registration lists and identification requirements for first-time registrants, (4) administrative complaint procedures, and (5) updated and upgraded voting equipment.

HAVA also established the U.S. Election Assistance Commission (EAC) to administer the federal funding and to provide guidance to the states in their efforts to comply with the HAVA administrative requirements. Section 202 directs the EAC to adopt voluntary voting system guidelines, and to provide for the testing, certification, decertification, and recertification of voting system hardware and software. The purpose of the guidelines is to provide a set of specifications and requirements against which voting systems can be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems.

This document, the Voluntary Voting System Guidelines (referred to herein as the Guidelines and/or VVSG), is the third iteration of national level voting system standards that has been developed. The Federal Election Commission published the Performance and Test Standards for Punchcard, Marksense and Direct Recording Electronic Voting Systems in 1990. This was followed by the Voting Systems Standards in 2002.

As required by HAVA, the EAC formed the Technical Guidelines Development Committee (TGDC) to develop an initial set of recommendations for the Guidelines. This committee of 15 experts began their work in July 2004 and submitted their recommendations to the EAC in the 9-month timeline prescribed by HAVA. The TGDC was provided with technical support by the National Institute for Standards and Technology (NIST), which was given nearly $3 million dollars by the EAC to complete this work.

The EAC reviewed and revised the TGDC recommendations and, as required by HAVA, published the proposed Guidelines for a 90 day public comment period. The document was also provided to both the Board of Advisors and the Standards Board for their review and comment. During the comment period the EAC conducted 3 public hearings on the Guidelines in New York City, Pasadena and Denver. Over 6000 comments were received from the public and the Boards. Each of these comments was reviewed and considered by the EAC in consultation with NIST in the development of this final version.

Purpose and Scope of the Guidelines

The purpose of the Voluntary Voting System Guidelines is to provide a set of specifications and requirements against which voting systems can be tested to determine if they provide all the basic functionality, accessibility and security capabilities required to ensure the integrity of voting systems. The VVSG specifies the functional requirements, performance characteristics, documentation requirements, and test evaluation criteria for the national certification of voting systems. The VVSG is composed of two volumes: Volume I, Voting System Performance Guidelines and Volume II, National Certification Testing Guidelines.

Effective Date

The 2005 Voluntary Voting System Guidelines will take effect 24 months after their final adoption in December 2005 by the EAC. At that time, all new systems submitted for national certification will be tested for conformance with these guidelines. In addition, if a modification to a system qualified or certified to a previous standard is submitted for national certification after this date, every component of the modified system will be tested against the 2005 VVSG. All previous versions of national standards will become obsolete at this time. This effective date provision does not have any impact on the mandatory January 1, 2006, deadline for states to comply with the HAVA Section 301 requirements.

Summary of Changes

Volume I of the Guidelines, entitled Voting System Performance Guidelines, includes new requirements for usability, accessibility, voting system software distribution, generation of software reference information, validation of software during voting system setup, and the use of wireless communications. System functional requirements have been revised to comply with HAVA Section 301 requirements. Environmental criteria have been updated. This volume also includes requirements for a voter verifiable paper audit trail component for direct-recording electronic voting systems for use by states that require this feature. In addition, this volume includes an updated glossary and a conformance clause.

Volume II of the Guidelines, entitled National Certification Testing Guidelines, has been revised to reflect the new EAC process for national certification of voting systems. This process was initiated in 2005 and replaces the voting system qualification process conducted by the National Association of State Election Directors (NASED) since 1994. In addition, revisions have been made to the testing procedures to reflect new requirements for the conduct of usability and accessibility testing. Volume II also includes an updated appendix on procedures for testing system error rates. Terminology in both volumes has been revised to reflect new terminology introduced by HAVA.

Volume I: Voting System Performance Guidelines Summary

Volume I, the Voting System Performance Guidelines, describes the requirements for the electronic components of voting systems. It is intended for use by the broadest audience, including voting system developers, manufacturers and suppliers; voting system testing labs; state organizations that certify systems prior to procurement; state and local election officials who procure and deploy voting systems; and public interest organizations that have an interest in voting systems and voting system standards. It contains the following sections:

Section I describes the purpose and scope of the Voting System Performance Guidelines.

Section 2 describes the functional capabilities required of voting systems. This section has been revised to reflect HAVA Section 301 requirements.

Section 3 describes new standards that make voting systems more usable and accessible for as many eligible citizens as possible, whatever their physical abilities, language skills, or experience with technology. This section reflects the HAVA 301 (a)(3) accessibility requirements.

Sections 4 through 6 describe specific performance standards for election system hardware, software, telecommunications, and security. Environmental criteria have been updated in Section 4.

Section 7 describes voting system security requirements and includes new requirements for voting system software distribution, generation of software reference information, validation of software during system setup, and the use of wireless. It also includes requirements for voter verifiable paper audit trail components for direct-recording electronic voting systems.

Sections 8 and 9 describe requirements for vendor quality assurance and configuration management practices and the documentation about these practices required for the EAC certification process.

Appendix A contains a glossary of terms.

Appendix B provides a list of related standards documents incorporated into the Guidelines by reference, documents used in the preparation of the Guidelines, and referenced legislation.

Appendix C presents an introductory discussion of independent verification systems as a potential concept for future voting system security design.

Appendix D contains technical guidance on color, contrast and text size adjustment for individuals with low vision or color blindness.

Volume II: National Certification Testing Guidelines Summary

Volume II, the National Certification Testing Guidelines, is a complementary document to Volume I. Volume II provides an overview and specific detail of the national certification testing process, which is performed by independent voting system test labs accredited by the EAC. It is intended principally for use by vendors: test labs: and election officials who certify, procure, and accept voting systems. This volume contains the following sections:

Section 1 describes the purpose of the National Certification Testing Guidelines.

Section 2 provides a description of the Technical Data Package that vendors are required to submit with their system for certification testing.

Section 3 describes the basic functionality testing requirements.

Sections 4 through 6 define the requirements for hardware, software and system integration testing. Section 6 has been revised to reflect new requirements for usability and accessibility testing.

Section 7 describes the required examination of vendor quality assurance and configuration management practices.

Appendix A provides the requirements for the National Certification Test Plan that is prepared by the voting system test lab and provided to the EAC for review.

Appendix B describes the scope and content of the National Certification Test Report which is prepared by the test lab and delivered to the EAC along with a recommendation for certification.

Appendix C describes the guiding principles used to design the voting system certification testing process. It also contains a revised section on testing system error rates.

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1 Introduction

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1 Introduction

1.1 Purpose and Scope of the Voluntary Voting System Guidelines

The purpose of the Voluntary Voting System Guidelines (VVSG or the Guidelines) is to provide a set of specifications and requirements against which voting systems can be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems. The VVSG specifies the functional requirements, performance characteristics, documentation requirements, and test evaluation criteria for the national certification of voting systems. To the extent possible, these requirements and specifications are described so they can be assessed by a series of defined, objective tests. The VVSG is composed of two volumes: Volume 1, Voting System Performance Guidelines; and Volume 2, National Certification Testing Guidelines.

The VVSG is one of several inter-related EAC promulgated guidelines and programs concerned with maintaining the reliability and security of voting systems and the integrity of the overall election process. The performance of national certification testing of voting systems is restricted to testing labs that have been formally accredited to be technically competent to evaluate systems for conformance to the Voting System Performance Guidelines. The National Association of State Election Directors (NASED) initiated the independent testing authority accreditation program for test labs in 1994, applying the standards and procedures in NASED Program Handbook 9201 (Revision A). With the passage of the Help America Vote Act (HAVA), this responsibility transitioned to the Election Assistance Commission (EAC) with support from the National Voluntary Laboratory Accreditation Program (NVLAP). This program is operated by the National Institute of Standards and Technology (NIST), applying the standards and procedures in NIST Handbook 150–22, NVLAP Voting System Testing.

The VVSG and the test lab accreditation process are essential components of the EAC National Certification Program for voting systems. This program applies the standards and procedures documented in the EAC voting system certification manual. HAVA Section 231 charges EAC with providing for the certification, decertification and recertification of voting systems. Under this program national certification is just the first step of the life cycle process of maintaining the reliability and security of the voting systems used in the nation's elections. To carry out this mandate, the EAC program will include monitoring of voting system performance through incident reporting by election officials and others. The certification program will maintain information on the quality assurance practices associated with the development and manufacturing of voting systems. When a system has successfully completed the certification process, the EAC program requires a copy of the certified voting system software to be provided to the National Software Reference Library operated by NIST. This will enable election officials to validate that the software received by their jurisdictions is the same as the certified version.

The VVSG notes the need for appropriate procedures to complement and supplement the technical requirements for voting system performance. It is well known that deficiencies in election management and administration procedures can have just as much impact on the enfranchisement of voters and the outcome of elections as the functioning of the voting machines. The overall integrity of the election process depends on both of these elements working together. EAC and NASED have instituted a multi-year effort to develop a comprehensive set of election management guidelines that will complement the technical system guidelines, as well as cover other elements of the election process.

Except as noted below, Volume I of the Guidelines applies to all system hardware, software, telecommunications, and documentation intended for use to:

- Prepare the voting system for use in an election
- Produce the appropriate ballot formats
- Test that the voting system and ballot materials have been properly prepared and are ready for use
- Record and count votes
- Consolidate and report election results
- Display results on-site or remotely
- Produce and maintain comprehensive audit trail data

Some voting systems use one or more commercial off-the-shelf (COTS) devices (such as card readers, printers, and personal computers) or software products (such as operating systems, programming language compilers, and database management systems). These devices and products are exempt from certain portions of system certification testing, as long as they are not modified for use in the voting system.

Volume 2 describes the testing process to provide a documented independent verification by an accredited testing laboratory that a voting system has been demonstrated to conform to the Volume 1 requirements and therefore should receive national certification. It provides the specific detail about the testing process and documentation requirements required to support the national certification program.

1.2 Use of the Voluntary Voting System Guidelines

The Guidelines are intended for use by multiple audiences to support their respective roles in the development, testing, and acquisition of voting systems:

- The accredited testing laboratories who use this information to develop test plans and procedures for the analysis and testing of systems in support of the national certification testing process
- State and local election officials who are evaluating voting systems for potential use in their jurisdictions
- Voting system designers and manufacturers who need to ensure that their products fulfill all these requirements so they can be certified

1.3 Evolution of Voting System Standards

1.3.1 Federal Election Commission

The first voting system standards were issued in January 1990, by the Federal Election Commission (FEC). This document included performance standards and testing procedures for Punchcard, Marksense, and Direct-Recording Electronic (DRE) voting systems. These standards did not cover paper ballot and mechanical lever systems because paper ballots are sufficiently self-explanatory not to require technical standards and mechanical lever systems are no longer manufactured or sold in the United States. The FEC also did not incorporate requirements for mainframe computer hardware because it was reasonable to assume that sufficient engineering and performance criteria already governed the operation of mainframe computers. However, vote tally software installed on mainframes was covered.

A national testing effort was initiated by NASED in 1994. As the system qualification process matured and qualified systems were used in the field, the NASED Voting Systems Board, in consultation with the testing labs, identified certain testing issues that needed to be resolved. Moreover, rapid advancements in information and personal computer technologies introduced new voting system development and implementation scenarios not contemplated by the 1990 Standards.

In 1997, NASED briefed the FEC on the importance of keeping the Standards up to date. Following a requirements analysis completed in 1999, the FEC initiated an effort to revise the 1990 Standards to reflect the evolving needs of the elections community. This resulted in the 2002 Voting Systems Standards.

Voters and election officials who use voting systems represent a broad spectrum of the population, and include individuals with disabilities who may have difficulty using traditional voting systems. In developing accessibility provisions for the 2002 Voting System Standards, the FEC requested assistance from the Access Board, the federal agency in the forefront of promulgating accessibility provisions. The Access Board submitted technical standards to meet the diverse needs of voters with a broad range of disabilities. The FEC adopted the entirety of the Access Board's recommendations and incorporated them into the 2002 Voting Systems Standards.

1.3.2 Election Assistance Commission

In 2002, Congress passed the Help America Vote Act, which established the U.S. Election Assistance Commission (EAC). EAC was mandated to develop and adopt new voluntary voting system guidelines and to provide for the testing, certification, and decertification of voting systems. HAVA also established the Technical Guidelines Development Committee (TGDC) with the duty of assisting the EAC in the development of the new guidelines. The Director of NIST chairs the TGDC, and NIST was tasked to provide technical support to their work. The TGDC delivered their initial set of recommendations to the EAC in May, 2005.

The TGDC built on the foundation of the 2002 Voting Systems Standards and the accessibility provisions of HAVA to expand requirements for voting system usability and accessibility. HAVA mandates that voting systems shall be accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. To facilitate the ability of jurisdictions to meet these requirements, HAVA allows for the use of at least one direct-recording electronic or other voting system equipped for individuals with disabilities at each polling place. Implementing this provision, however, will not entirely eliminate the necessity of accommodating the needs of some disabled voters by human assistance, given the limitations of current technology.

The 2005 VVSG is the culmination of sixteen months of effort by the TGDC, NIST and the EAC. There is still much to be done to further develop the technical guidelines for voting system performance, accessibility and usability features, and security. Further work is also needed for the specification of comprehensive standard test suites for certification testing, to include testing for usability and accessibility features and expanded security testing.

1.4 Overview of Voting System Testing

1.4.1 The National Certification Program for Voting Systems

The purpose of the national certification program is to validate and document, through an independent testing process, that voting systems meet the requirements set forth in VVSG Volume 1—Voting System Performance Guidelines, and perform according to the vendor's specifications for the system. Volume 1 specifies the minimum functional requirements, performance characteristics, documentation requirements, and test evaluation criteria that voting systems must meet in order to receive national certification. At the time of VVSG 2005 publication, 39 states either require national certification or utilize the national standards when certifying voting systems.

National certification testing can only be performed by testing labs that have been accredited for demonstrated technical competence to test voting systems using these Guidelines. Volume 2 of the VVSG—National Certification Testing Guidelines—provides guidance on the testing process and describes the associated documentation requirements. These tests encompass the examination of software; the inspection and evaluation of system documentation; tests of hardware under conditions simulating the intended storage, operation, transportation, and maintenance environments; operational tests to validate system performance and function under normal and abnormal conditions; and examination of the vendor's system development, testing, quality assurance, and configuration management practices. Certification tests address individual system components or elements, as well as the integrated system as a whole.

Since 1994, testing of voting systems has been performed by Independent Test Authorities (ITAs) certified by NASED. Upon the successful completion of testing, the ITA issued a Qualification Test Report to the vendor and NASED. The Technical Committee of the NASED Voting Systems Board would review the test report and, if satisfactory, issue a Qualification Number. The Qualification Number remains valid for as long as the voting system remains unchanged.

HAVA mandated that the certification testing process be transferred from NASED to EAC. National certification testing complements and evaluates the vendor's developmental testing and beta testing. The test lab is expected to evaluate the completeness of the vendor's developmental test program, including the sufficiency of vendor tests conducted to demonstrate compliance with the Guidelines as well as the system's performance specifications. The test lab undertakes sample testing of the vendor's test modules and also designs independent system-level tests to supplement and check those designed by the vendor. Although some of the certification tests are based on those prescribed in the Military Standards, in most cases the test conditions are less stringent, reflecting commercial, rather than military, practice.

Upon review of test reports and a determination that satisfactory results were achieved that address the full scope of testing, EAC will issue a certification number that indicates the system has successfully completed testing by an accredited test lab for compliance with the Guidelines. The certification number applies to the system as a whole and does not apply to individual system components or untested configurations.

After a system has completed initial certification testing, further examination of the system is required if modifications are made to hardware, software, or telecommunications, including the installation of software on different hardware. Vendors request review of modifications by the test lab based on the nature and scope of changes made. The test lab will assess whether the modified system should be resubmitted for certification testing and the extent of testing to be conducted, and then it will provide an appropriate recommendation to the EAC and the vendor.

Generally, a voting system remains certified under the standards against which it was tested as long as no modifications requiring recertification have been made to the system. However, if a new threat to a particular voting system is discovered, it is the prerogative of EAC to determine which certified voting systems are vulnerable, whether those systems need to be retested, and the specific tests to be conducted. In addition, when new requirements supersede the requirements under which the system was certified, it is the prerogative of EAC to determine when systems that were certified under the earlier requirements will need to be re-tested to meet current guidelines.

1.4.2 State Certification Testing

State certification tests are performed by individual states, with or without the assistance of outside consultants, to:

- Confirm that the voting system presented is the same as the one certified under the Guidelines
- Test for the proper implementation of state-specific requirements
- Establish a baseline for future evaluations or tests of the system, such as acceptance testing or state review after modifications have been made
- Define acceptance tests

State certification test scripts are not included in the Guidelines, as they must be defined by the state, with its laws, election practices, and needs in mind. However, it is recommended that they not duplicate the national certification tests, but instead focus on functional tests and qualitative assessment to ensure that the system operates in a manner that is acceptable under state law. If a voting system is modified after state certification is completed, it is recommended that states reevaluate the system to determine if further certification testing is warranted.

Certification tests performed by individual states typically rely on information contained in documentation provided by the vendor for system design, installation, operations, required facilities and supplies, personnel support and other aspects of the voting system. States and jurisdictions may define information and documentation requirements additional to those defined in the Guidelines. By design, the Guidelines do not address these additional requirements. However, national certification testing will address all the capabilities of a voting system stated by the vendor in the system documentation submitted with the testing application to the EAC, including additional capabilities that are not required by the states.

1.4.3 Acceptance Testing

Acceptance tests are performed at the state or local jurisdiction level upon system delivery by the vendor to:

- Confirm that the system delivered is the specific system certified by EAC and, when applicable, certified by the state
- Evaluate the degree to which delivered units conform to both the system characteristics specified in the procurement documentation, and those demonstrated in the national and state certification tests
- Establish a baseline for any future required audits of the system

Some of the operational tests conducted during certification may be repeated during acceptance testing.

1.5 Definitions, References, and Types of Voting Systems

1.5.1 Definitions and References

The Guidelines contain terms describing function, design, documentation, and testing attributes of voting system hardware, software and telecommunications. Unless otherwise specified, the intended sense of technical terms is that which is commonly used by the information technology industry. In some cases terminology is specific to elections or voting systems. A glossary of terms is contained in Appendix A. Non-technical terms not listed in Appendix A shall be interpreted according to their standard dictionary definitions.

There are a number of technical standards that are incorporated in the Guidelines by reference. These are referred to by title in the body of the document. The full citations for these publications are provided in Appendix B. In addition, this appendix includes other references that may be useful for understanding and interpretation.

1.5.2 Types of Voting Systems

HAVA Section 301 defines a voting system as the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment), that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information. In addition, a voting system includes the practices and associated documentation used to identify system components and versions of such components; to test the system during its development and maintenance; to maintain records of system errors and defects; to determine specific system changes made after initial certification; and to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

Traditionally, a voting system has been defined by the mechanism the system uses to cast votes and further categorized by the location where the system tabulates ballots. In addition to defining a common set of requirements that apply to all voting systems, the VVSG states requirements specific to a particular type of voting system, where appropriate. However, the Guidelines recognize that as the industry develops new solutions and the technology continues to evolve, the distinctions between voting system types may become blurred. The fact that the VVSG refers to specific system types is not intended to stifle innovations that may be based on a more fluid understanding of system types. However, appropriate procedures must be in place to ensure new developments provide the necessary integrity and can be properly evaluated in the certification process.

Consequently, vendors that submit a system that integrates components from more than one traditional system type or a system that includes components or technology not addressed in the Guidelines shall submit the results of all beta tests of the new system when applying for national certification. Vendors shall also submit a proposed test plan to the EAC for use in national certification testing. The Guidelines permit vendors to produce or utilize

interoperable components of a voting system that are tested within the full voting system configuration.

The listing below summarizes the functional requirements that HAVA Section 301 mandates to assist voters. While these requirements may be implemented in a different manner for different types of voting systems, all types of voting systems must provide these capabilities:

- Permit the voter to verify (in a private and independent manner) the vote selected by the voter on the ballot before the ballot is cast and counted
- 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
- Notify the voter if he or she has selected more than one candidate for a single office, inform the voter of the effect of casting multiple votes for a single office, and provide the voter an opportunity to correct the ballot before it is cast and counted
- Be accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters
- Provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act 1.5.2.1 Paper-Based Voting System A paper-based voting system records votes, counts votes, and produces a tabulation of the vote count from votes cast on paper cards or sheets. A marksense (also known as optical scan) voting system allows a voter to record votes by making marks directly on the ballot, usually in voting response locations. Additionally, a paper-based system may allow for the voter's selections to be indicated by marks made on a paper ballot by an electronic input device, as long as such an input device does not independently record, store, or tabulate the voter selections.

1.5.2.2 Direct-Recording Electronic Voting System

A direct-recording electronic (DRE) voting system records votes by means of a ballot display provided with mechanical or electro-optical components that can be activated by the voter; that processes data by means of a computer program; and that records voting data and ballot images in memory components. It produces a tabulation of the voting data stored in a removable memory component and as printed copy. The system may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from precincts at the central location.

1.5.2.3 Public Network Direct-Recording Electronic Voting System

A public network DRE voting system is an election system that uses electronic ballots and transmits vote data from the polling place to another location over a public network. Vote data may be transmitted as individual ballots as they are cast, periodically as batches of ballots throughout the election day, or as one batch at the close of voting. For purposes of the Guidelines, public network DRE voting systems are considered a form of DRE voting system and are subject to the standards applicable to DRE voting systems. However, because transmitting vote data over public networks relies on equipment beyond the control of the election authority, the system is subject to additional threats to system integrity and availability. Therefore, additional requirements are applied to provide appropriate security for data transmission.

The use of public networks for transmitting vote data must provide the same level of integrity as other forms of voting systems, and must be accomplished in a manner that precludes three risks to the election process: automated casting of fraudulent votes, automated manipulation of vote counts, and disruption of the voting process such that the system is unavailable to voters during the time period authorized for system use.

1.5.2.4 Precinct Count Voting System

A precinct count voting system is a voting system that tabulates ballots at the polling place. These systems typically tabulate ballots as they are cast and print the results after the close of polling. For DREs and some paper-based systems these systems provide electronic storage of the vote count and may transmit results to a central location over public telecommunication networks.

1.5.2.5 Central Count Voting System

A central count voting system is a voting system that tabulates ballots from multiple precincts at a central location. Voted ballots are typically placed into secure storage at the polling place. Stored ballots are transported or transmitted to a central counting location. The system produces a printed report of the vote count, and may produce a report stored on electronic media.

1.6 Conformance Clause

1.6.1 Scope and Applicability

The Voluntary Voting System Guidelines define requirements for conformance of voting systems that voting system vendors shall meet. The Guidelines also provide the framework, procedures, and requirements that testing labs responsible for the certification testing of voting systems shall follow. The requirements and procedures in the Guidelines may also be used by states to certify voting systems. To ensure that correct voting system software has been distributed without modification, the Guidelines include requirements for certified voting system software to be deposited in a national software repository. This provides an independent means for election officials to verify the software they purchase.

The Guidelines define the minimum requirements for voting systems and the process of testing voting systems. The guidelines are intended for use by:

- Designers and manufacturers of voting systems
- Test labs performing the analysis and testing of voting systems in support of the EAC national certification process
- Software repositories designated by EAC or by a state
- Election officials, including ballot designers and officials responsible for the installation, operation, and maintenance of voting machines
- Test labs and consultants performing the state certification of voting systems Minimum requirements specified in these guidelines include:
- Functional capabilities
- Performance characteristics, including security
- Documentation
- Test evaluation criteria

1.6.2 Conformance Framework

This section provides the framework in which conformance is defined. It identifies the entities to which these guidelines apply, the relationships among the various entities, the structure of the requirements, and the terminology used to indicate conformance.

1.6.2.1 Applicable Entities

The requirements, prohibitions, options, and guidance specified in these guidelines apply to voting systems, voting system vendors, test labs, and software repositories. In general, requirements for voting systems in these guidelines apply to all types of voting systems, unless prefaced with explanatory narrative that applicability is limited to a specific type of system.

Other terms in these guidelines shall be construed as synonymous with ''voting systems.'' They are: ''systems'', ''the system'', ''the voting system'', and ''each voting system.''

The term ''voting system vendor'' imposes documentation or testing requirements for the manufacturer or vendor. Other terms in these guidelines shall be construed as synonymous with ''voting system vendor.'' They are: ''vendors'', ''the vendor'', ''manufacturer or vendor'', ''voting system designers'', and ''implementer''.

The terms used to designate requirements and procedural guidelines for national certification testing laboratories are indicated by referring to ''testing authorities'', ''test labs'', and ''accredited test labs''. The term ''repository'' will be used to designate requirements levied on the National Software Reference Library repository maintained at NIST or any other designated repository.

1.6.2.2 Relationships Among Entities

It is the voting system vendor that needs to implement these requirements and provide the necessary documentation for the system. In order to claim conformance to the Guidelines, the voting system vendor shall satisfy the specified requirements, including implementation of functionality, prescribed software coding and assurance practices, and preparation of the Technical Data Package. The voting system vendor shall successfully complete the prescribed test campaign with an EAC accredited test lab.

The accredited test lab shall satisfy the requirements for conducting certification testing. The test lab may use an operational environment emulating that used by election officials as part of their testing to ensure that the voting system can be configured and operated in a secure and reliable manner according to the vendor's documentation and as specified by the Guidelines. The test lab shall coordinate and deliver the requisite documentation and test report to the EAC for review. Upon issuance of a certification number by the EAC, the test lab shall deposit a copy of the certified voting system software with the National Software Reference Library.

The EAC shall review the test results and associated documentation and make a determination that all requirements have been appropriately tested and the test results are acceptable. The EAC will issue a national certification number that indicates conformance of the specified system with these Guidelines.

The National Software Reference Library (NSRL) shall create a digital signature of the voting system software provided by the test lab. This information will be posted to a website so election officials can compare the digital signature of the software provided to them by the voting system vendor with this certified reference. The NSRL shall maintain this reference information until notified by the EAC that it can be archived.

1.6.3 Structure of Requirements

Each voting system requirement in Volume I is identified according to a hierarchical scheme in which higher-level requirements (such as ''provide accessibility for visually impaired voters'') are supported by lower-level requirements (e.g., ''provide an audio-tactile interface''). Thus, requirements are nested. When the nesting hierarchy has reached four levels (*i.e.*, 1.1.1.1), further nested requirements are designated with lowercase letters, then roman numerals. Therefore, all requirements are traceable by a distinct reference.

Some requirements are directly testable and some are not. The latter tend to be higher-level and are included because (1) they are testable indirectly insofar as their lower-level requirements are testable, and (2) they often provide the structure and rationale for the lower-level requirements. Satisfying the lower-level requirements will result in satisfying the higher-level requirement.

1.6.3.1 Conformance Language

The following keywords are used to convey conformance requirements:

- Shall—indicates a mandatory requirement in order to conform. Synonymous with ''is required to.''
- Is prohibited—indicates a mandatory requirement that indicates something that is not permitted (allowed) in order to conform. Synonymous with ''shall not.''
- Should, is encouraged—indicates an optional recommended action, one that is particularly suitable, without mentioning or excluding others. Synonymous with ''is permitted and recommended.''
- May—indicates an optional, permissible action. Synonymous with ''is permitted.''

Informative parts of this document include examples, extended explanations, and other matter that contain information necessary for proper understanding of the Guidelines and conformance to it.

1.6.3.2 Categorizing Requirements

The Guidelines set forth a common set of requirements for national certification that apply to all types of electronic voting systems. They also provide requirements that are applicable for particular circumstances, such as alternative language capability or disability accessibility. The requirements implementing the HAVA Section 301(a) mandates, except for disability accessibility, must be met by all voting systems. The alternative language capability mandated by Section 301(a)(4) must be met by all systems intended for use in jurisdictions subject to Section 203 of the Voting Rights Act. The Section 301(a)(3) disability accessibility requirements must be met by all systems intended to fulfill the one per polling place disability equipped voting system provision of Section 301(a)(3)(B).

In addition, the Guidelines categorize some requirements into related groups of functionality to address equipment type, ballot tabulation location, and voting system component (e.g., election management system, voting machine). Hence, all of the requirements contained in the Guidelines do not apply to all elements of all voting systems. For example, requirements categorized as applying to DRE systems are not applicable to paper-based voting. The requirements implementing disability accessibility are not required of all voting systems, only by those systems the vendor designates as accessible voting systems.

Among the categories defined in the VVSG are two types of voting systems with respect to mechanisms to cast votes—paper-based voting systems and DRE voting systems. Additionally, voting systems are further categorized by the locations where ballots are tabulated—precinct count voting systems, which tabulate ballots at the polling place, and central count voting systems, which tabulate ballots from multiple precincts at a central location. The Guidelines define specific requirements for systems that fall within these four categories as well as various combinations of these categories.

1.6.3.3 Extensions

Extensions are additional functions, features, and/or capabilities included in a voting system that are not required by the Guidelines. To accommodate the needs of states that may impose additional requirements and to accommodate changes in technology, these guidelines allow extensions. For example, the requirements for a voter verifiable paper audit trail feature will only be applied to those systems designated by the vendor as providing this feature. The use of extensions shall not contradict nor cause the

nonconformance of functionality required by the Guidelines.

1.6.4 Implementation Statement

The voting system implementation statement describes the voting system and documents the VVSG Volume 1 requirements that have been implemented by the voting system. It can also identify optional features and capabilities supported by the voting system, as well as any extensions (i.e., additional functionality beyond what is required in the guidelines). The implementation statement must include a checklist identifying all the requirements for which a claim of conformance is made.

The implementation statement must be submitted with the vendor's application to the EAC for national certification testing. It must provide a concise summary and narrative description of the voting system's capabilities. It shall include identifying information about the voting system, including the hardware and software components, version number and date.

1.7 Effective Date

The Voluntary Voting System Guidelines (VVSG) shall become effective for national certification testing 24 months after their final adoption in December, 2005 by EAC. At that time, all new systems submitted for national certification shall be tested for conformance with these Guidelines. In addition, if a modification to a system certified or qualified to a previous standard is submitted for national certification after this date, every component of the modified system shall be tested using these Guidelines. All previous versions of national voting system standards will become obsolete upon this effective date.

These Guidelines are voluntary in that each of the states can decide whether to require the voting systems used in their state to have a national certification. States may decide to adopt these Guidelines in whole or in part at any time, irrespective of the effective date. In addition, states may specify additional requirements that voting systems in their jurisdiction must meet. The national certification program does not in any way pre-empt the ability of the states to have their own system certification process.

This VVSG effective date provision has no effect on the mandatory voting system requirements prescribed in HAVA Section 301(a), which states must comply with on or before January 1, 2006. The EAC issued Advisory 2005–004 to assist states in determining if a voting system is compliant with Section 301(a). This advisory is available on the EAC Web site at *www.eac.gov.*

1 Functional Requirements

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2 Functional Requirements

This section contains requirements detailing the functional capabilities required of a voting system. This section sets out precisely what a voting system is required to do. In addition, it sets forth the minimum actions a voting system must be able to perform to be eligible for certification.

For organizational purposes, functional capabilities are categorized as follows by the phase of election activity in which they are required:

2.1 *Overall System Capabilities:* These functional capabilities apply throughout the election process. They include security, accuracy, integrity, system auditability, election management system, vote tabulation, ballot counters, telecommunications, and data retention.

2.2 *Pre-voting Capabilities:* These functional capabilities are used to prepare the voting system for voting. They include ballot preparation, the preparation of election-specific software (including firmware), the production of ballots, the installation of ballots and ballot counting software (including firmware), and system and equipment tests.

2.3 *Voting System Capabilities:* These functional capabilities include all operations conducted at the polling place by voters and officials including the generation of status messages.

2.4 *Post-voting Capabilities:* These functional capabilities apply after all votes have been cast. They include closing the polling place; obtaining reports by voting machine, polling place, and precinct; obtaining consolidated reports; and obtaining reports of audit trails.

2.5 *Maintenance, Transportation and Storage Capabilities:* These capabilities are necessary to maintain, transport, and store voting system equipment.

In recognition of the diversity of voting systems, the Guidelines apply specific requirements to specific technologies. Some of the guidelines apply only if the system incorporates certain optional functions (for example, voting systems employing telecommunications to transmit voting data). For each functional capability, common requirements are specified. Where necessary, these are followed by requirements applicable to specific technologies (*i.e.*, paper-based or DRE) or intended use (*i.e.*, central or precinct count).

2.1 Overall System Capabilities

This section defines required functional capabilities that are system-wide in nature and not unique to pre-voting, voting, and post-voting operations. All voting systems shall provide the following functional capabilities, further outlined in this section:

2.1.1 Security
2.1.2 Accuracy
2.1.3 Error Recovery
2.1.4 Integrity
2.1.5 System Audit
2.1.6 Election Management System
2.1.7 Vote Tabulating Program
2.1.8 Ballot Counter
2.1.9 Telecommunications
2.1.10 Data Retention

Voting systems may also include telecommunications components. Technical standards for these capabilities are described in Sections 3 through 6 of the Voluntary Voting System Guidelines.

2.1.1 Security

System security is achieved through a combination of technical capabilities and sound administrative practices. To ensure security, all systems shall:

a. Provide security access controls that limit or detect access to critical system components to guard against loss of system integrity, availability, confidentiality, and accountability

b. Provide system functions that are executable only in the intended manner and order, and only under the intended conditions

c. Use the system's control logic to prevent a system function from executing if any preconditions to the function have not been met

d. Provide safeguards in response to system failure to protect against tampering during system repair or interventions in system operations

e. Provide security provisions that are compatible with the procedures and administrative tasks involved in equipment preparation, testing, and operation

f. Incorporate a means of implementing a capability if access to a system function is to be restricted or controlled

g. Provide documentation of mandatory administrative procedures for effective system security

2.1.2 Accuracy

Memory hardware, such as semiconductor devices and magnetic storage media, must be accurate. The design of equipment in all voting systems shall provide for the highest possible levels of protection against mechanical, thermal, and electromagnetic stresses that impact system accuracy. Section 4 provides additional information on susceptibility requirements. To ensure vote accuracy, all systems shall:

a. Record the election contests, candidates, and issues exactly as defined by election officials

b. Record the appropriate options for casting and recording votes

c. Record each vote precisely as indicated by the voter and produce an accurate report of all votes cast;

d. Include control logic and data processing methods incorporating parity and check-sums (or equivalent error detection and correction methods) to demonstrate that the system has been designed for accuracy

e. Provide software that monitors the overall quality of data read-write and transfer quality status, checking the number and types of errors that occur in any of the relevant operations on data and how they were corrected

In addition, DRE systems shall:

f. As an additional means of ensuring accuracy in DRE systems, voting devices shall record and retain redundant copies of the original ballot image. A ballot image is an electronic record of all votes cast by the voter, including undervotes.

2.1.3 Error Recovery

To recover from a non-catastrophic failure of a device, or from any error or malfunction that is within the operator's ability to correct, the system shall provide the following capabilities:

a. Restoration of the device to the operating condition existing immediately prior to the error or failure, without loss or corruption of voting data previously stored in the device

b. Resumption of normal operation following the correction of a failure in a memory component, or in a data processing component, including the central processing unit

c. Recovery from any other external condition that causes equipment to become inoperable, provided that catastrophic electrical or mechanical damage due to external phenomena has not occurred

2.1.4 Integrity

Integrity measures ensure the physical stability and function of the vote recording and counting processes.

To ensure system integrity, all systems shall:

a. Protect against a single point of failure that would prevent further voting at the polling place

b. Protect against the interruption of electrical power

c. Protect against generated or induced electromagnetic radiation

d. Protect against ambient temperature and humidity fluctuations

e. Protect against the failure of any data input or storage device

f. Protect against any attempt at improper data entry or retrieval g. Record and report the date and time of normal and abnormal events

h. Maintain a permanent record of all original audit data that cannot be modified or overridden but may be augmented by designated authorized officials in order to adjust for errors or omissions (e.g., during the canvassing process)

i. Detect and record every event, including the occurrence of an error condition that the system cannot overcome, and time-dependent or programmed events that occur without the intervention of the voter or a polling place operator

j. Include built-in measurement, self-test, and diagnostic software and hardware for detecting and reporting the system's status and degree of operability

In addition to the common requirements, DRE systems shall:

k. Maintain a record of each ballot cast using a process and storage location that differs from the main vote detection, interpretation, processing, and reporting path

l. Provide a capability to retrieve ballot images in a form readable by humans

2.1.5 System Audit

This subsection describes the context and purpose of voting system audits and sets forth specific functional requirements. Election audit trails provide the supporting documentation for verifying the accuracy of reported election results. They present a concrete, indestructible archival record of all system activity related to the vote tally, and are essential for public confidence in the accuracy of the tally, for recounts, and for evidence in the event of criminal or civil litigation.

These requirements are based on the premise that system-generated creation and maintenance of audit records reduces the chance of error associated with manually generated audit records. Because most audit capability is automatic, the system operator has less information to track and record, and is less likely to make mistakes or omissions. The subsections that follow present operational requirements critical to acceptable performance and reconstruction of an election. Requirements for the content of audit records are described in Section 5.

The requirements for all system types, both precinct and central count, are described in generic language. Because the actual implementation of specific characteristics may vary from system to system, it is the responsibility of the vendor to describe each system's characteristics in sufficient detail so that test labs and system users can evaluate the adequacy of the system's audit trail. This description shall be incorporated in the System Operating Manual, which is part of the Technical Data Package.

Documentation of items such as paper ballots delivered, paper ballots collected, administrative procedures for system security, and maintenance performed on voting equipment are also part of the election audit trail, but are not covered in these technical standards. Useful guidance is provided by the Innovations in Election Administration #10; Ballot Security and Accountability, available on the EAC's website.

2.1.5.1 Operational Requirements

Audit records shall be prepared for all phases of election operations performed

using devices controlled by the jurisdiction or its contractors. These records rely upon automated audit data acquisition and machine-generated reports, with manual input of some information. These records shall address the ballot preparation and election definition phase, system readiness tests, and voting and ballot-counting operations. The software shall activate the logging and reporting of audit data as described below.

a. The timing and sequence of audit record entries is as important as the data contained in the record. All voting systems shall meet the requirements for time, sequence and preservation of audit records outlined below.

i. Except where noted, systems shall provide the capability to create and maintain a real-time audit record. This capability records and provides the operator or precinct official with continuous updates on machine status. This information allows effective operator identification of an error condition requiring intervention, and contributes to the reconstruction of election-related events necessary for recounts or litigation.

ii. All systems shall include a real-time clock as part of the system's hardware. The system shall maintain an absolute record of the time and date or a record relative to some event whose time and data are known and recorded.

iii. All audit record entries shall include the time-and-date stamp.

iv. The audit record shall be active whenever the system is in an operating mode. This record shall be available at all times, though it need not be continually visible.

v. The generation of audit record entries shall not be terminated or altered by program control, or by the intervention of any person. The physical security and integrity of the record shall be maintained at all times.

vi. Once the system has been activated for any function, the system shall preserve the contents of the audit record during any interruption of power to the system until processing and data reporting have been completed.

vii. The system shall be capable of printing a copy of the audit record. A separate printer is not required for the audit record, and the record may be produced on the standard system printer if all the following conditions are met:

- The generation of audit trail records does not interfere with the production of output reports
- The entries can be identified so as to facilitate their recognition, segregation, and retention
- The audit record entries are kept physically secure

b. All voting systems shall meet the requirements for error messages below.

i. The voting system shall generate, store, and report to the user all error messages as they occur.

ii. All error messages requiring intervention by an operator or precinct official shall be displayed or printed clearly in easily understood language text, or by means of other suitable visual indicators.

iii. When the voting system uses numerical error codes for trained technician maintenance or repair, the text corresponding to the code shall be self-contained or affixed inside the voting machine. This is intended to reduce inappropriate reactions to error conditions, and to allow for ready and effective problem correction.

iv. All error messages for which correction impacts vote recording or vote processing shall be written in a manner that is understandable to an election official who possesses training on system use and operation, but does not possess technical training on system servicing and repair.

v. The message cue for all voting systems shall clearly state the action to be performed in the event that voter or operator response is required.

vi. Voting system design shall ensure that erroneous responses will not lead to irreversible error.

vii. Nested error conditions shall be corrected in a controlled sequence such that voting system status shall be restored to the initial state existing before the first error occurred.

c. The Guidelines provide latitude in software design so that vendors can consider various user processing and reporting needs. The jurisdiction may require some status and information messages to be displayed and reported in real-time. Messages that do not require operator intervention may be stored in memory to be recovered after ballot processing has been completed.

The voting system shall display and report critical status messages using clear indicators or English language text. The voting system need not display non-critical status messages at the time of occurrence. Voting systems may display non-critical status messages (*i.e.*, those that do not require operator intervention) by means of numerical codes for subsequent interpretation and reporting as unambiguous text.

Voting systems shall provide a capability for the status messages to become part of the real-time audit record. The voting system shall provide a capability for a jurisdiction to designate critical status messages.

2.1.5.2 Use of Shared Computing Platforms

Further requirements must be applied to Commercial-off-the-Shelf operating systems to ensure completeness and integrity of audit data for election software. These operating systems are capable of executing multiple application programs simultaneously. These systems include both servers and workstations, including the many varieties of UNIX and Linux, and those offered by Microsoft and Apple. Election software running on these systems is vulnerable to unintended effects from other user sessions, applications, and utilities executing on the same platform at the same time as the election software.

''Simultaneous processes'' of concern include: unauthorized network connections, unplanned user logins, and unintended execution or termination of operating system processes. An unauthorized network connection or unplanned user login can host unintended processes and user actions, such as the termination of operating system audit, the termination of election software processes, or the deletion of election software audit and logging data. The execution of an operating system process could be a full system scan at a time when that process would adversely affect the election software processes. Operating system processes improperly terminated could be system audit or malicious code detection.

To counter these vulnerabilities, three operating system protections are required on all such systems on which election software is hosted. First, authentication shall be configured on the local terminal (display screen and keyboard) and on all external connection devices (''network cards'' and ''ports''). This ensures that only authorized and identified users affect the system while election software is running.

Second, operating system audit shall be enabled for all session openings and closings, for all connection openings and closings, for all process executions and terminations, and for the alteration or deletion of any memory or file object. This ensures the accuracy and completeness of election data stored on the system. It also ensures the existence of an audit record of any person or process altering or deleting system data or election data.

Third, the system shall be configured to execute only intended and necessary processes during the execution of election software. The system shall also be configured to halt election software processes upon the termination of any

critical system process (such as system audit) during the execution of election software.

2.1.6 Election Management System

The Election Management System (EMS) is used to prepare ballots and programs for use in casting and counting votes, and to consolidate, report, and display election results. An EMS shall generate and maintain a database, or one or more interactive databases, that enables election officials or their designees to perform the following functions:

- Define political subdivision boundaries and multiple election districts as indicated in the system documentation
- Identify contests, candidates, and issues
- Define ballot formats and appropriate voting options
- Generate ballots and election-specific programs for voting equipment
- Install ballots and election-specific programs
- Test that ballots and programs have been properly prepared and installed
- Accumulate vote totals at multiple reporting levels as indicated in the system documentation
- Generate the post-voting reports required by Subsection 2.4
- Process and produce audit reports of the data as indicated in Subsection 5.5

2.1.7 Vote Tabulating Program

Each voting system shall have a vote tabulation program that will meet specific functional requirements.

2.1.7.1 Functions

The vote tabulating program software resident in each voting machine, vote count server, or other devices shall include all software modules required to:

a. Monitor system status and generate machine-level audit reports

b. Accommodate device control functions performed by polling place officials and maintenance personnel

c. Register and accumulate votes

d. Accommodate variations in ballot counting logic

2.1.7.2 Voting Variations

There are significant variations among state election laws with respect to permissible ballot contents, voting options, and the associated ballot counting logic. The Technical Data Package accompanying the system shall specifically identify which of the following items can and cannot be supported by the voting system, as well as how the voting system can implement the items supported:

- Closed primaries
- Open primaries
- Partisan offices
- Non-partisan offices
- Write-in voting
- Primary presidential delegation nominations
- Ballot rotation
- Straight party voting
- Cross-party endorsement
- Split precincts
- Vote for N of M
- Recall issues, with options
- Cumulative voting
- Ranked order voting
- Provisional or challenged ballots

2.1.8 Ballot Counter

For all voting systems, each piece of voting equipment that tabulates ballots shall provide a counter that:

a. Can be set to zero before any ballots are submitted for tally

b. Records the number of ballots cast during a particular test cycle or election

c. Increases the count only by the input of a ballot

d. Prevents or disables the resetting of the counter by any person other than authorized persons at authorized points

e. Is visible to designated election officials

2.1.9 Telecommunications

For all voting systems that use telecommunications for the transmission of data during pre-voting, voting or post-voting activities, capabilities shall be provided that ensure data are transmitted with no alteration or unauthorized disclosure during transmission. Such transmissions shall not violate the privacy, secrecy, and integrity demands of the Guidelines. Section 6 describes telecommunications standards that apply to, at a minimum, the following types of data transmissions:

Voter Authentication: Coded information that confirms the identity of a voter for security purposes for a system that transmit votes individually over a public network

Ballot Definition: Information that describes to voting equipment the content and appearance of the ballots to be used in an election

Vote Transmission to Central Site: For voting systems that transmit votes individually over a public network, the transmission of a single vote to the county (or contractor) for consolidation with other county vote data

Vote Count: Information representing the tabulation of votes at any one of several levels: polling place, precinct, or central count

List of Voters: A listing of the individual voters who have cast ballots in a specific election

2.1.10 Data Retention

United States Code Title 42, Sections 1974 through 1974e state that election administrators shall preserve for 22 months ''all records and paper that came into (their) possession relating to an application, registration, payment of poll tax, or other act requisite to voting.'' This retention requirement applies to systems that will be used at anytime for voting of candidates for federal offices (e.g., Member of Congress, United States Senator, and/or Presidential Elector). Therefore, all voting systems shall provide for maintaining the integrity of voting and audit data during an election and for a period of at least 22 months thereafter.

Because the purpose of this law is to assist the federal government in discharging its law enforcement responsibilities in connection with civil rights and elections crimes, its scope must be interpreted in keeping with that objective. The appropriate state or local authority must preserve all records that may be relevant to the detection and prosecution of federal civil rights or election crimes for the 22-month federal retention period, if the records were generated in connection with an election that was held in whole or in part to select federal candidates. It is important to note that Section 1974 does not require that election officials generate any specific type or classification of election record. However, if a record is generated, Section 1974 comes into force and the appropriate authority must retain the records for 22 months.

For 22-month document retention, the general rule is that all printed copy records produced by the election database and ballot processing systems shall be so labeled and archived. Regardless of system type, all audit trail information spelled out in Subsection 5.5 shall be retained in its original format, whether that be real-time logs generated by the system, or manual logs maintained by election personnel. The election audit trail includes not only in-process logs of election-night and subsequent processing of absentee or provisional ballots, but also time logs of baseline ballot definition formats, and system readiness and testing results.

In many voting systems, the source of election-specific data (and ballot formats) is a database or file. In precinct count voting systems, this data is used to program each machine, establish ballot layout, and generate tallying files. It is not necessary to retain this information on electronic media if there is an official, authenticated printed copy of all final database information.

However, it is recommended that the state or local jurisdiction also retain electronic records of the aggregate data for each voting machine so that reconstruction of an election is possible without data re-entry. The same requirement and recommendation applies to vote results generated by each precinct count voting machine.

2.2 Pre-Voting Capabilities

This subsection defines capabilities required to support functions performed prior to the opening of polls. All voting systems shall provide capabilities to support:

- Ballot preparation
- Election programming
- Ballot and program installation and control
- Readiness testing
- Verification at the polling place
- Verification at the central counting place

The standards also include requirements to ensure compatible interfaces with the ballot definition process and the reporting of election results.

2.2.1 Ballot Preparation

Ballot preparation is the process of using election databases to define the specific contests, questions, and related instructions to be contained in ballots and to produce all permissible ballot layouts. Ballot preparation requirements include:

- General capabilities
- Ballot formatting
- Ballot production

2.2.1.1 General Capabilities

All systems shall provide the general capabilities for ballot preparation. All systems shall be capable of:

a. Enabling the automatic formatting of ballots in accordance with the requirements for offices, candidates, and measures qualified to be placed on the ballot for each political subdivision and election district

b. Collecting and maintaining the following data

i. Offices and their associated labels and instructions

ii. Candidate names and their associated labels

iii. Issues or measures and their associated text

c. Supporting the maximum number of potentially active voting positions as indicated in the system documentation

d. For a primary election, generating ballots that segregate the choices in partisan contests by party affiliation

e. Generating ballots that contain identifying codes or marks uniquely associated with each format

f. Ensuring that vote response fields, selection buttons, or switches properly align with the specific candidate names and/or issues printed on the ballot display, ballot card or sheet, or separate ballot pages

Paper-based voting systems shall also meet the following requirements applicable to the technology used:

g. Enable voters to make selections by making a mark in areas designated for this purpose upon each ballot sheet

h. For marksense systems, ensure that the timing marks align properly with the vote response fields

2.2.1.2 Ballot Formatting

Ballot formatting is the process by which election officials or their designees use election databases and voting system software to define the specific contests and related instructions contained on the ballot and present them in a layout permitted by state law. All voting systems shall provide a capability for:

a. Creation of newly defined elections

b. Rapid and error-free definition of elections and their associated ballot layouts

c. Uniform allocation of space and fonts used for each office, candidate, and contest such that the voter perceives no active voting position to be preferred to any other

d. Simultaneous display of the maximum number of choices for a single contest as indicated by the vendor in the system documentation

e. Retention of previously defined formats for an election

f. Prevention of unauthorized modification of any ballot formats

g. Modification by authorized persons of a previously defined ballot format for use in a subsequent election

2.2.1.3 Ballot Production

Ballot production is the process of converting ballot formats to a media ready for use in the physical ballot production or electronic presentation.

The voting system shall provide a means of printing or otherwise generating a ballot display that can be installed in all voting equipment for which it is intended. All voting systems shall provide the capabilities below.

a. The electronic display or printed document on which the user views the ballot is capable of rendering an image of the ballot in any of the languages required by the Voting Rights Act of 1965, as amended.

b. The electronic display or printed document on which the user views the ballot does not show any advertising or commercial logos of any kind, whether public service, commercial, or political, unless specifically provided for in state law. Electronic displays shall not provide connection to such material through hyperlink.

c. The ballot conforms to vendor specifications for type of paper stock, weight, size, shape, size and location of mark field used to record votes, folding, bleed-through, and ink for printing if paper ballot documents or paper displays are part of the system.

Vendor documentation for marksense systems shall include specifications for ballot materials to ensure that vote selections are read from only a single ballot at a time, without detection of marks from multiple ballots concurrently (e.g., reading of bleed-through from other ballots).

2.2.2 Election Programming

Election programming is the process by which election officials or their designees use election databases and vendor system software to logically define the voter choices associated with the contents of the ballots. All systems shall provide for the:

a. Logical definition of the ballot, including the definition of the number of allowable choices for each office and contest

b. Logical definition of political and administrative subdivisions, where the list of candidates or contests varies between polling places

c. Exclusion of any contest on the ballot in which the voter is prohibited from casting a ballot because of place of residence, or other such administrative or geographical criteria

d. Ability to select from a range of voting options to conform to the laws of the jurisdiction in which the system will be used

e. Generation of all required master and distributed copies of the voting program, in conformance with the definition of the ballots for each voting device and polling place, and for each tabulating device

2.2.3 Ballot and Program Installation and Control

All systems shall provide a means of installing ballots and programs on each piece of polling place or central count equipment in accordance with the ballot requirements of the election and the requirements of the jurisdiction in which the equipment will be used. All systems shall include the following at the time of ballot and program installation:

a. A detailed work plan or other documentation providing a schedule and steps for the software and ballot installation, which includes a table

outlining the key dates, events and deliverables

b. A capability for automatically verifying that the software has been properly selected and installed in the equipment or in programmable memory devices, and for indicating errors

c. A capability for automatically validating that software correctly matches the ballot formats that it is intended to process, for detecting errors, and for immediately notifying an election official of detected errors

2.2.4 Readiness Testing

Election personnel conduct voting equipment and voting system readiness tests prior to the start of an election to ensure that the voting system functions properly, to confirm that voting equipment has been properly integrated, and to obtain equipment status reports. All voting systems shall provide the capabilities to:

a. Verify that voting equipment and precinct count equipment is properly prepared for an election, and collect data that verifies equipment readiness

b. Obtain status and data reports from each set of equipment

c. Verify the correct installation and interface of all voting equipment

d. Verify that hardware and software function correctly

e. Generate consolidated data reports at the polling place and higher jurisdictional levels

f. Segregate test data from actual voting data, either procedurally or by hardware/software features

Resident test software, external devices, and special purpose test software connected to or installed in voting equipment to simulate operator and voter functions may be used for these tests provided that the following standards are met:

g. These elements shall be capable of being tested separately, and shall be proven to be reliable verification tools prior to their use

h. These elements shall be incapable of altering or introducing any residual effect on the intended operation of the voting device during any succeeding test and operational phase

Paper-based systems shall:

i. Support conversion testing that uses all potential ballot positions as active positions

j. Support conversion testing of ballots with active position density for systems without pre-designated ballot positions

2.2.5 Verification at the Polling Place

Election officials perform verification at the polling place to ensure that all voting systems and voting equipment function properly before and during an election. All voting systems shall provide a formal record of the following, in any media, upon verification of the authenticity of the command source:

a. The election's identification data

b. The identification of all equipment units

c. The identification of the polling place

d. The identification of all ballot formats

e. The contents of each active candidate register by office and of each active measure register at all storage locations (showing that they contain only zeros)

f. A list of all ballot fields that can be used to invoke special voting options

g. Other information needed to confirm the readiness of the equipment, and to accommodate administrative reporting requirements

To prepare voting devices to accept voted ballots, all voting systems shall provide the capability to test each device prior to opening to verify that each is operating correctly. At a minimum, the tests shall include:

h. Confirmation that there are no hardware or software failures

i. Confirmation that the device is ready to be activated for accepting votes

If a precinct count system includes equipment for the consolidation of polling place data at one or more central counting locations, it shall have means to verify the correct extraction of voting data from transportable memory devices, or to verify the transmission of secure data over secure communication links.

2.2.6 Verification at the Central Location

Election officials perform verification at the central location to ensure that vote counting and vote consolidation equipment and software function properly before and after an election. Upon verification of the authenticity of the command source, any system used in a central count environment shall provide a printed record of the following:

a. The election's identification data

b. The contents of each active candidate register by office and of each active measure register at all storage locations (showing that they contain all zeros)

c. Other information needed to ensure the readiness of the equipment and to accommodate administrative reporting requirements

2.3 Voting Capabilities

All voting systems shall support:

- Opening the polls
- Casting a ballot

Additionally, all DRE systems shall support:

- Activating the ballot
- Augmenting the election counter
- Augmenting the life-cycle counter

2.3.1 Opening the Polls

The capabilities required for opening the polls are specific to individual voting system technologies. At a minimum, the systems shall provide the functional capabilities indicated below.

2.3.1.1 Precinct Count Systems

To allow voting devices to be activated for voting, all precinct count systems shall provide:

a. An internal test or diagnostic capability to verify that all of the polling place tests specified in Subsection 2.2.5 have been successfully completed

b. Automatic disabling of any device that has not been tested until it has been tested

2.3.1.2 Paper-based System Requirements

To facilitate opening the polls, all paper-based systems shall include:

a. A means of verifying that ballot marking devices are properly prepared and ready to use

b. A voting booth or similar facility, in which the voter may mark the ballot in privacy

c. Secure receptacles for holding voted ballots

In addition to the above requirements, all paper-based precinct count equipment shall include a means of:

d. Activating the ballot counting device

e. Verifying that the device has been correctly activated and is functioning properly

f. Identifying device failure and corrective action needed

2.3.1.3 DRE System Requirements

To facilitate opening the polls, all DRE systems shall include:

a. A security seal, a password, or a data code recognition capability to prevent the inadvertent or unauthorized actuation of the poll-opening function

b. A means of enforcing the execution of steps in the proper sequence if more than one step is required

c. A means of verifying the system has been activated correctly

d. A means of identifying system failure and any corrective action needed

2.3.2 Activating the Ballot (DRE Systems)

To activate the ballot, all DRE systems shall:

a. Enable election officials to control the content of the ballot presented to the voter, whether presented in printed form or electronic display, such that each voter is permitted to record votes only in contests in which that voter is authorized to vote

b. Allow each eligible voter to cast a ballot

c. Prevent a voter from voting on a ballot to which he or she is not entitled

d. Prevent a voter from casting more than one ballot in the same election

e. Activate the casting of a ballot in a general election

f. Enable the selection of the ballot that is appropriate to the party affiliation declared by the voter in a primary election

g. Activate all portions of the ballot upon which the voter is entitled to vote

h. Disable all portions of the ballot upon which the voter is not entitled to vote

2.3.3 Casting a Ballot

Some required capabilities for casting a ballot are common to all systems. Others are specific to individual voting technologies or intended use. Systems must provide additional functional capabilities that enable accessibility to disabled voters as defined in Subsection 3.2.

2.3.3.1 Common Requirements

To facilitate casting a ballot, all systems shall:

a. Provide text that is at least 3 millimeters high and provide the capability to adjust or magnify the text to an apparent size of 6.3 millimeters

b. Protect the secrecy of the vote such that the system cannot reveal any information about how a particular voter voted, except as otherwise required by individual state law

c. Record the selection and non-selection of individual vote choices for each contest and ballot measure

d. Record the voter's selection of candidates whose names do not appear on the ballot, if permitted under state law, and record as many write-in votes as the number of candidates the voter is allowed to select

e. In the event of a failure of the main power supply external to the voting system, provide the capability for any voter who is voting at the time to complete casting a ballot, allow for the successful shutdown of the voting system without loss or degradation of the voting and audit data, and allow voters to resume voting once the voting system has reverted to back-up power

f. Provide the capability for voters to continue casting ballots in the event of a failure of a telecommunications connection within the polling place or between the polling place and any other location

2.3.3.2 Paper-based System Requirements

All paper-based systems shall:

a. Allow the voter to easily identify the voting field that is associated with each candidate or ballot measure response

b. Allow the voter to mark the ballot to register a vote

c. Allow either the voter or the appropriate election official to place the voted ballot into the ballot counting device (for precinct count systems) or into a secure receptacle (for central count systems)

d. Protect the secrecy of the vote throughout the process

In addition to the above requirements, all paper-based precinct count systems shall:

e. Provide feedback to the voter that identifies specific contests for which he or she has made no selection or fewer than the allowable number of selections (e.g., undervotes)

f. Notify the voter if he or she has made more than the allowable number of selections for any contest (e.g., overvotes)

g. Notify the voter before the ballot is cast and counted of the effect of making more than the allowable number of selections for a contest

h. Provide the voter opportunity to correct the ballot for either an undervote or overvote before the ballot is cast and counted

2.3.3.3 DRE System Requirements

In addition to the above common requirements, DRE systems shall:

a. Prohibit the voter from accessing or viewing any information on the display screen that has not been authorized by election officials and preprogrammed into the voting system (i.e., no potential for display of external information or linking to other information sources)

b. Enable the voter to easily identify the selection button or switch, or the active area of the ballot display, that is associated with each candidate or ballot measure response

c. Allow the voter to select his or her preferences on the ballot in any legal number and combination

d. Indicate that a selection has been made or canceled

e. Indicate to the voter when no selection, or an insufficient number of selections, has been made for a contest (e.g., undervotes)

f. Notify the voter if he or she has made more than the allowable number of selections for any contest (e.g., overvotes)

g. Notify the voter before the ballot is cast and counted of the effect of making more than the allowable number of selections for a contest

h. Provide the voter opportunity to correct the ballot for either an undervote or overvote before the ballot is cast and counted

i. Notify the voter when the selection of candidates and measures is completed

j. Allow the voter, before the ballot is cast, to review his or her choices and, if the voter desires, to delete or change his or her choices before the ballot is cast

k. For electronic image displays, prompt the voter to confirm the voter's choices before casting his or her ballot, signifying to the voter that casting the ballot is irrevocable and directing the voter to confirm the voter's intention to cast the ballot

l. Notify the voter after the vote has been stored successfully that the ballot has been cast

m. Notify the voter that the ballot has not been cast successfully if it is not stored successfully, including storage of the ballot image, and provide clear instruction as to the steps the voter should take to cast his or her ballot should this event occur

n. Provide sufficient computational performance to provide responses back to each voter entry in no more than three seconds

o. Ensure that the votes stored accurately represent the actual votes cast

p. Prevent modification of the voter's vote after the ballot is cast

q. Provide a capability to retrieve ballot images in a form readable by humans [in accordance with the requirements of Subsections 2.1.2 (f) and 2.1.4 (k) and (l)]

r. Increment the proper ballot position registers or counters

s. Protect the secrecy of the vote throughout the voting process

t. Prohibit access to voted ballots until after the close of polls

u. Provide the ability for election officials to submit test ballots for use in verifying the end-to-end integrity of the voting system

v. Isolate test ballots such that they are accounted for accurately in vote counts and are not reflected in official vote counts for specific candidates or measures

2.4 Post-Voting Capabilities

All voting systems shall provide capabilities to accumulate and report results for the jurisdiction and to generate audit trails. In addition, precinct count voting systems must

provide a means to close the polls including generating appropriate reports. If the system provides the capability to broadcast results, additional standards apply.

2.4.1 Closing the Polls

These requirements for closing the polls and locking voting systems against future voting are specific to precinct count systems. The voting system shall provide the means for:

a. Preventing the further casting of ballots once the polls have closed

b. Providing an internal test that verifies that the prescribed closing procedure has been followed, and that the device status is normal

c. Incorporating a visible indication of system status

d. Producing a diagnostic test record that verifies the sequence of events, and indicates that the extraction of voting data has been activated

e. Precluding the unauthorized reopening of the polls once the poll closing has been completed for that election

2.4.2 Consolidating Vote Data

All systems shall provide a means to consolidate vote data from all polling places, and optionally from other sources such as absentee ballots, provisional ballots, and voted ballots requiring human review (e.g., write-in votes).

2.4.3 Producing Reports

All systems shall be able to create reports summarizing the vote data on multiple levels.

All systems shall provide capabilities to:

a. Support geographic reporting, which requires the reporting of all results for each contest at the precinct level and additional jurisdictional levels

b. Produce a printed report of the number of ballots counted by each tabulator

c. Produce a printed report for each tabulator of the results of each contest that includes the votes cast for each selection, the count of undervotes, and the count of overvotes

d. Produce a consolidated printed report of the results for each contest of all votes cast (including the count of ballots from other sources supported by the system as specified by the vendor) that includes the votes cast for each selection, the count of undervotes, and the count of overvotes

e. Be capable of producing a consolidated printed report of the combination of overvotes for any contest that is selected by an authorized official (e.g., the number of overvotes in a given contest combining candidate A and candidate B, combining candidate A and candidate C, etc.)

f. Produce all system audit information required in Subsection 5.4 in the form of printed reports, or in electronic memory for printing centrally

g. Prevent data from being altered or destroyed by report generation, or by the transmission of results over telecommunications lines

In addition, all precinct count voting systems shall:

h. Prevent the printing of reports and the unauthorized extraction of data prior to the official close of the polls

i. Provide a means to extract information from a transportable programmable memory device or data storage medium for vote consolidation

j. Consolidate the data contained in each unit into a single report for the polling place when more than one voting machine or precinct tabulator is used

k. Prevent data in transportable memory from being altered or destroyed by report generation, or by the transmission of official results over telecommunications lines

2.4.4 Broadcasting Results

Some voting systems offer the capability to make unofficial results available to external organizations such as the news media, political party officials, and others. Although this capability is not required, systems that make unofficial results available shall:

a. Provide only aggregated results, and not data from individual ballots

b. Provide no access path from unofficial electronic reports or files to the storage devices for official data

c. Clearly indicate on each report or file that the results it contains are unofficial

2.5 Maintenance, Transportation, and Storage

All systems shall be designed and manufactured to facilitate preventive and corrective maintenance, conforming to the hardware standards described in Subsection 4.1. All vote casting and tally equipment designated for storage between elections shall:

a. Function without degradation in capabilities after transit to and from the place of use, as demonstrated by meeting the performance standards described in Subsection 4.1

b. Function without degradation in capabilities after storage between elections, as demonstrated by meeting the performance standards described in Subsection 4.1

3 Usability and Accessibility Requirements

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3 Usability and Accessibility Requirements

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3 Usability and Accessibility Requirements

The importance of usability and accessibility in the design of voting systems has become increasingly apparent. It is not sufficient that the internal operation of these systems be correct; in addition, voters and poll workers must be able to use them effectively. There are some particular considerations for the design of usable and accessible voting systems:

- The voting task itself can be fairly complex; the voter may have to navigate an electronic ballot, choose multiple candidates in a single contest, or decide on abstrusely worded referenda
- Voting is performed infrequently, so there is limited opportunity for voters and poll workers to gain familiarity with the process
- Jurisdictions may change voting equipment, thus obviating whatever familiarity the voter might have acquired
- Usability and accessibility requirements include a broad range of factors, including physical abilities, language skills, and technology experience

The challenge, then, is to provide a voting system that voters can use comfortably, efficiently, and with confidence that they have cast their votes correctly. The requirements within this section are intended to serve that goal. Three broad principles motivate this section:

1. *All eligible voters shall have access to the voting process without discrimination.* The voting process shall be accessible to individuals with disabilities. The voting process includes

access to the polling place, instructions on how to vote, initiating the voting session, making ballot selections, review of the ballot, final submission of the ballot, and getting help when needed.

2. *Each cast ballot shall accurately capture the selections made by the voter.* The ballot shall be presented to the voter in a manner that is clear and usable. Voters should encounter no difficulty or confusion regarding the process for recording their selections.

3. *The voting process shall preserve the secrecy of the ballot.* The voting process shall preclude anyone else from determining the content of a voter's ballot, without the voter's cooperation. If such a determination is made against the wishes of the voter, then his or her privacy has been violated.

All the requirements in this section have the purpose of improving the quality of interaction between voters and voting systems.

- Requirements for general usability apply to all voting systems. Requirements for any alternative languages required by state or federal law are included under this heading.
- Requirements to assist voters with physical, sensory, or cognitive disabilities apply, as a minimum, to the accessible voting stations required by HAVA Section 301 (a)(3)(B). They may also assist those not usually described as having a disability, e.g., voters with poor eyesight or limited dexterity.

Several uncommon terms are used in this section. For the convenience of the reader, they are defined below, in addition to being included in the Glossary. Other terms frequently used here and throughout this document are defined in the Glossary. Note in particular the distinctions between these terms: voting system, voting equipment, voting machine and voting station.

- Common Industry Format (CIF)—the format to be used for usability testing reporting, described in ANSI/INCITS 354–2001 ''Common Industry Format (CIF) for Usability Test Reports''
- Accessible Voting Station—the voting station equipped for individuals with disabilities referred to in HAVA 301 (a)(3)(B).
- Audio-Tactile Interface—a voter interface designed not to require visual reading of a ballot. Audio is used to convey information to the voter and sensitive tactile controls allow the voter to convey information to the voting system.

3.1 Usability Requirements

The voting process shall provide a high level of usability for voters. Accordingly, voters shall be able to negotiate the process effectively, efficiently, and comfortably. The mandatory voting system standards mandated in HAVA Section 301 relate to the interaction between the voter and the voting system:

a. 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 the ballot is cast and counted;

ii. 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 any error); and

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.

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—

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

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).

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.

Usability is defined generally as a measure of the effectiveness, efficiency, and satisfaction achieved by a specified set of users with a given product in the performance of specified tasks. In the context of voting, the primary user is the voter, the product is the voting system, and the task is the correct recording of the voter ballot selections. Additional requirements for task performance are independence and privacy: the voter should normally be able to complete the voting task without assistance from others, and the voter selections should be private. Lack of independence or privacy may adversely affect effectiveness (e.g., by possibly inhibiting the voter's free choice) and efficiency (e.g., by slowing down the process).

Among the basic metrics for usability are:

- Low error rate for marking the ballot (the voter selection is correctly conveyed to and represented within the voting system)
- efficient operation (time required to vote is not excessive)
- satisfaction (voter experience is safe, comfortable, free of stress, and instills confidence)

It is the intention of the EAC that in future revisions to the Guidelines, usability will be addressed by high-level performance-based requirements. That is, the requirements will directly address metrics for effectiveness (e.g., correct capture of voter selections), efficiency (e.g., time taken to vote), and satisfaction. Until the supporting research is completed, however, the contents of this subsection are limited to a basic set of widely accepted design requirements and lower-level performance requirements. The reasons for this approach are:

- These are to serve as interim requirements, pending the issuance of high-level performance requirements
- The actual benefit of numerous detailed design guidelines is difficult to prove or measure
- The technical complexity and costs of a large set of detailed requirements may not be justified
- Guidelines that are difficult to test because of insufficient specificity have been omitted

While the scope of usability applies to the entire voting process, the emphasis in these requirements is on the voter interface with the voting machine, which is assumed to be a visual-tactile interface.

The outline for this subsection is:

3.1.1 Usability Testing
3.1.2 Functional Capabilities
3.1.3 Alternative Languages
3.1.4 Cognitive Issues
3.1.5 Perceptual Issues
3.1.6 Interaction Issues
3.1.7 Privacy

3.1.1 Usability Testing

The vendor shall conduct summative usability tests on the voting system using individuals representative of the general population. The vendor shall document the testing performed and report the test results using the Common Industry Format. This documentation shall be included in the Technical Data Package submitted to the EAC for national certification.

Discussion: Voting system developers are required to conduct realistic usability tests on the final product. For the present, vendors can define their own testing protocols. Future revisions to the Guidelines will include requirements for usability testing that will provide specific performance benchmarks.

3.1.2 Functional Capabilities

The voting process shall provide certain functional capabilities to support voter usability.

a. The voting system shall provide feedback to the voter that identifies specific contests or ballot issues for which he or she has made no selection or fewer than the allowable number of selections (e.g., undervotes)

b. The voting system shall notify the voter if he or she has made more than the allowable number of selections for any contest (e.g., overvotes)

c. The voting system shall notify the voter before the ballot is cast and counted of the effect of making more than the allowable number of selections for a contest

d. The voting system shall provide the voter the opportunity to correct the ballot for either an undervote or overvote before the ballot is cast and counted

e. The voting system shall allow the voter, at his or her choice, to submit an undervoted ballot without correction

f. DRE voting machines shall allow the voter to change a vote within a contest before advancing to the next contest.

Discussion: The point here is that voters using a DRE should not have to wait for the final ballot review screen in order to change a vote.

g. DRE voting machines should provide navigation controls that allow the voter to advance to the next contest or go back to the previous contest before completing a vote on the contest currently being presented (whether visually or aurally).

Discussion: For example, the voter should not be forced to proceed sequentially through all the contests before going back to check his or her selection for a previous contest.

3.1.3 Alternative Languages

The voting equipment shall be capable of presenting the ballot, ballot selections, review screens and instructions in any language required by state or federal law.

Discussion: HAVA Section 301 (a)(4) states that 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). Ideally every voter would be able to vote independently and privately, regardless of language. As a practical matter, alternative language access is mandated under the Voting Rights Act of 1975, subject to certain thresholds, e.g., if the language group exceeds 5% of the voting age population. The audio interface provided for blind voters may also assist voters who speak English, but who are unable to read it (See Subsection 3.2.2.2).

3.1.4 Cognitive Issues

The voting process shall be designed to minimize cognitive difficulties for the voter.

a. Consistent with election law, the voting system should support a process that does not introduce any bias for or against any of the selections to be made by the voter. In both visual and aural formats, contest choices shall be presented in an equivalent manner.

Discussion: Certain differences in presentation are mandated by state law, such as the order in which candidates are listed and provisions for voting for write-in candidates. But comparable characteristics such as font size or voice volume and speed must be the same for all choices.

b. The voting machine or related materials shall provide clear instructions and assistance to allow voters to successfully execute and cast their ballots independently.

Discussion: Voters should not routinely need to ask for human assistance.

i. Voting machines or related materials shall provide a means for the voter to get help at any time during the voting session.

Discussion: The voter should always be able to get help if needed. DRE voting machines may provide this with a distinctive ''help'' button. Any type of voting equipment may provide written instructions that are separate from the ballot.

ii. The voting machine shall provide instructions for all its valid operations.

Discussion: If an operation is available to the voter, it must be documented. Examples include how to change a vote, how to navigate among contests, how to cast a straight party vote, and how to cast a write-in vote.

c. The voting system shall provide the capability to design a ballot for maximum clarity and comprehension.

i. The voting equipment should not visually present a single contest spread over two pages or two columns.

Discussion: Such a visual separation poses the risk that the voter may perceive one contest as two. If a contest has a large number of candidates, it may be infeasible to observe this guideline.

ii. The ballot shall clearly indicate the maximum number of candidates for which one can vote within a single contest.

iii. There shall be a consistent relationship between the name of a candidate and the mechanism used to vote for that candidate.

Discussion: For example, if the response field where voters indicate their selections is located to the left of a candidate's name, then each response field shall be located to the left of the associated candidates' names.

d. Warnings and alerts issued by the voting system should clearly state the nature of the problem and the set of responses available to the voter. The warning should clearly state whether the voter has performed or attempted an invalid operation or whether the voting equipment itself has malfunctioned in some way.

Discussion: In case of an equipment failure, the only action available to the voter might be to get assistance from a poll worker.

e. The use of color by the voting system should agree with common conventions: (a) green, blue or white is used for general information or as a normal status indicator; (b) amber or yellow is used to indicate warnings or a marginal status; (c) red is used to indicate error conditions or a problem requiring immediate attention.

3.1.5 Perceptual Issues

The voting process shall be designed to minimize perceptual difficulties for the voter.

a. No voting machine display screen shall flicker with a frequency between 2 Hz and 55 Hz.

Discussion: Aside from usability concerns, this requirement protects voters with epilepsy.

b. Any aspect of the voting machine that is adjustable by the voter or poll worker, including font size, color, contrast, and audio volume, shall automatically reset to a standard default value upon completion of that voter's session.

Discussion: The voting machine must present the same initial appearance to every voter.

c. If any aspect of a voting machine is adjustable by the voter or poll worker, there shall be a mechanism to reset all such aspects to their default values.

Discussion: The purpose is to allow a voter who has adjusted the machine into an undesirable state to reset all the aspects to begin again.

d. All electronic voting machines shall provide a minimum font size of 3.0 mm (measured as the height of a capital letter) for all text.

e. All voting machines using paper ballots should make provisions for voters with poor reading vision.

Discussion: Possible solutions include: (a) providing paper ballots in at least two font sizes, 3.0–4.0mm and 6.3–9.0mm and (b) providing a magnifying device.

f. The default color coding shall maximize correct perception by voters with color blindness.

Discussion: There are many types of color blindness and no color coding can, by itself, guarantee correct perception for everyone. However, designers should take into account such factors as: red-green color blindness is the most common form; high luminosity contrast will help colorblind voters to recognize visual features; and color-coded graphics can also use shape to improve the ability to distinguish certain features.

g. Color coding shall not be used as the sole means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

Discussion: While color can be used for emphasis, some other non-color mode must also be used to convey the information, such as a shape or text style. For example, red can be enclosed in an octagon shape.

h. All text intended for the voter should be presented in a sans serif font.

Discussion: Experimentation has shown that users prefer such a font and the legibility of serif and sans serif fonts is equivalent.

i. The minimum figure-to-ground ambient contrast ratio for all text and informational graphics (including icons) intended for the voter shall be 3:1.

3.1.6 Interaction Issues

The voting process shall be designed to minimize interaction difficulties for the voter.

a. Voting machines with electronic image displays shall not require page scrolling by the voter.

Discussion: This is not an intuitive operation for those unfamiliar with the use of computers. Even those experienced with computers often do not notice a scroll bar and miss information at the bottom of the ''page.'' Voting systems may require voters to move to the next or previous ''page.''

b. The voting machine shall provide unambiguous feedback regarding the voter's selection, such as displaying a checkmark beside the selected option or conspicuously changing its appearance.

c. If the voting machine requires a response by a voter within a specific period of time, it shall issue an alert at least 20 seconds before this time period has expired and provide a means by which the voter may receive additional time.

d. Input mechanisms shall be designed to minimize accidental activation.

i. On touch screens, the sensitive touch areas shall have a minimum height of 0.5 inches and minimum width of 0.7 inches. The vertical distance between the centers of adjacent areas shall be at least 0.6 inches, and the horizontal distance at least 0.8 inches.

ii. No key or control on a voting machine shall have a repetitive effect as a result of being held in its active position.

Discussion: This is to preclude accidental activation. For instance, if a voter is typing in the name of a write-in candidate, depressing and holding the ''e'' key results in only a single ''e'' added to the name.

3.1.7 Privacy

The voting process shall preclude anyone else from determining the content of a voter's ballot, without the voter's cooperation.

Discussion: Privacy ensures that the voter can make selections based solely on his or her own preferences without intimidation or inhibition. Among other practices, this forbids the issuance of a receipt to the voter that would provide proof of how he or she voted.

3.1.7.1 Privacy at the Polls

When deployed according to the installation instructions provided by the vendor, the voting station shall prevent others from observing the contents of a voter's ballot.

a. The ballot and any input controls shall be visible only to the voter during the voting session and ballot submission.

b. The audio interface shall be audible only to the voter.

Discussion: Voters who are hard of hearing but need to use an audio interface may also need to increase the volume of the audio. Such situations require headphones with low sound leakage.

c. As mandated by HAVA 301 (a)(1)(C), the voting system shall notify the voter of an attempted overvote in a way that preserves the privacy of the voter and the confidentiality of the ballot.

3.1.7.2 No Recording of Alternate Format Usage

Voter anonymity shall be maintained for alternative format ballot presentation.

a. No information shall be kept within an electronic cast vote record that identifies any alternative language feature(s) used by a voter.

b. No information shall be kept within an electronic cast vote record that identifies any accessibility feature(s) used by a voter.

3.2 Accessibility Requirements

The voting process shall be accessible to voters with disabilities. As a minimum, every polling place shall have at least one voting station equipped for individuals with disabilities, as provided in HAVA 301 (a)(3)(B). A machine so equipped is referred to herein as an accessible voting station.

HAVA Section 301 (a) (3) reads, in part:

Accessibility for Individuals with Disabilities.—The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual 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;

(B) satisfy the requirement of 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

The requirements in Subsection 3.2 are intended to address this mandate. Ideally, every voter would be able to vote independently and privately. As a practical matter, there may be some number of voters whose disabilities are so severe that they will need personal assistance. Nonetheless, these requirements are meant to make the voting system independently accessible to as many voters as possible. These requirements are in addition to those described in Subsection 3.1 Usability Requirements.

The outline for this subsection is:

3.2.1 General
3.2.2 Vision
3.2.3 Dexterity
3.2.4 Mobility
3.2.5 Hearing
3.2.6 Speech
3.2.7 English Proficiency
3.2.8 Cognition

3.2.1 General

The voting process shall incorporate the following features that are applicable to all types of disabilities:

a. When the provision of accessibility involves an alternative format for ballot presentation, then all information presented to voters including instructions, warnings, error and other messages, and ballot choices shall be presented in that alternative format.

b. The support provided to voters with disabilities shall be intrinsic to the accessible voting station. It shall not be necessary for the accessible voting station to be connected to any personal assistive device of the voter in order for the voter to operate it correctly.

Discussion: This requirement does not preclude the accessible voting station from providing interfaces to assistive technology. [See definition of ''personal assistive devices'' in the Glossary.] Its purpose is to assure that disabled voters are not required to bring special devices with them in order to vote successfully. The requirement does not assert that the accessible voting station

will obviate the need for a voter's ordinary non-interfacing devices, such as eyeglasses or canes. Jurisdictions should ensure that an accessible voting station provides clean and sanitary devices for voters with dexterity disabilities.

c. When the primary means of voter identification or authentication uses biometric measures that require a voter to possess particular biological characteristics, the voting process shall provide a secondary means that does not depend on those characteristics.

Discussion: For example, if fingerprints are used for voter identification, another mechanism shall be provided for voters without usable fingerprints.

3.2.2 Vision

The voting process shall be accessible to voters with visual disabilities.

Discussion: Note that all aspects of the voting process are to be accessible, not just the voting machine.

3.2.2.1 Partial Vision

The accessible voting station shall be accessible to voters with partial vision.

a. The vendor shall conduct summative usability tests on the voting system using partially sighted individuals. The vendor shall document the testing performed and report the test results using the Common Industry Format. This documentation shall be included in the Technical Data Package submitted to the EAC for national certification.

Discussion: Voting system developers are required to conduct realistic usability tests on the final product. For the present, vendors can define their own testing protocols. Future revisions to the Guidelines will include requirements for usability testing that will provide specific performance benchmarks.

b. The accessible voting station with an electronic image display shall be capable of showing all information in at least two font sizes, (a) 3.0–4.0 mm and (b) 6.3–9.0 mm, under control of the voter.

Discussion: All millimeters will be calculated using Hard Metric Conversion. [See Glossary for definition.] While larger font sizes may assist most voters with poor vision, certain disabilities such as tunnel vision are best addressed by smaller font sizes.

c. An accessible voting station with a monochrome-only electronic image display shall be capable of showing all information in high contrast either by default or under the control of the voter or poll worker. High contrast is a figure-to-ground ambient contrast ratio for text and informational graphics of at least 6:1.

d. An accessible voting station with a color electronic image display shall allow the voter to adjust the color or the figure-to-ground ambient contrast ratio.

Discussion: See Technical Guide for Color, Contrast and Text Size in Appendix D for examples of how a voting station may meet this requirement by offering a limited number of discrete choices. In particular, it is not required that the station offer a continuous range of color or contrast values.

e. Buttons and controls on accessible voting stations shall be distinguishable by both shape and color.

Discussion: The redundant cues are helpful to those with low vision. They are also helpful to individuals who may have difficulty reading the text on the screen. f. An accessible voting station using an electronic image display shall provide synchronized audio output to convey the same information as that which is displayed on the screen.

3.2.2.2 Blindness

The accessible voting station shall be accessible to voters who are blind.

a. The vendor shall conduct summative usability tests on the voting system using individuals who are blind. The vendor shall document the testing performed and report the test results using the Common Industry Format. This documentation shall be included in the Technical Data Package submitted to the EAC for national certification.

Discussion: Voting system developers are required to conduct realistic usability tests on the final product. For the present, vendors can define their own testing protocols. Future revisions to the Guidelines will include requirements for usability testing that will provide specific performance benchmarks.

b. The accessible voting station shall provide an audio-tactile interface (ATI) that supports the full functionality of the visual ballot interface, as specified in Subsection 2.3.3.

Discussion: Note the necessity of both audio output and tactilely discernible controls for voter input. Full functionality includes at least:

- Instructions and feedback on initial activation of the ballot (such as insertion of a smart card), if this is normally performed by the voter on comparable voting stations
- Instructions and feedback to the voter on how to operate the accessible voting station, including settings and options (e.g., volume control, repetition)
- Instructions and feedback for navigation of the ballot
- Instructions and feedback for contest choices, including write-in candidates
- Instructions and feedback on confirming and changing selections
- Instructions and feedback on final submission of ballot

i. The ATI of the accessible voting station shall provide the same capabilities to vote and cast a ballot as are provided by other voting machines or by the visual interface of the standard voting machine.

Discussion: For example, if a visual ballot supports voting a straight party ticket and then changing the choice in a single contest, so must the ATI.

ii. The ATI shall allow the voter to have any information provided by the voting system repeated.

iii. The ATI shall allow the voter to pause and resume the audio presentation.

iv. The ATI shall allow the voter to skip to the next contest or return to previous contests.

Discussion: This is analogous to the ability of sighted voters to move on to the next contest once they have made a selection or to abstain from voting on a contest altogether.

v. The ATI shall allow the voter to skip over the reading of a referendum so as to be able to vote on it immediately.

Discussion: This is analogous to the ability of sighted voters to skip over the wording of a referendum on which they have already made a decision prior to the voting session (e.g., ''Vote yes on proposition #123'').

c. All voting stations that provide audio presentation of the ballot shall conform to the following requirements:

Discussion: These requirements apply to all voting machine audio output, not just to the ATI of an accessible voting station.

i. The ATI shall provide its audio signal through an industry standard connector for private listening using a 3.5mm stereo headphone jack to allow voters to use their own audio assistive devices.

ii. When a voting machine utilizes a telephone style handset or headphone to provide audio information, it shall provide a wireless T-Coil coupling for assistive hearing devices so as to provide access to that information for voters with partial hearing. That coupling shall achieve at least a category T4 rating as defined by American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19.

iii. No voting equipment shall cause electromagnetic interference with assistive hearing devices that would substantially degrade the performance of those devices. The voting equipment, considered as a wireless device, shall achieve at least a category T4 rating as defined by American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19.

Discussion: ''Hearing devices'' include hearing aids and cochlear implants.

iv. A sanitized headphone or handset shall be made available to each voter.

Discussion: This requirement can be achieved in various ways, including the use of ''throwaway'' headphones, or of sanitary coverings.

v. The voting machine shall set the initial volume for each voter between 40 and 50 dB SPL.

Discussion: A voter does not ''inherit'' the volume as set by the previous user of the voting station.

vi. The voting machine shall provide a volume control with an adjustable volume from a minimum of 20dB SPL up to a maximum of 100 dB SPL, in increments no greater than 10 dB.

vii. The audio system shall be able to reproduce frequencies over the audible speech range of 315 Hz to 10 KHz.

viii. The audio presentation of verbal information should be readily comprehensible by voters who have normal hearing and are proficient in the language. This includes such characteristics as proper enunciation, normal intonation, appropriate rate of speech, and low background noise. Candidate names should be pronounced as the candidate intends.

ix. The audio system shall allow voters to control the rate of speech. The range of speeds supported should be at least 75% to 200% of the nominal rate.

Discussion: Many blind voters are accustomed to interacting with accelerated speech.

d. If the normal procedure is to have voters initialize the activation of the ballot, the accessible voting station shall provide features that enable voters who are blind to perform this activation.

Discussion: For example, smart cards might provide tactile cues so as to allow correct insertion.

e. If the normal procedure is for voters to submit their own ballots, then the accessible voting station shall provide features that enable voters who are blind to perform this submission.

Discussion: For example, if voters normally feed their own optical scan ballots into a reader, blind voters should also be able to do so.

f. All mechanically operated controls or keys on an accessible voting station shall be tactilely discernible without activating those controls or keys.

g. On an accessible voting station, the status of all locking or toggle controls or keys (such as the ''shift'' key) shall be visually discernible, and discernible either through touch or sound.

3.2.3 Dexterity

The voting process shall be accessible to voters who lack fine motor control or use of their hands.

a. The vendor shall conduct summative usability tests on the voting system using individuals lacking fine motor control. The vendor shall document the testing performed and report the test results using the Common Industry Format. This documentation shall be included in the Technical Data Package submitted to the EAC for national certification.

Discussion: Voting system developers are required to conduct realistic usability tests on the final product. For the present, vendors can define their own testing protocols. Future revisions to the Guidelines will include requirements for usability testing that will provide specific performance benchmarks.

b. All keys and controls on the accessible voting station shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be no greater 5 lbs. (22.2 N).

Discussion: Controls are to be operable without excessive force.

c. The accessible voting station controls shall not require direct bodily contact or for the body to be part of any electrical circuit.

Discussion: This requirement ensures that controls are operable by individuals using prosthetic devices.

d. The accessible voting station shall provide a mechanism to enable non-manual input that is functionally equivalent to tactile input.

Discussion: This requirement ensures that the accessible voting station is operable by individuals who do not have the use of their hands. All the functionality of the accessible voting station (e.g., straight party voting, write-in candidates) that is available through the other forms of input, such as tactile, must also be available through a non-manual input mechanism if it is provided by the accessible voting station.

e. If the normal procedure is for voters to submit their own ballots, then the accessible voting station shall provide features that enable voters who lack fine motor control or the use of their hands to perform this submission.

3.2.4 Mobility

The voting process shall be accessible to voters who use mobility aids, including wheelchairs.

a. The accessible voting station shall provide a clear floor space of 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum for a stationary mobility aid. The clear floor space shall be level with no slope exceeding 1:48 and positioned for a forward approach or a parallel approach.

b. All controls, keys, audio jacks and any other part of the accessible voting station necessary for the voter to operate the voting machine shall be within reach as specified under the following sub-requirements:

Discussion: Note that these requirements have meaningful application mainly to controls in a fixed location. A hand-held tethered control panel is another acceptable way of providing reachable controls.

i. If the accessible voting station has a forward approach with no forward reach obstruction then the high reach shall be 48 inches maximum and the low reach shall be 15 inches minimum. See Figure 1.

ii. If the accessible voting station has a forward approach with a forward reach obstruction, the following requirements apply (See Figure 2):

- The forward obstruction shall be no greater than 25 inches in depth, its top no higher than 34 inches and its bottom surface no lower than 27 inches.
- If the obstruction is no more than 20 inches in depth, then the maximum high reach shall be 48 inches, otherwise it shall be 44 inches.

iii. Space under the obstruction between the finish floor or ground and 9 inches (230 mm) above the finish floor or ground shall be considered toe clearance and shall comply with the following provisions:

- Toe clearance shall extend 25 inches (635 mm) maximum under the obstruction
- The minimum toe clearance under the obstruction shall be either 17 inches (430 mm) or the depth required to reach over the obstruction to operate the accessible voting station, whichever is greater
- Toe clearance shall be 30 inches (760 mm) wide minimum

iv. Space under the obstruction between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground shall be considered knee clearance and shall comply with the following provisions:

- Knee clearance shall extend 25 inches (635 mm) maximum under the obstruction at 9 inches (230 mm) above the finish floor or ground.
- The minimum knee clearance at 9 inches (230 mm) above the finish floor or ground shall be either 11 inches (280 mm) or 6 inches less than the toe clearance, whichever is greater.
- Between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground, the knee clearance shall be permitted to reduce at a rate of 1 inch

(25 mm) in depth for each 6 inches (150 mm) in height.

Discussion: It follows that the minimum knee clearance at 27 inches above the finish floor or ground shall be 3 inches less than the minimum knee clearance at 9 inches above the floor.

• Knee clearance shall be 30 inches (760 mm) wide minimum.

v. If the accessible voting station has a parallel approach with no side reach obstruction then the maximum high reach shall be 48 inches and the minimum low reach shall be 15 inches. See Figure 3.

vi. If the accessible voting station has a parallel approach with a side reach obstruction, the following sub-requirements apply. See Figure 4.

• The side obstruction shall be no greater than 24 inches in depth and its top no higher than 34 inches.

• If the obstruction is no more than 10 inches in depth, then the maximum high reach shall be 48 inches, otherwise it shall be 46 inches.

Discussion: Since this is a parallel approach, no clearance under the obstruction is required.

c. All labels, displays, controls, keys, audio jacks, and any other part of the accessible voting station necessary for the voter to operate the voting machine shall be easily legible and visible to a voter in a wheelchair with normal eyesight (no worse than 20/40, corrected) who is in an appropriate position and orientation with respect to the accessible voting station

Discussion: There are a number of factors that could make relevant parts of the accessible voting station difficult to see such as; small lettering, controls and labels tilted at an awkward angle from the voter's viewpoint, and glare from overhead lighting.

Figures 1-4

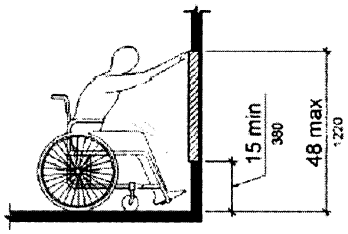

Figure 1
Unobstructed forward reach

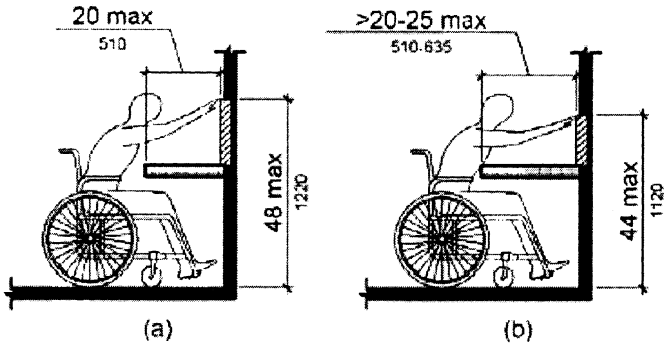

Figure 2
Obstructed forward reach
(a) for an obstruction depth of up to 20 inches (508 mm)
(b) for an obstruction depth of up to 25 inches (635 mm)

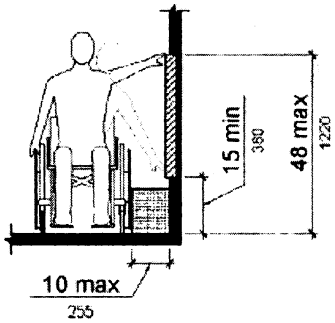

Figure 3
Unobstructed side reach with an allowable obstruction less than 10 inches (254 mm) deep.

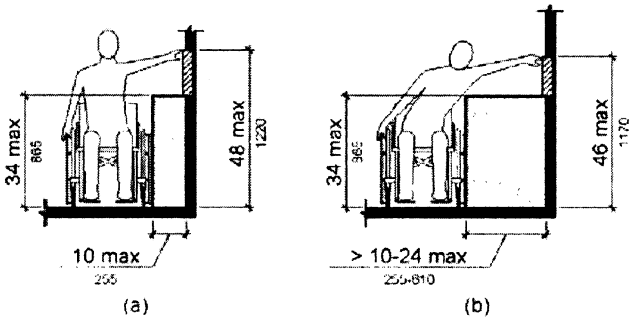

Figure 4
Obstructed side reach
(a) for an obstruction depth of up to 10 inches (254 mm)
(b) for an obstruction depth of up to 24 inches (610 mm)

3.2.5 Hearing

The voting process shall be accessible to voters with hearing disabilities. a. The accessible voting station shall incorporate the features listed under requirement 3.2.2.2 (c) for voting equipment that provides audio presentation of the ballot to provide accessibility to voters with hearing disabilities.

Discussion: Note especially the requirements for volume initialization and control.

b. If voting equipment provides sound cues as a method to alert the voter, the tone shall be accompanied by a visual cue, unless the station is in audio-only mode.

Discussion: For instance, the voting equipment might beep if the voter attempts to overvote. If so, there would have to be an equivalent visual cue, such as the appearance of an icon, or a blinking element. Some voting equipment may have an audio-only mode, in which case, there would be no visual cue.

3.2.6 Speech

The voting process shall be accessible to voters with speech disabilities. a. No voting equipment shall require voter speech for its operation.

Discussion: This does not preclude voting equipment from offering speech input as an option, but speech must not be the only means of input.

3.2.7 English Proficiency

For voters who lack proficiency in reading English, or whose primary language is unwritten, the voting equipment shall provide spoken instructions and ballots in the preferred language of the voter, consistent with state and federal law. The requirements of 3.2.2.2 (c) shall apply to this mode of interaction.

3.2.8 Cognition

The voting process should be accessible to voters with cognitive disabilities.

Discussion: At present there are no design features specifically aimed at helping those with cognitive disabilities. Requirements 3.2.2.1 (f), the synchronization of audio with the screen in a DRE, is helpful for some cognitive disabilities such as dyslexia. Requirements in Subsection 3.1.4 also address cognitive issues relative to voting system usability.

4 Hardware Requirements

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4 Hardware Requirement

This section contains the requirements for the machines and manufactured devices that are part of a voting system. It specifies minimum values for certain performance characteristics; physical characteristics; and design, construction, and maintenance characteristics for the hardware and selected related components of all voting systems, such as:

- Ballot printers
- Ballot cards and sheets
- Ballot displays
- Voting devices, including ballot marking devices and DRE recording devices
- Voting booths and enclosures
- Ballot boxes and ballot transfer boxes
- Ballot readers
- Computers used to prepare ballots, program elections, consolidate and report votes, and perform other elections management activities
- Electronic ballot recorders
- Electronic precinct vote control units
- Removable electronic data storage media
- Servers
- Printers

This section applies to the combination of software and hardware to accomplish specific performance and system control requirements. Standards that are specific to software alone are provided in Section 5.

The requirements of this section apply generally to all hardware used in voting systems, including:

- Hardware provided by the voting system vendor and its suppliers
- Hardware furnished by an external provider (for example, providers of commercial-off-the-shelf equipment) where the hardware may be used in any way during voting system operation
- Hardware provided by the voting jurisdiction

The requirements presented in this section are organized as follows:

Performance Requirements: These requirements address the combined operational capabilities of the voting system hardware and software across a broad range of parameters

Physical Requirements: These requirements address the size, weight and transportability of the voting system

Design, Construction, and Maintenance Requirements: These requirements address the reliability and durability of materials, product marking, quality of system workmanship, safety, and other attributes to ensure smooth system operation in the voting environment

4.1 Performance Requirements

The performance requirements address a broad range of parameters, encompassing:

- Accuracy requirements, where requirements are specified for distinct processing functions of paper-based and DRE systems
- Environmental requirements, where no distinction is made between requirements for paper-based and DRE systems, but requirements for precinct and central count are described
- Vote data management requirements, where no differentiation is made between requirements for paper-based and DRE systems
- Vote recording requirements, where separate and distinct requirements are delineated for paper-based and DRE systems
- Conversion requirements, which apply only to paper-based systems

• Processing requirements, where separate and distinct requirements are delineated for paper-based and DRE systems

• Reporting requirements, where no distinction is made between requirements for paper-based and DRE systems, but where differences between precinct and central count systems are readily apparent based on differences of their reporting

The performance requirements include such attributes as ballot reading and handling requirements; system accuracy; memory stability; and the ability to withstand specified environmental conditions. These characteristics also encompass system-wide requirements for shelter, electrical supply, and compatibility with data networks.

Performance requirements for voting systems represent the combined operational capability of both system hardware and software. Accuracy, as measured by data error rate, and operational failure are treated as distinct attributes in performance testing. All systems shall meet the performance requirements under operating conditions and after storage under non-operating conditions.

4.1.1 Accuracy Requirements

Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected. For a voting system, accuracy is defined as the ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data. This rate is set at a sufficiently stringent level that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. Paper-based and DRE systems have different processing steps. Some differences also exist between precinct count and central count systems. Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

a. For all paper-based voting systems:

i. Scanning ballot positions on paper ballots to detect selections for individual candidates and contests

ii. Conversion of selections detected on paper ballots into digital data

b. For all DRE voting systems:

i. Recording the voter selections of candidates and contests into voting data storage

ii. Recording voter selections of candidates and contests into ballot image storage independently from voting data storage

c. For precinct-count voting systems (paper-based and DRE):

i. Consolidation of vote selection data from multiple precinct-based voting machines to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

d. For central-count voting systems (paper-based and DRE):

i. Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

For testing purposes, the acceptable error rate is defined using two parameters: the desired error rate to be achieved, and the maximum error rate that should be accepted by the test process.

For each processing function indicated above, the voting system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

4.1.2 Environmental Requirements

The environmental requirements for voting systems include shelter, space, furnishings and fixtures, supplied energy, environmental control, and external telecommunications services. Environmental conditions applicable to the design and operation of voting systems consist of the following categories:

• Natural environment, including temperature, humidity, and atmospheric pressure

• Induced environment, including proper and improper operation and handling of the system and its components during the election processes

• Transportation and storage

• Electromagnetic signal environment, including exposure to and generation of radio frequency energy

All voting systems shall be designed to withstand the environmental conditions contained in the appropriate test procedures of the Guidelines. These procedures will be applied to all devices for casting, scanning and counting ballots, except those that constitute COTS devices that have not been modified in any manner to support their use as part of a voting system and that have a documented record of performance under conditions defined in the Guidelines.

The Technical Data Package supplied by the vendor shall include a statement of all requirements and restrictions regarding environmental protection, electrical service, recommended auxiliary power, telecommunications service, and any other facility or resource required for the proper installation and operation of the system.

4.1.2.1 Shelter Requirements

All precinct count systems shall be designed for storage and operation in any enclosed facility ordinarily used as a warehouse or polling place, with prominent instructions as to any special storage requirements.

4.1.2.2 Space Requirements

There is no restriction on space allowed for the installation of voting systems, except that the arrangement of these systems shall not impede performance of their duties by polling place officials, the orderly flow of voters through the polling place or the ability for the voter to vote in private.

4.1.2.3 Furnishings and Fixtures

Any furnishings or fixtures provided as a part of voting systems, and any components provided by the vendor that are not a part of the voting system but that are used to support its storage, transportation or operation, shall comply with the safety design of Subsection 4.3.8.

4.1.2.4 Electrical Supply

Components of voting systems that require an electrical supply shall meet the following standards:

a. Precinct count voting systems shall operate with the electrical supply ordinarily found in polling places (Nominal 120 Vac/60Hz/1 phase)

b. Central count voting systems shall operate with the electrical supply ordinarily found in central tabulation facilities or computer room facilities (Nominal 120 Vac/60Hz/1, nominal 208 Vac/60Hz/3 or nominal 240 Vac/60Hz/2)

c. All voting machines shall also be capable of operating for a period of at least 2 hours on backup power, such that no voting data is lost or corrupted nor normal operations interrupted. When backup power is exhausted the voting machine shall retain the contents of all memories intact

The backup power capability is not required to provide lighting of the voting area.

4.1.2.5 Electrical Power Disturbance

Vote scanning and counting equipment for paper-based voting systems, and all DRE voting equipment, shall be able to withstand, without disruption of normal operation or loss of data:

a. Voltage dip of 30% of nominal @10 ms;

b. Voltage dip of 60% of nominal @100 ms & 1 sec

c. Voltage dip of >95% interrupt @5 sec

d. Surges of +15% line variations of nominal line voltage

e. Electric power increases of 7.5% and reductions of 12.5% of nominal specified power supply for a period of up to four hours at each power level

4.1.2.6 Electrical Fast Transient

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, electrical fast transients of:

a. + 2 kV and—2 kV on External Power lines (both AC and DC)

b. + 1 kV and—1 kV on Input/Output lines(signal, data, and control lines) longer than 3 meters

c. Repetition Rate for all transient pulses will be 100 kHz

4.1.2.7 Lightning Surge

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, surges of:

a. ±2 kV AC line to line

b. ±2 kV AC line to earth

c. + or—0.5 kV DC line to line >10m

d. + or—0.5 kV DC line to earth >10m

e. ±1 kV I/O sig/control >30m

4.1.2.8 Electrostatic Disruption

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand ±15 kV air discharge and ±8 kV contact discharge without damage or loss of data. The equipment may reset or have momentary interruption so long as normal operation is resumed without human intervention or loss of data. Loss of data means votes that have been completed and confirmed to the voter.

4.1.2.9 Electromagnetic Emissions

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall comply with the Rules and Regulations of the Federal Communications Commission, Part 15; Class B requirements for both radiated and conducted emissions.

4.1.2.10 Electromagnetic Susceptibility

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand an electromagnetic field of 10 V/m modulated by a 1 kHz 80% AM modulation over the frequency range of 80 MHz to 1000 MHz, without disruption of normal operation or loss of data.

4.1.2.11 Conducted RF Immunity

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, conducted RF energy of:

a. 10V rms over the frequency range 150 KHz to 80 MHz with an 80% amplitude modulation with a 1 KHz sine wave AC & DC power

b. 10V sig/control >3 m over the frequency range 150 KHz to 80 MHz with an 80% amplitude modulation with a 1 KHz sine wave

4.1.2.12 Magnetic Fields Immunity

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, AC magnetic fields of 30 A/m at 60 Hz.

4.1.2.13 Environmental Control—Operating Environment

Equipment used for election management activities or vote counting (including both precinct and central count systems) shall be capable of operation in temperatures ranging from 50 to 95 degrees Fahrenheit.

4.1.2.14 Environmental Control—Transit and Storage

Equipment used for vote casting or for counting votes in a precinct count system, shall meet these specific minimum performance standards that simulate exposure to physical shock and vibration associated with handling and transportation by surface and air common carriers, and to temperature conditions associated with delivery and storage in an uncontrolled warehouse environment:

a. High and low storage temperatures ranging from –4 to +140 degrees Fahrenheit, equivalent to MIL–STD–810D, Methods 501.2 and 502.2, Procedure I–Storage

b. Bench handling equivalent to the procedure of MIL–STD–810D, Method 516.3, Procedure VI

c. Vibration equivalent to the procedure of MIL–STD–810D, Method 514.3, Category 1-Basic Transportation, Common Carrier

d. Uncontrolled humidity equivalent to the procedure of MIL–STD–810D, Method 507.2, Procedure I-Natural Hot-Humid

4.1.2.15 Data Network Requirements

Voting systems may use a local or remote data network. If such a network is used, then all components of the network shall comply with the telecommunications requirements described in Section 6 and the Security requirements described in Section 7.

4.1.3 Election Management System Requirements

The Election Management System (EMS) requirements address electronic hardware and software used to conduct the pre-voting functions defined in Section 2 with regard to ballot preparation, election programming, ballot and program installation, readiness testing, verification at the polling place, and verification at the central location.

4.1.3.1 Recording Requirements

Voting systems shall accurately record all election management data entered by the user, including election officials or their designees.

For recording accuracy, all systems shall:

a. Record every entry made by the user

b. Add permissible voter selections correctly to the memory components of the device

c. Verify the correctness of detection of the user selections and the addition of the selections correctly to memory

d. Add various forms of data entered directly by the election official or designee, such as text, line art, logos, and images

e. Verify the correctness of detection of data entered directly by the user and the addition of the selections correctly to memory

f. Preserve the integrity of election management data stored in memory against corruption by stray electromagnetic emissions, and internally generated spurious electrical signals

g. Log corrected data errors by the voting system

4.1.3.2 Memory Stability

Memory devices used to retain election management data shall have demonstrated error-free data retention for a period of 22 months.

4.1.4 Vote Recording Requirements

The vote recording requirements address the enclosure, equipment, and supplies used by voters to vote.

4.1.4.1 Common Requirements

All voting systems shall provide voting booths or enclosures for poll site use. Such booths or enclosures may be integral to the voting system or supplied as components of the voting system, and shall:

a. Be integral to, or make provision for, the installation of the voting machine

b. Ensure by its structure stability against movement or overturning during entry, occupancy, and exit by the voter

c. Provide privacy for the voter, and be designed in such a way as to prevent observation of the ballot by any person other than the voter

d. Be capable of meeting the accessibility requirements of Subsection 3.2

4.1.4.2 Paper-Based Recording Requirements

The paper-based recording requirements govern:

- Ballot cards or sheets, and pages or assemblies of pages containing ballot field identification data
- Ballot marking devices
- Frames or fixtures to hold the ballot while it is being marked
- Compartments or booths where voters record selections
- Secure containers for the collection of voted ballots

a. Paper ballots used by paper-based voting systems shall meet the following standards:

i. Marks that identify the unique ballot format shall be outside the area in which votes are recorded, so as to minimize the likelihood that these marks will be mistaken for vote responses and the likelihood that recorded votes will obliterate these marks

ii. If printed alignment marks are used to locate the vote response fields on the ballot, these marks shall be outside the area in which votes are recorded, so as to minimize the likelihood that these marks will be mistaken for vote responses and the likelihood that recorded votes will obliterate these marks

iii. The Technical Data Package shall specify the required paper stock, size, shape, opacity, color, watermarks, field layout, orientation, size and style of printing, size and location of mark fields used for vote response fields and to identify unique ballot formats, placement of alignment marks, ink for printing, and folding and bleed-through limitations for preparation of ballots that are compatible with the system

b. The Technical Data Package shall specify marking devices, which, if used to make the prescribed form of mark, produce readable marked ballots such that the system meets the performance requirements for accuracy in Subsection 4.1.1. Marking devices can be either manual (such as pens or pencils) or electronic. These specifications shall identify:

i. Specific characteristics of marking devices that affect readability of marked ballots

ii. Performance capabilities with regard to each characteristic

iii. For marking devices manufactured by multiple external sources, a listing of sources and model numbers that are compatible with the system

c. A frame or fixture for printed ballot cards is optional. However, if such a device is provided, it shall:

i. Be of any size and shape consistent with its intended use

ii. Position the card properly

iii. Hold the ballot card securely in its proper location and orientation for voting

iv. Comply with the requirements for design and construction contained in Subsection 4.3

d. Ballot boxes and ballot transfer boxes, which serve as secure containers for the storage and transportation of voted ballots, shall:

i. Be of any size, shape, and weight commensurate with their intended use

ii. Incorporate locks or seals, the specifications of which are described in the system documentation

iii. Provide specific points where ballots are inserted, with all other points on the box constructed in a manner that prevents ballot insertion

iv. For precinct count systems, contain separate compartments for the segregation of unread ballots, ballots containing write-in votes or any irregularities that may require special handling or processing. In lieu of compartments, the conversion processing may mark such ballots with an identifying spot or stripe to facilitate manual segregation

4.1.4.3 DRE System Recording Requirements

The DRE system recording requirements address the detection and recording of votes, including the logic and data processing functions required to determine the validity of voter selections, to accept and record valid selections, and to reject invalid selections. The requirements also address the physical environment in which ballots are cast.

a. DRE systems shall include an audible or visible activity indicator providing the status of each voting device. This indicator shall:

i. Indicate whether the device has been activated for voting

ii. Indicate whether the device is in use

b. To ensure vote recording accuracy and integrity while protecting the anonymity of the voter, all DRE systems shall:

i. Contain all mechanical, electromechanical, and electronic components; software; and controls required to detect and record the activation of selections made by the voter in the process of voting and casting a ballot

ii. Incorporate redundant memories to detect and allow correction of errors caused by the failure of any of the individual memories

iii. Provide at least two processes that record the voter's selections that:

- To the extent possible, are isolated from each other
- Designate one process and associated storage location as the main vote detection, interpretation, processing and reporting path

iv. Use a different process to store ballot images, for which the method of recording may include any appropriate encoding or data compression procedure consistent with the regeneration of an unequivocal record of the ballot as cast by the voter

v. Provide a capability to retrieve ballot images in a form readable by humans

vi. Ensure that all processing and storage protects the anonymity of the voter

c. DRE systems shall meet the following requirements for recording accurately each vote and ballot cast:

i. Detect every selection made by the voter

ii. Correctly add permissible selections to the memory components of the device

iii. Verify the correctness of the detection of the voter selections and the addition of the selections to memory

iv. Achieve an error rate not to exceed the requirement indicated in Subsection 4.1.1

v. Preserve the integrity of voting data and ballot images (for DRE machines) stored in memory for the official vote count and audit trail purposes against corruption by stray electromagnetic emissions, and internally generated spurious electrical signals

vi. Maintain a log of corrected data Recording reliability refers to the ability of the DRE system to record votes accurately at its maximum rated processing volume for a specified period of time. The DRE system shall record votes reliably in accordance with the requirements of Subsection 4.3.3.

4.1.5 Paper-Based Conversion Requirements

The paper-based conversion requirements address the ability of the system to read the ballot card and to translate its pattern of marks into electronic signals for later processing. These capabilities may be built into the voting system in an integrated fashion, or may be provided by one or more components that are not unique to the system, such as a general purpose data processing card reader or read head suitably interfaced to the system. These requirements address two major functions: ballot handling and ballot reading.

4.1.5.1 Ballot Handling

Ballot handling consists of a ballot card's acceptance, movement through the read station, and transfer into a collection station or receptacle.

a. The capacity to convert the marks on individual ballots into signals is uniquely important to central count systems. The capacity for a central count system shall be documented by the vendor. This documentation shall include the capacity for individual components that impact the overall capacity

b. When ballots are unreadable or some condition is detected requiring that the cards be segregated from normally processed ballots for human review (e.g. write-ins), all central count paper-based systems shall do one of the following:

i. Outstack the ballot

ii. Stop the ballot reader and display a message prompting the election official or designee to remove the ballot

iii. Mark the ballot with an identifying mark to facilitate its later identification

c. Additionally, the system shall provide a capability that can be activated by an authorized election official to identify ballots containing overvotes, blank ballots, and ballots containing undervotes in a designated contest. If enabled, these capabilities shall perform one of the above actions in response to the indicated condition.

d. When ballots are unreadable or when some condition is detected requiring that the cards be segregated from normally processed ballots for human review (e.g. write-in votes) all precinct count systems shall:

i. In response to an unreadable or blank ballot, return the ballot and provide a message prompting the voter to examine the ballot

ii. In response to a ballot with a write-in vote, segregate the ballot or mark the ballot with an identifying mark to facilitate its later identification

iii. In response to a ballot with an overvote the system shall:

- Provide a capability to identify an overvoted ballot
- Return the ballot
- Provide an indication prompting the voter to examine the ballot
- Allow the voter to correct the ballot
- Provide a means for an authorized election official to deactivate this capability entirely and by contest

iv. In response to a ballot with an undervote, the system shall:

- Provide a capability to identify an undervoted ballot
- Return the ballot
- Provide an indication prompting the voter to examine the ballot
- Allow the voter to correct the ballot
- Allow the voter to submit the ballot with the undervote
- Provide a means for an authorized election official to deactivate this capability

e. Ballot readers shall prevent multiple feed or detect and provide an alarm indicating multiple feed. Multiple feed occurs when a ballot reader attempts to read more than one ballot at a time.

i. If multiple feed is detected, the card reader shall halt in a manner that permits the operator to remove the unread cards causing the error, and reinsert them in the card input hopper

ii. The frequency of multiple feeds with ballots intended for use with the system shall not exceed l in 10,000

4.1.5.2 Ballot Reading Accuracy

This paper-based system requirement governs the conversion of the physical ballot into electronic data. Reading accuracy for ballot conversion refers to the ability to:

a. Recognize vote punches or marks, or the absence thereof, for each possible selection on the ballot

b. Discriminate between valid punches or marks and extraneous perforations, smudges, and folds

c. Convert the vote punches or marks, or the absence thereof, for each possible selection on the ballot into digital signals

To ensure accuracy, paper-based systems shall:

d. Detect punches or marks that conform to vendor specifications with an error rate not exceeding the requirement indicated in Subsection 4.1.1

e. Ignore, and not record, extraneous perforations, smudges, and folds

f. Reject ballots that meet all vendor specifications at a rate not to exceed 2 percent

4.1.6 Tabulation Processing Requirements

Tabulation processing requirements apply to the hardware and software required to accumulate voting data for all candidates and measures within voting machines and polling places, and to consolidate the voting data at a central level or multiple levels. These requirements also address the generation and maintenance of audit records, the detection and disabling of improper use or operation of the system, and the monitoring of overall system status. Separate and distinct requirements for paper-based and DRE voting systems are presented below.

4.1.6.1 Paper-Based System Processing Requirements

The paper-based processing requirements address all mechanical devices, electromechanical devices, electronic devices, and software required to perform the logical and numerical functions of interpreting the electronic image of the voted ballot, and assigning votes to the proper memory registers.

a. Processing accuracy refers to the ability of the system to receive electronic signals produced by punches for punchcard systems and vote marks and timing information for marksense systems; perform logical and numerical operations upon these data; and reproduce the contents of memory when required, without error. Specific requirements are detailed below:

i. Processing accuracy shall be measured by vote selection error rate, the ratio of uncorrected vote selection errors to the total number of ballot positions that could be recorded across all ballots when the system is operated at its nominal or design rate of processing

ii. The vote selection error rate shall include data that denotes ballot style or precinct as well as data denoting a vote in a specific contest or ballot proposition

iii. The vote selection error rate shall include all errors from any source

iv. The vote selection error rate shall not exceed the requirement indicated in Subsection 4.1.1

b. Paper-based system memory devices, used to retain control programs and data, shall have demonstrated error-free data retention for a period of 22 months, under the environmental conditions for operation and non-operation (i.e., storage).

4.1.6.2 DRE System Processing Requirements

The DRE voting systems processing requirements address all mechanical

devices, electromechanical devices, electronic devices, and software required to process voting data after the polls are closed.

a. DRE voting systems shall meet the following requirements for processing speed:

i. Operate at a speed sufficient to respond to any operator and voter input without perceptible delay (no more than three seconds)

ii. If the consolidation of polling place data is done locally, perform this consolidation in a time not to exceed five minutes for each device in the polling place

b. Processing accuracy is defined as the ability of the system to process voting data stored in DRE voting devices or in removable memory modules installed in such devices. Processing includes all operations to consolidate voting data after the polls have been closed. DRE voting systems shall:

i. Produce reports that are completely consistent, with no discrepancy among reports of voting device data produced at any level

ii. Produce consolidated reports containing absentee, provisional or other voting data that are similarly error-free. Any discrepancy, regardless of source, is resolvable to a procedural error, to the failure of a non-memory device or to an external cause

c. DRE system memory devices used to retain control programs and data shall have demonstrated error-free data retention for a period of 22 months. Error-free retention may be achieved by the use of redundant memory elements, provided that the capability for conflict resolution or correction among elements is included.

4.1.7 Reporting Requirements

The reporting requirements govern all mechanical, electromechanical, and electronic devices required for voting systems to print audit record entries and results of the tabulation. These requirements also address data storage media for transportation of data to other sites.

4.1.7.1 Removable Storage Media

In voting systems that use storage media that can be removed from the system and transported to another location for readout and report generation, these media shall use devices with demonstrated error-free retention for a period of 22 months under the environmental conditions for operation and non-operation contained in Subsection 4.1.2. Examples of removable storage media include: programmable read-only memory (PROM), random access memory (RAM) with battery backup, magnetic media or optical media.

4.1.7.2 Printers

All printers used to produce reports of the vote count shall be capable of producing:

a. Alphanumeric headers

b. Election, office and issue labels

c. Alphanumeric entries generated as part of the audit record

4.1.8 Vote Data Management Requirements

The vote data management requirements for all systems address capabilities that manage, process, and report voting data after the data has been consolidated at the polling place or other jurisdictional levels.

These capabilities allow the system to:

- Consolidate voting data from polling place data memory or transfer devices
- Report polling place summaries
- Process absentee ballots, data entered manually, and administrative ballot definition data

The requirements address all hardware and software required to generate output reports in the various formats required by the using jurisdiction.

4.1.8.1 Data File Management

All voting systems shall provide the capability to:

a. Integrate voting data files with ballot definition files

b. Verify file compatibility

c. Edit and update files as required

4.1.8.2 Data Report Generation

All voting systems shall include report generators for producing output reports at the device, polling place, and summary level, with provisions for administrative and judicial subdivisions as required by the using jurisdiction.

4.2 Physical Characteristics

This subsection covers physical characteristics of all voting systems and components that affect their general utility and suitability for election operations.

4.2.1 Size

There is no numerical limitation on the size of any voting equipment, but the size of each voting machine should be compatible with its intended use and the location at which the equipment is to be used.

4.2.2 Weight

There is no numerical limitation on the weight of any voting equipment, but the weight of each voting machine should be compatible with its intended use and the location at which the equipment is to be used.

4.2.3 Transport and Storage of Precinct Systems

All precinct voting systems shall:

a. Provide a means to safely and easily handle, transport, and install voting equipment, such as wheels or a handle or handles

b. Be capable of using, or be provided with, a protective enclosure rendering the equipment capable of withstanding:

i. Impact, shock and vibration loads associated with surface and air transportation

ii. Stacking loads associated with storage

4.3 Design, Construction, and Maintenance Characteristics

This subsection covers voting system materials, construction workmanship, and specific design characteristics important to the successful operation and efficient maintenance of the voting system.

4.3.1 Materials, Processes, and Parts

The approach to system design is unrestricted, and may incorporate any form or variant of technology capable of meeting the voting systems requirements and standards.

Precinct count systems shall be designed in accordance with best commercial practice for microcomputers, process controllers, and their peripheral components. Central count voting systems and equipment used in a central tabulating environment shall be designed in accordance with best commercial and industrial practice.

All voting systems shall:

a. Be designed and constructed so that the frequency of equipment malfunctions and maintenance requirements are reduced to the lowest level consistent with cost constraints

b. Include, as part of the accompanying Technical Data Package, an approved parts list

c. Exclude parts or components not included in the approved parts list

4.3.2 Durability

All voting systems shall be designed to withstand normal use without deterioration and without excessive maintenance cost for a period of ten years.

4.3.3 Reliability

The reliability of voting system devices shall be measured as Mean Time Between Failure (MTBF) for the

system submitted for testing. MBTF is defined as the value of the ratio of operating time to the number of failures which have occurred in the specified time interval. A typical system operations scenario consists of approximately 45 hours of equipment operation, consisting of 30 hours of equipment set-up and readiness testing and 15 hours of elections operations. For the purpose of demonstrating compliance with this requirement, a failure is defined as any event which results in either the:

- Loss of one or more functions
- Degradation of performance such that the device is unable to perform its intended function for longer than 10 seconds

The MTBF demonstrated during certification testing shall be at least 163 hours.

4.3.4 Maintainability

Maintainability represents the ease with which maintenance actions can be performed based on the design characteristics of equipment and software and the processes the vendor and election officials have in place for preventing failures and for reacting to failures. Maintainability includes the ability of equipment and software to self-diagnose problems and make non-technical election workers aware of a problem. Maintainability addresses all scheduled and unscheduled events, which are performed to:

- Determine the operational status of the system or a component
- Adjust, align, tune or service components
- Repair or replace a component having a specified operating life or replacement interval
- Repair or replace a component that exhibits an undesirable predetermined physical condition or performance degradation
- Repair or replace a component that has failed
- Verify the restoration of a component or the system to operational status

Maintainability shall be determined based on the presence of specific physical attributes that aid system maintenance activities, and the ease with which system maintenance tasks can be performed by the test lab. Although a more quantitative basis for assessing maintainability, such as the Mean Time to Repair the system is desirable, the certification of a system is conducted before it is approved for sale and thus before a broader base of maintenance experience can be obtained.

4.3.4.1 Physical Attributes

The following physical attributes will be examined to assess reliability:

a. Presence of labels and the identification of test points

b. Provision of built-in test and diagnostic circuitry or physical indicators of condition pc. Presence of labels and alarms related to failures

d. Presence of features that allow non-technicians to perform routine maintenance tasks (such as update of the system database)

4.3.4.2 Additional Attributes

The following additional attributes will be considered to assess system maintainability:

a. Ease of detecting that equipment has failed by a non-technician pb. Ease of diagnosing problems by a trained technician

c. Low false alarm rates (i.e., indications of problems that do not exist)

d. Ease of access to components for replacement

e. Ease with which adjustment and alignment can be performed

f. Ease with which database updates can be performed by a non-technician

g. Adjust, align, tune or service components

4.3.5 Availability

The availability of a voting system is defined as the probability that the equipment (and supporting software) needed to perform designated voting functions will respond to operational commands and accomplish the function. The voting system shall meet the availability standard for each of the following voting functions:

a. For all paper-based systems:

i. Recording voter selections (such as by ballot marking or punch)

ii. Scanning the punches or marks on paper ballots and converting them into digital data

b. For all DRE systems, recording and storing voter ballot selections

c. For precinct count systems (paper-based and DRE), consolidation of vote selection data from multiple precinct based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

d. For central-count systems (paper-based and DRE), consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

System availability is measured as the ratio of the time during which the system is operational (up time) to the total time period of operation (up time plus down time). Inherent availability (Ai) is the fraction of time a system is functional, based upon Mean Time Between Failure (MTBF) and Mean Time To Repair (MTTR), that is:

$$Ai = (MTBF)/(MTBF + MTTR)$$

MTTR is the average time required to perform a corrective maintenance task during periods of system operation. Corrective maintenance task time is active repair time, plus the time attributable to other factors that could lead to logistic or administrative delays, such as travel notification of qualified maintenance personnel and travel time for such personnel to arrive at the appropriate site.

Corrective maintenance may consist of substitution of the complete device or one of its components, as in the case of precinct count and some central count systems, or it may consist of on-site repair.

The voting system shall achieve at least 99 percent availability during normal operation for the functions indicated above. This standard encompasses for each function the combination of all devices and components that support the function, including their MTTR and MTBF attributes.

Vendors shall specify the typical system configuration that is to be used to assess availability, and any assumptions made with regard to any parameters that impact the MTTR. These factors shall include at a minimum:

e. Recommended number and locations of spare devices or components to be kept on hand for repair purposes during periods of system operation

f. Recommended number and locations of qualified maintenance personnel who need to be available to support repair calls during system operation

g. Organizational affiliation (i.e., jurisdiction, vendor) of qualified maintenance personnel

4.3.6 Product Marking

All voting systems shall:

a. Identify all devices by means of a permanently affixed nameplate or label containing the name of the manufacturer or vendor, the name of the device, its part or model number, its revision letter, its serial number, and if applicable, its power requirements

b. Display on each device a separate data plate containing a schedule for and list of operations required to service or to perform preventive maintenance

c. Display advisory caution and warning instructions to ensure safe

operation of the equipment and to avoid exposure to hazardous electrical voltages and moving parts at all locations where operation or exposure may occur

4.3.7 Workmanship

To help ensure proper workmanship, all manufacturers of voting systems shall:

a. Adopt and adhere to practices and procedures to ensure that their products are free from damage or defect that could make them unsatisfactory for their intended purpose

b. Ensure that components provided by external suppliers are free from damage or defect that could make them unsatisfactory for their intended purpose

4.3.8 Safety

All voting systems shall meet the following requirements for safety:

a. All voting systems and their components shall be designed to eliminate hazards to personnel or to the equipment itself

b. Defects in design and construction that can result in personal injury or equipment damage must be detected and corrected before voting systems and components are placed into service

c. Equipment design for personnel safety shall be equal to or better than the appropriate requirements of the Occupational Safety and Health Act, Code of Federal Regulations, Title 29, Part 1910

5 Software Requirements

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5 Software Requirements

5.1 Scope

This section describes essential design and performance characteristics of the software used in voting systems, addressing both system level software, such as operating systems, and voting system application software, including firmware. The requirements of this section are intended to ensure that voting system software is reliable, robust, testable, and maintainable. The requirements in this section also support system accuracy, logical correctness, privacy, security and integrity.

The general requirements of this section apply to software used to support the entire range of voting system activities described in Section 2. More specific requirements are defined for ballot counting, vote processing, creating an audit trail, and generating output reports and files. Although this section emphasizes software, the guidelines described also influence hardware design considerations.

This section recognizes that there is no best way to design software. Many programming languages are available for which modern programming practices are applicable, such as the use of rigorous program and data structures, data typing, and naming conventions. Other programming languages exist for which such practices are not easily applied.

The Guidelines are intended to guide the design of software written in any of the programming languages commonly used for mainframe, mini-computer, and microprocessor systems. They are not intended to preclude the use of other languages or environments, such as those that exhibit declarative structure, object-oriented languages, functional programming languages, or any other combination of language and implementation that provides appropriate levels of performance, testability, reliability, and security. The vendor makes specific software selections. However, the use of widely recognized and proven software design methods will facilitate the analysis and testing of voting system software in the certification process.

5.1.1 Software Sources

The requirements of this section apply generally to all software used in voting systems, including:

- Software provided by the voting system vendor and its component suppliers
- Software furnished by an external provider (for example, providers of COTS operating systems and web browsers) where the software may be used in any way during voting system operation
- Software developed by the voting jurisdiction

Compliance with the software requirements is assessed by several formal tests, including code examination. Unmodified software is not subject to code examination; however, source code provided by third parties and embedded in software modules for compilation or interpretation shall be provided in human readable form to the accredited test lab. The accredited test lab may inspect source code units to determine testing requirements or to verify that the code is unmodified and that the default configuration options have not been changed.

Configuration of software, both operating systems and applications, is critical to proper system functioning. Correct test design and sufficient test execution must account for the intended and proper configuration of all system components. Therefore, the vendors shall submit a record of all user selections made during software installation as part of the Technical Data Package. The vendor shall also submit a record of all configuration changes made to the software following its installation. The accredited test lab shall confirm the propriety and correctness of these user selections and configuration changes.

5.1.2 Management of Software and Hardware

The requirements of this section apply to all software used in any manner to support any voting-related activities, regardless of the ownership of the software or the ownership and location of the hardware on which the software is installed or operates. These requirements apply to:

- Software that operates on voting devices and vote counting devices installed at polling places under the control of the voting jurisdiction
- Software that operates on ballot printers, vote counting devices, and other hardware typically installed at central or precinct locations (including contractor facilities)
- Election management software

However, some requirements apply only in specific situations indicated in this section. In addition to the requirements of this section, all software used in any manner to support any voting-related activities shall meet the requirements for security described in Section 7.

5.1.3 Exclusions

Some voting systems use computers that also may be used for other purposes. General purpose software such as operating systems, programming language compilers, database

management systems, and Web browsers may be installed on these computers. Such software is governed by the Guidelines unless:

a. The software provides no support of voting system capabilities

b. The software is removable, disconnectable or switchable such that it cannot function while voting system functions are enabled

c. Procedures are provided that confirm that the software has been removed, disconnected or switched

5.2 Software Design and Coding Standards

The software used by voting systems is selected by the vendor and not prescribed by the Guidelines. This section provides requirements for voting system software with regard to:

- Selection of programming languages
- Software integrity
- Software modularity and programming
- Control constructs
- Naming conventions
- Coding conventions
- Comment conventions

5.2.1 Selection of Programming Languages

Software associated with the logical and numerical operations of vote data shall use a high-level programming language, such as: Pascal, Visual Basic, Java, C and C++. The requirement for the use of high-level language for logical operations does not preclude the use of assembly language for hardware-related segments, such as device controllers and handler programs. Also, operating system software may be designed in assembly language.

5.2.2 Software Integrity

Self-modifying, dynamically loaded or interpreted code is prohibited, except under the security provisions outlined in Subsection 7.4. This prohibition is to ensure that the software tested and approved during the certification process remains unchanged and retains its integrity. External modification of code during execution shall be prohibited. Where the development environment (programming language and development tools) includes the following features, the software shall provide controls to prevent accidental or deliberate attempts to replace executable code:

a. Unbounded arrays or strings (includes buffers used to move data)

b. Pointer variables

c. Dynamic memory allocation and management

5.2.3 Software Modularity and Programming

Voting system application software, including commercial off-the-shelf (COTS) software, shall be designed in a modular fashion. However, COTS software is not required to be inspected for compliance with this requirement. For the purpose of this requirement [1], ''modules'' may be compiled or interpreted independently. Modules may also be nested. The modularity rules described here apply to the component sub-modules of a library. The principle to be followed is that the module contains all the elements to compile or interpret successfully and has limited access to data in other modules. The design concept is simple replacement with another module whose interfaces match the original module. A module is designed in accordance with the rules below.

a. Each module shall have a specific function that can be tested and verified independently of the remainder of the code. In practice, some additional modules (such as library modules) may be needed to compile the module under test, but the modular construction allows the supporting modules to be replaced by special test versions that support test objectives.

b. Each module shall be uniquely and mnemonically named, using names that differ by more than a single character. In addition to the unique name, the modules shall include a set of header comments identifying the module's purpose, design, conditions, and version history, followed by the operational code. Headers are optional for modules of fewer than ten executable lines where the subject module is embedded in a larger module that has a header containing the header information. Library modules shall also have a header comment describing the purpose of the library and version information.

c. All required resources, such as data accessed by the module, should either be contained within the module or explicitly identified as input or output to the module. Within the constraints of the programming language, such resources shall be placed at the lowest level where shared access is needed. If that shared access level is across multiple modules, the definitions should be defined in a single file (called header files in some languages, such as C) where any changes can be applied once and the change automatically applies to all modules upon compilation or activation.

d. A module is small enough to be easy to follow and understand. Program logic visible on a single page is easy to follow and correct. Volume II, Section 5 provides testing guidelines for the accredited test lab to identify large modules subject to review under this requirement.

e. Each module shall have a single entry point, and a single exit point, for normal process flow. For library modules or languages such as the object-oriented languages, the entry point is to the individual contained module or method invoked. The single exit point is the point where control is returned. At that point, the data that is expected as output must be appropriately set. The exception for the exit point is where a problem is so severe that execution cannot be resumed. In this case, the design must explicitly protect all recorded votes and audit log information and must implement formal exception handlers provided by the language.

f. Process flow within the modules shall be restricted to combinations of the control structures defined in Volume II, Section 5. These structures support the modular concept, especially the single entry and exit rule above. They apply to any language feature where program control passes from one activity to the next, such as control scripts, object methods or sets of executable statements, even though the language itself is not procedural

5.2.4 Control Constructs

Voting system software shall use the control constructs identified in Volume II, Section 5:

a. Acceptable constructs are Sequence, If-Then-Else, Do-While, Do-Until, Case, and the General Loop (including the special case for loop).

i. If the programming language used does not provide these control constructs, the vendor shall provide comparable control structure logic. The constructs shall be used consistently throughout the code. No other constructs shall be used to control program logic and execution.

ii. While some programming languages do not create programs as linear processes, stepping from an initial condition through changes to a conclusion, the program components nonetheless contain procedures (such as ''methods'' in object-oriented languages). Even in these programming languages, the procedures must execute through these control constructs or their equivalents, as defined and provided by the vendor.

iii. Operator intervention or logic that evaluates received or stored data shall

[1] Some software languages and develpment environments use a different definition of module but this principle still applies.

not re-direct program control within a program routine. Program control may be re-directed within a routine by calling subroutines, procedures, and functions, and by interrupt service routines and exception handlers (due to abnormal error conditions). Do-While (False) constructs and intentional exceptions (used as GoTos) are prohibited.

5.2.5 Naming Conventions

Voting system software shall use the naming conventions below.

a. Object, function, procedure, and variable names shall be chosen to enhance the readability and intelligibility of the program. Insofar as possible, names shall be selected so that their parts of speech represent their use, such as nouns to represent objects and verbs to represent functions.

b. Names used in code and in documentation shall be consistent.

c. Names shall be unique within an application. Names shall differ by more than a single character. All single-character names are forbidden except those for variables used as loop indexes. In large systems where subsystems tend to be developed independently, duplicate names may be used where the scope of the name is unique within the application. Names should always be unique where modules are shared.

d. Language keywords shall not be used as names of objects, functions, procedures, variables or in any manner not consistent with the design of the language.

5.2.6 Coding Conventions

Voting system software shall adhere to basic coding conventions. The coding conventions used shall meet one of the following conditions:

a. The vendors shall identify the published, reviewed, and industry-accepted coding conventions used and the accredited test lab shall test for compliance

b. The accredited test lab shall evaluate the code using the coding convention requirements specified in Volume II, Section 5

These guidelines reference conventions that protect the integrity and security of the code, which may be language-specific and language-independent conventions that significantly contribute to readability and maintainability. Specific style conventions that support economical testing are not binding unless adopted by the vendor.

5.2.7 Comment Conventions

Voting system software shall use the following comment conventions:

a. All modules shall contain headers. For small modules of 10 lines or less, the header may be limited to identification of unit and revision information. Other header information should be included in the small unit headers if not clear from the actual lines of code. Header comments shall provide the following information:

i. The purpose of the unit and how it works

ii. Other units called and the calling sequence

iii. A description of input parameters and outputs

iv. File references by name and method of access (i.e., read, write, modify or append)

v. Global variables used

vi. Date of creation and a revision record

b. Descriptive comments shall be provided to identify objects and data types. All variables shall have comments at the point of declaration clearly explaining their use. Where multiple variables that share the same meaning are required, the variables may share the same comment

c. In-line comments shall be provided to facilitate interpretation of functional operations, tests, and branching

d. Assembly code shall contain descriptive and informative comments , such that its executable lines can be clearly understood

e. All comments shall be formatted in a uniform manner that makes it easy to distinguish them from executable code

5.3 Data and Document Retention

All systems shall:

a. Maintain the integrity of voting and audit data during an election, and for at least 22 months thereafter, a time sufficient to resolve most contested elections and support other activities related to the reconstruction and investigation of a contested election

b. Protect against the failure of any data input or storage device at a location controlled by the jurisdiction or its contractors, and against any attempt at improper data entry or retrieval

5.4 Audit Record Data

Audit trails are essential to ensure the integrity of a voting system. Operational requirements for audit trails are described in Subsection 2.5.1.1. Audit record data are generated by these procedures. The audit record data in the following subsections are essential to the complete recording of election operations and reporting of the vote tally. This list of audit records may not reflect the design constructs of some systems. Therefore, vendors shall supplement it with information relevant to the operation of their specific systems.

5.4.1 Pre-election Audit Records

During election definition and ballot preparation, the system shall audit the preparation of the baseline ballot formats and modifications to them, a description of these modifications, and corresponding dates.

The log shall include:

a. The allowable number of selections a contest

b. The combinations of voting patterns permitted or required by the jurisdiction

c. The inclusion or exclusion of contests as the result of multiple districting within the polling place

d. Any other characteristics that may be peculiar to the jurisdiction, the election or the polling place location

e. Manual data maintained by election personnel

f. Samples of all final ballot formats

g. Ballot preparation edit listings

5.4.2 System Readiness Audit Records

The following minimum requirements apply to system readiness audit records:

a. Prior to the start of ballot counting, a system process shall verify hardware and software status and generate a readiness audit record. This record shall include the identification of the software release, the identification of the election to be processed, and the results of software and hardware diagnostic tests

b. In the case of systems used at the polling place, the record shall include polling place identification

c. The ballot interpretation logic shall test and record the correct installation of ballot formats on voting devices

d. The software shall check and record the status of all data paths and memory locations to be used in vote recording to protect against contamination of voting data

e. Upon the conclusion of the tests, the software shall provide evidence in the audit record that the test data have been expunged

f. If required and provided, the ballot reader and arithmetic-logic unit shall be evaluated for accuracy, and the system shall record the results. It shall allow the processing or simulated processing of sufficient test ballots to provide a statistical estimate of processing accuracy

g. For systems that use a public network, provide a report of test ballots that includes:

i. Number of ballots sent

ii. When each ballot was sent

iii. Machine from which each ballot was sent

iv. Specific votes or selections contained in the ballot

5.4.3 In-Process Audit Records

In-process audit records document system operations during diagnostic routines and the casting and tallying of ballots. At a minimum, the in-process audit records shall contain:

a. Machine generated error and exception messages to demonstrate successful recovery. Examples include, but are not necessarily limited to:

i. The source and disposition of system interrupts resulting in entry into exception handling routines

ii. All messages generated by exception handlers

iii. The identification code and number of occurrences for each hardware and software error or failure

iv. Notification of system login or access errors, file access errors, and physical violations of security as they occur, and a summary record of these events after processing

v. Other exception events such as power failures, failure of critical hardware components, data transmission errors or other types of operating anomalies

b. Critical system status messages other than informational messages displayed by the system during the course of normal operations. These items include, but are not limited to:

i. Diagnostic and status messages upon startup

ii. The ''zero totals'' check conducted before opening the polling place or counting a precinct centrally

iii. For paper-based systems, the initiation or termination of card reader and communications equipment operation

iv. For DRE machines at controlled voting locations, the event (and time, if available) of activating and casting each ballot (i.e., each voter's transaction as an event). This data can be compared with the public counter for reconciliation purposes

c. Non-critical status messages that are generated by the machine's data quality monitor or by software and hardware condition monitors

d. System generated log of all normal process activity and system events that require operator intervention, so that each operator access can be monitored and access sequence can be constructed

5.4.4 Vote Tally Data

In addition to the audit requirements described above, other election-related data is essential for reporting results to interested parties, the press, and the voting public, and is vital to verifying an accurate count.

Voting systems shall meet these reporting requirements by providing software capable of obtaining data concerning various aspects of vote counting and producing printed reports. At a minimum, vote tally data shall include:

a. Number of ballots cast, using each ballot configuration, by tabulator, by precinct, and by political subdivision

b. Candidate and measure vote totals for each contest, by tabulator

c. The number of ballots read within each precinct and for additional jurisdictional levels, by configuration, including separate totals for each party in primary elections

d. Separate accumulation of overvotes and undervotes for each contest, by tabulator, precinct and for additional jurisdictional levels (no overvotes would be indicated for DRE voting devices)

e. For paper-based systems only, the total number of ballots both able to be processed and unable to be processed; and if there are multiple card ballots, the total number of cards read

For systems that produce an electronic file containing vote tally data, the contents of the file shall include the same minimum data cited above for printed vote tally reports.

5.5 Vote Secrecy on DRE Systems

All DRE systems shall ensure vote secrecy by:

a. Immediately after the voter chooses to cast his or her ballot, record the voter's selections in the memory to be used for vote counting and audit data (including ballot images), and erase the selections from the display, memory, and all other storage, including all forms of temporary storage

b. Immediately after the voter chooses to cancel his or her ballot, erase the selections from the display and all other storage, including buffers and other temporary storage

6 Telecommunications Requirements

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6 Telecommunications Requirements

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6 Telecommunications Requirements

6.1 Scope

This section contains the performance, design, and maintenance characteristics of the telecommunications components of voting systems and the acceptable levels of performance against these characteristics. For the purpose of the Guidelines, telecommunications is defined as the capability to transmit and receive data electronically using hardware and software components over distances both within and external to a polling place.

The requirements in this section represent acceptable levels of combined telecommunications hardware and software function and performance for the transmission of data that is used to operate the system and report election results. Where applicable, this section specifies minimum values for critical performance and functional attributes involving telecommunications hardware and software components.

This section does not apply to other means of moving data, such as the physical transport of data recorded on paper-based media or the transport of physical devices, such as memory cards, that store data in electronic form.

Voting systems may include network hardware and software to transfer data among systems. Major network components are local area networks (LANs), wide area networks (WANs), workstations (desktop computers), servers, data, and applications. Workstations include voting stations, precinct tabulation systems, and voting supervisory terminals. Servers include systems that provide registration forms and ballots and accumulate and process voter registrations and cast ballots.

Desirable network characteristics include simplicity, flexibility (especially in routing, to maintain good response times) and maintainability (including availability, provided primarily through redundancy of resources and connections, particularly of connections to public infrastructure).

A wide area network (WAN) public telecommunications component consists of the hardware and software to transport information, over shared public (i.e., commercial or governmental) circuitry or among private systems. For voting systems, the telecommunications boundaries are defined as the transport circuitry, on one side of which exists the public telecommunications infrastructure, outside the control of voting system supervisors. On the other side of the transport circuitry are the local area network (LAN) resources, workstations,

servers, data and applications controlled by voting system supervisors.

Local area network (LAN) components consist of the hardware and software infrastructure used to transport information between users in a local environment, typically a building or group of buildings. Typically a LAN connects workstations with a local server.

An application may be a single program or a group of programs that work together to provide a function to an end user, who may be a voter or an election administrator. Voter programs may include voter registration, balloting, and status checking. Administrator programs may include ballot preparation, registration for preparation, registration approval, ballot vetting, ballot processing, and election processing.

This section is intended to complement the network security requirements found in Section 7, which include requirements for voter and administrator access, availability of network service, data confidentiality, and data integrity. Most importantly, security services must restrict access to local election system components from public resources, and these services must also restrict access to voting system data while it is in transit through public networks.

6.1.1 Types of Components

This section addresses telecommunications hardware and software across a broad range of technologies including, but not limited to:

- Dial-up communications technologies including standard landline, wireless, microwave, Very Small Aperture Terminal, Integrated Services Digital Network, Digital Subscriber Line
- Public and private high-speed telecommunications lines including FT–1, T–1, T–3; frame relay; private line
- Cabling technologies including Universal Twisted Pair cable (CAT 5 or higher) or Ethernet hub/switch
- Wireless including radio frequency and infrared
- Communications routers
- Modems, whether internal and external to personal computers, servers, and other voting system components installed at the polling place or central count location
- Modem drivers, dial-up networking software
- Channel service units and Data service units installed at the polling place or central count location
- Dial-up networking applications software

6.1.2 Telecommunications Operations and Providers

This section applies to voting-related transmissions over public networks, such as those provided by local distribution and long distance carriers. This section also applies to private networks regardless of whether the network is owned and operated by the election jurisdiction.

For systems that transmit official data over public networks, this section applies to telecommunications components installed and operated at locations supervised by election officials, such as polling places or central offices. This includes:

- Components acquired by the jurisdiction for the purpose of voting, including components installed at the polling place or a central office (including central site facilities operated by vendors or contractors)
- Components acquired by others (such as school systems, libraries, military installations and other public organizations) that are used at locations supervised by election officials, including minimum configuration components required by the vendor but that the vendor permits to be acquired from third party sources not under the vendor's control (e.g., router or modem card manufacturer or supplier)

6.1.3 Data Transmission

These requirements apply to the use of telecommunications to transmit data for the preparation of the system for an election, the execution of an election, and the preservation of the system data and audit trails during and following an election. While this section does not assume a specific model of voting system operations and does not assume a specific model for the use of telecommunications to support such operations, it does address the following types of data, where applicable:

Voter Authentication: Coded information that confirms the identity of a voter for security purposes for a system that transmits votes individually over a public network.

Ballot Definition: Information that describes to a voting machine the content and appearance of the ballots to be used in an election.

Vote Transmission: For systems that transmit votes individually over a public network, the transmission of a single vote within a network at a polling place and to the county (or contractor) for consolidation with other county vote data.

Vote Count: Information representing the tabulation of votes at any level within the control of the jurisdiction, such as the polling place, precinct or central count.

List of Voters: A listing of the individual voters who have cast ballots in a specific election.

Additional data transmissions used to operate a voting system in the conduct of an election, but not explicitly listed above, are also subject to the requirements of this section. For systems that transmit data using public networks, this section applies to telecommunications hardware and software for transmissions within and among all combinations of senders and receivers located at polling places, precinct count facilities and central count facilities (whether operated by the jurisdiction or a contractor).

6.2 Design, Construction, and Maintenance Requirements

Design, construction, and maintenance requirements for telecommunications represent the operational capability of both system hardware and software. These capabilities shall be considered basic to all data transmissions.

6.2.1 Accuracy

The telecommunications components of all voting systems shall meet the accuracy requirements of Subsection 4.1.1.

6.2.2 Durability

The telecommunications components of all voting systems shall meet the durability requirements of Subsection 4.3.2.

6.2.3 Reliability

The telecommunications components of all voting systems shall meet the reliability requirements of Subsection 4.3.3.

6.2.4 Maintainability

The telecommunications components of all voting systems shall meet the maintainability requirements of Subsection 4.3.4.

6.2.5 Availability

The telecommunications components of all voting systems shall meet the availability requirements of Subsection 4.3.5.

6.2.6 Integrity

For WANs using public telecommunications, boundary definition and implementation shall meet the requirements below.

a. Outside service providers and subscribers of such providers shall not be given direct access or control of any resource inside the boundary.

b. Voting system administrators shall not require any type of control of resources outside this boundary. Typically, an end point of a telecommunications circuit will be a subscriber termination on a Digital Service Unit/Customer Service Unit although the specific technology configuration may vary. Regardless of the technology used, the boundary point must ensure that everything on the voting system side is locally configured and controlled by the election jurisdiction while everything on the public network side is controlled by an outside service provider.

c. The system shall be designed and configured such that it is not vulnerable to a single point of failure in the connection to the public network which could cause total loss of voting capabilities at any polling place.

6.2.7 Confirmation

Confirmation occurs when the system notifies the user of the successful or unsuccessful completion of the data transmission, where successful completion is defined as accurate receipt of the transmitted data. To provide confirmation, the telecommunications components of a voting system shall notify the user of the successful or unsuccessful completion of the data transmission. In the event of unsuccessful transmission the user shall be notified of the action to be taken.

7 Security Requirements

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7 Security Requirements

7.1 Scope

This section describes essential security capabilities for a voting system, encompassing the system's hardware, software, communications and documentation. No predefined set of security standards will address and defeat all conceivable or theoretical threats. The Guidelines articulate requirements to achieve acceptable levels of integrity and reliability. The objectives of the security standards for voting systems are:

- To protect critical elements of the voting system
- To establish and maintain controls to minimize errors
- To protect the system from intentional manipulation, fraud and malicious mischief
- To identify fraudulent or erroneous changes to the voting system
- To protect secrecy in the voting process

The Voting System Performance Guidelines (Volume I of the VVSG) are intended to address a broad range of risks to the integrity of a voting system. While it is not possible to identify all potential risks, Volume I identifies several types of risks that must be addressed. These include:

- Unauthorized changes to system capabilities for:

—Defining ballot formats
— Casting and recording votes
— Calculating vote totals consistent with defined ballot formats
— Reporting vote totals

- Alteration of voting system audit trails
- Changing, or preventing the recording of, a vote
- Introducing data for a vote not cast by a registered voter
- Changing calculated vote totals
- Preventing access to vote data—including individual votes and vote totals—by unauthorized individuals
- Preventing access to voter identification data and data for votes cast by the voter such that an individual can determine the content of specific votes

This section describes specific capabilities that vendors shall integrate into a voting system to address the risks above. Several new elements have been added since the 2002 Voting Systems Standards:

- Requirements for software distribution to purchasing jurisdictions.
- Generation of reference information to validate software
- Validation of software using the reference information
- Requirements regarding the use of wireless communications
- Requirements for DREs with voter verifiable paper trail components

The requirements apply to the broad range of hardware, software, communications components, and documentation that comprises a voting system. These requirements apply to those components that are:

- Provided by the voting system vendor and the vendor's suppliers
- Furnished by an external provider (i.e., providers of personal computers and COTS operating systems) where the components are capable of being used during voting system operation
- Developed by a voting jurisdiction

The requirements apply to all software used in any manner to support any voting-related activity, regardless of the ownership of the software or the ownership and location of the hardware on which the software is installed or operated. These requirements apply to software that operates on:

- Voting devices and vote counting devices installed at polling places under the control or authority of the voting jurisdiction
- Ballot printers, vote counting devices, and other hardware typically installed at central or precinct locations (including contractor facilities)

7.1.1 Elements of Security Outside Vendor Control

The requirements of this section apply to the capabilities of a voting system that must be provided by the vendor. However, an effective security program requires well-defined security practices by the purchasing jurisdiction and the personnel managing and operating the system. These practices include:

• Administrative and management controls for the voting system and election management—including access controls
• Internal security procedures.
• Adherence to, and enforcement of, operational procedures (e.g., effective password management)
• Security of physical facilities
• Organizational responsibilities and personnel screening

Because implementation of these elements is not under the control of the vendor, they will be addressed in the forthcoming Management Guidelines that will address the procedural aspects of conducting elections and managing the operation of voting systems. However, vendors must provide appropriate system capabilities to enable the implementation of management controls.

7.1.2 Organization of This Section

The guidelines presented in this section are organized as follows:

Access Control: These standards address procedures and system capabilities that limit or detect access to critical system components in order to guard against loss of system integrity, availability, confidentiality, and accountability.

Physical Security: These standards address physical security measures and procedures that prevent disruption of the voting process at the polling place and corruption of voting data.

Software Security: These standards address the installation of software, including firmware, in the voting system and the protection against malicious software. It should be noted that computer-generated audit controls facilitate system security and are an integral part of software capability. These audit requirements are presented in Subsection 5.4.

Telecommunications and Data Transmission: These standards address security for the electronic transmission of data between system components or locations over private, public, and wireless networks.

Use of Public Communications Networks: These standards address security for systems that communicate individual votes or vote totals over public communications networks.

Wireless Communications: These standards address the security of the voting system and voting data when wireless is used.

Independent Verification Systems: This section provides an introduction to the concept of independent verification as a method to demonstrate voting system integrity. This discussion provides the context for the requirements for DREs with voter verifiable paper audit trails.

Direct-Recording Electronic Systems with Voter Verifiable Paper Audit Trails (optional): This capability is not required for national certification. These guidelines are provided for use by states that require this feature for DRE systems.

7.2 Access Control

Access controls are procedures and system capabilities that detect or limit access to system components in order to guard against loss of system integrity, availability, confidentiality, and accountability. Access controls provide reasonable assurance that system resources such as data files, application programs, and computer-related facilities and equipment are protected against unauthorized operation, modification, disclosure, loss or impairment. Unauthorized operations include modification of compiled or interpreted code, run-time alteration of flow control logic or of data, and abstraction of raw or processed voting data in any form other than a standard output report by an authorized operator.

Access controls may include physical controls, such as keeping computers in locked rooms to limit physical access, and technical controls, such as security software programs designed to prevent or detect unauthorized access to sensitive files. The access controls described in this section are limited to those controls required to be provided by system vendors.

7.2.1 General Access Control Policy

The vendor shall specify the general features and capabilities of the access control policy recommended to provide effective voting system security.

Although the jurisdiction in which the voting system is operated is responsible for determining the access policies for each election, the vendor shall provide a description of recommended policies for:

a. Software access controls
b. Hardware access controls
c. Communications
d. Effective password management
e. Protection abilities of a particular operating system
f. General characteristics of supervisory access privileges
g. Segregation of duties
h. Any additional relevant characteristics

7.2.1.1 Individual Access Privileges

Voting system vendors shall:

a. Identify each person to whom access is granted, and the specific functions and data to which each person holds authorized access
b. Specify whether an individual's authorization is limited to a specific time, time interval or phase of the voting or counting operations
c. Permit the voter to cast a ballot expeditiously, but preclude voter access to all aspects of the vote counting processes

7.2.1.2 Access Control Measures

Vendors shall provide a detailed description of all system access control measures designed to permit authorized access to the system and prevent unauthorized access. Examples of such measures include:

a. Use of data and user authorization
b. Program unit ownership and other regional boundaries
c. One-end or two-end port protection devices
d. Security kernels
e. Computer-generated password keys
f. Special protocols
g. Message encryption
h. Controlled access security

Vendors also shall define and provide a detailed description of the methods used to prevent unauthorized access to the access control capabilities of the system itself.

7.3 Physical Security Measures

A voting system's sensitivity to disruption or corruption of data depends, in part, on the physical location of equipment and data media, and on the establishment of secure telecommunications among various locations. Most often, the disruption of voting and vote counting results from a physical violation of one or more areas of the system thought to be protected. Therefore, security procedures shall address physical threats and the corresponding means to defeat them.

7.3.1 Polling Place Security

For polling place operations, vendors shall develop and provide detailed documentation of measures to enable poll workers to physically protect and perform orderly shutdown of voting equipment to counteract vandalism, civil disobedience, and similar occurrences.

The measures shall allow the immediate detection of tampering with vote casting devices and precinct ballot counters. They also shall control physical access to a telecommunications link if such a link is used.

7.3.2 Central Count Location Security

Vendors shall develop and document in detail the measures to be taken in a central counting environment. These measures shall include physical and procedural controls related to the

handling of ballot boxes, preparing of ballots for counting, counting operations and reporting data.

7.4 Software Security

Voting systems shall meet specific security requirements for the installation of software and for protection against malicious software.

7.4.1 Software and Firmware Installation

The system shall meet the following requirements for installation of software, including hardware with embedded firmware.

a. If software is resident in the system as firmware, the vendor shall require and state in the system documentation that every device is to be retested to validate each ROM prior to the start of elections operations.

b. To prevent alteration of executable code, no software shall be permanently installed or resident in the voting system unless the system documentation states that the jurisdiction must provide a secure physical and procedural environment for the storage, handling, preparation, and transportation of the system hardware.

c. The voting system bootstrap, monitor, and device-controller software may be resident permanently as firmware, provided that this firmware has been shown to be inaccessible to activation or control by any means other than by the authorized initiation and execution of the vote counting program, and its associated exception handlers.

d. The election-specific programming may be installed and resident as firmware, provided that such firmware is installed on a component (such as a computer chip) other than the component on which the operating system resides.

e. After initiation of election day testing, no source code or compilers or assemblers shall be resident or accessible.

7.4.2 Protection Against Malicious Software

Voting systems shall deploy protection against the many forms of threats to which they may be exposed such as file and macro viruses, worms, Trojan horses, and logic bombs. Vendors shall develop and document the procedures to be followed to ensure that such protection is maintained in a current status.

7.4.3 Software Distribution and Setup Validation

Subsections 7.4.4, 7.4.5 and 7.4.6 specify requirements for the distribution of voting system software and the setup validation performed on voting system equipment. These requirements are applicable to voting systems that have completed certification testing. The goal of the software distribution requirements is to ensure that the correct voting system software has been distributed without modification. The goal of setup validation requirements, including requirements for verifying the presence of certified software and the absence of other software, is to ensure that voting system equipment is in a proper initial state before being used.

In general, a voting system can be considered to be composed of multiple associated systems including polling place systems, central counting/aggregation systems, and election management systems. These other systems may reside on different computer platforms at different locations and run different software. Voting system software is considered to be all executable code and associated configuration files critical for the proper operation of the voting system regardless of the location of installation and functionality provided. This includes third party software such as operating systems, drivers, and database management systems.

7.4.4 Software Distribution

a. The vendor shall document all software including voting system software, third party software (such as operating systems and drivers) to be installed on the certified voting system, and installation programs.

i. The documentation shall have a unique identifier (such as a serial number or part number) for the following set of information: documentation, software vendor name, product name, version, the certification application number of the voting system, file names and paths or other location information (such as storage addresses) of the software.

ii. The documentation shall designate all software files as static, semi-static or dynamic.

Discussion: Static voting system software such as executable code does not change based on the election being conducted or the voting equipment upon which it is installed. Semi-static voting system software contains configuration information for the voting system based on the voting equipment that is installed and the election being conducted. Semi-static software is only modified during the installation of (a) the voting system software on voting equipment or (b) the election-specific software such as ballot formats. Dynamic voting system software changes over time once installed on voting equipment. However, the specific time or value of the change in the dynamic software is usually unknown in advance, making it impossible to create reference information to verify the software.

b. The EAC accredited testing lab shall witness the final build of the executable version of the certified voting system software performed by the vendor.

i. The testing lab shall create a complete record of the build that includes: a unique identifier (such as a serial number) for the complete record; a list of unique identifiers of unalterable storage media associated with the record; the time, date, location, names and signatures of all people present; the source code and resulting executable file names; the version of voting system software; the certification application number of the voting system; the name and versions of all (including third party) libraries; and the name, version, and configuration files of the development environment used for the build.

ii. The record of the source code and executable files shall be made on unalterable storage media. Each piece of media shall have a unique identifier.

Discussion: Unalterable storage media includes technology such as a CD–R, but not CD–RW. The unique identifiers appear on indelibly printed labels and in a digitally signed file on the unalterable storage media.

iii. The testing lab shall retain this record until notified by the EAC that it can be archived.

c. After EAC certification has been granted, the testing lab shall create a subset of the complete record of the build that includes a unique identifier (such as a serial number) of the subset, the unique identifier of the complete record, a list of unique identifiers of unalterable storage media associated with the subset, the vendor and product name, the version of voting system software, the certification number of the voting system, and all the files that resulted from the build and binary images of all installation programs.

iii. The record of the software shall be made on unalterable storage media. Each piece of media shall have a unique identifier.

iv. The testing lab shall retain a copy, send a copy to the vendor, and send a copy to the NIST National Software Reference Library (NSRL) [2] and/or to any repository designated by a State.

[2] The National Software Reference Library (NSRL) is a repository of software maintained by the National Institute of Standards and Technology. It was designed to meet the need for court admissible evidence in the identification of software files. The EAC has designated the NSRL as a repository for voting system software. Information is available at *www.nsrl.nist.gov.*

v. The NSRL shall retain this software until notified by the EAC that it can be archived.

d. The vendor shall provide the NSRL and any repository designated by a state with a copy of the software installation disk, which the vendor will distribute to purchasers—including the executable binary images of all third party software.

i. All voting system software, installation programs and third party software (such as operating systems and drivers) used to install or to be installed on voting system equipment shall be distributed using unalterable storage media.

ii. The vendor shall document that the process used to verify the software distributed on unalterable storage media is the certified software by using the reference information provided by the NSRL or other designated repository before installing the software.

e. The voting system equipment shall be designed to allow the voting system administrator to verify that the software is the certified software by comparing it to reference information produced by the NSRL or other designated repository.

f. The vendors and testing labs shall document to whom they provide voting system software.

7.4.5 Software Reference Information

The NSRL or other repository designated by a state election office shall generate reference information using the binary images of the (a) certified voting system software received on unalterable storage media from testing labs and (b) election-specific software received on unalterable storage media from jurisdictions.

a. The NSRL or other designated repository shall generate reference information in at least one of the following forms: (a) complete binary images, (b) cryptographic hash values or (c) digital signatures of the software.

Discussion: Although binary images, cryptographic hashes, and digital signatures can detect a modification or alteration in the software, they cannot determine if the change to the software was accidental or intentional.

b. The NSRL or other designated repository shall create a record of the creation of reference information that includes: a unique identifier (such as a serial number) for the record; the file names of software and associated unique identifier(s) of the unalterable storage media from which reference information is generated; the time, date and name of people who generated reference information; the type of reference information created; the certification number of the voting system; the voting system software version; the product name; and the vendor name.

c. The NSRL or other designated repository shall retain the unalterable storage media used to generate the reference information until notified by the EAC that it can be archived.

7.4.5.1 Hashes and Digital Signatures

a. The NSRL or other designated repository that generates hash value and/or digital signature reference information shall use FIPS-approved algorithms for hashing and signing.

i. The NSRL or other designated repository that generates hash values, digital signatures reference information or cryptographic keys shall use a FIPS 140–2 level 1 or higher validated cryptographic module.

Discussion: See *http://www.csrc.nist.gov/cryptval/* for information on FIPS 140–2.

ii. The NSRL or other designated repository that generates sets of hash values and digital signatures for reference information shall include a hash value or digital signature covering the set of reference information.

b. If the NSRL or other designated repository uses public key technology, the following requirements shall be met:

i. Public and private key pairs used by the repository to generate digital signatures shall be 2048-bits or greater in length

ii. The repository's private keys used to generate digital signature reference information shall be used for no more than three years

iii. Public keys used to verify digital signature reference information shall be placed on unalterable storage media if not contained in a signed non-proprietary format for distribution.

Discussion: Examples of non-proprietary standard formats include X.509 or PKCS#7.

iv. All copies of public key unalterable storage media made by the repository shall be labeled so that they are uniquely identifiable, including at a minimum: a unique identifier (such as a serial number) for the unalterable storage media; the time, date, location and name(s) of the repository owning the associated private keys; documentation about its creation; and an indication that the contents are public keys.

v. The NSRL or other designated repository shall document to whom they provide unalterable storage media containing their public keys used to verify digital signature reference information including at a minimum: the uniquely identified public keys, the time and date provided, the name of the organization, and the name and contact information (phone, address, email address) of the recipient.

vi. When a private key used to generate digital signature reference information becomes compromised, the NSRL or other designated repository shall provide notification to recipients of the associated public key that the private key has been compromised and the date on which it was compromised.

c. The NSRL or other designated repository shall make both the reference information available on unalterable storage media and its associated documentation that is labeled by the repository that created it uniquely identifiable by including at a minimum: a unique identifier (such as a serial number) for the storage media; the time, date, location and name of the creating repository; and an indication that the contents are reference information.

7.4.6 Software Setup Validation

a. Setup validation methods shall verify that no unauthorized software is present on the voting equipment.

b. The vendor shall have a process to verify that the correct software is loaded, that there is no unauthorized software, and that voting system software on voting equipment has not been modified, using the reference information from the NSRL or from a State designated repository.

i. The process used to verify software should be possible to perform without using software installed on the voting system.

ii. The vendor shall document the process used to verify software on voting equipment.

iii. The process shall not modify the voting system software on the voting system during the verification process.

c. The vendor shall provide a method to comprehensively list all software files that are installed on voting systems.

d. The verification process should be able to be performed using COTS software and hardware available from sources other than the voting system vendor.

i. If the process uses hashes or digital signatures, then the verification software shall use a FIPS 140–2 level 1 or higher validated cryptographic module.

ii. The verification process shall either (a) use reference information on unalterable storage media received from the repository or (b) verify the digital signature of the reference information on any other media.

e. Voting system equipment shall provide a means to ensure that the system software can be verified through a trusted external interface, such as a

read-only external interface, or by other means.

i. The external interface shall be protected using tamper evident techniques

ii. The external interface shall have a physical indicator showing when the interface is enabled and disabled

iii. The external interface shall be disabled during voting

iv. The external interface should provide a direct read-only access to the location of the voting system software without the use of installed software

f. Setup validation methods shall verify that registers and variables of the voting system equipment contain the proper static and initial values.

i. The vendor should provide a method to query the voting system to determine the values of all static and dynamic registers and variables including the values that jurisdictions are required to modify to conduct a specific election.

ii. The vendor shall document the values of all static registers and variables, and the initial starting values of all dynamic registers and variables listed for voting system software, except for the values set to conduct a specific election.

7.5 Telecommunications and Data Transmission

There are four areas that must be addressed by telecommunications and data transmission security capabilities: access control, data integrity, detection and prevention of data interception, and protection against external threats.

7.5.1 Maintaining Data Integrity

Voting systems that use telecommunications to communicate between system components and locations are subject to the same security requirements governing access to any other system hardware, software, and data function.

a. Voting systems that use electrical or optical transmission of data shall ensure the receipt of valid vote records is verified at the receiving station. This should include standard transmission error detection and correction methods such as checksums or message digest hashes. Verification of correct transmission shall occur at the voting system application level and ensure that the correct data is recorded on all relevant components consolidated within the polling place prior to the voter completing casting of his or her ballot.

b. Voting systems that use telecommunications to communicate between system components and locations before the polling place is officially closed shall:

i. Implement an encryption standard currently documented and validated for use by an agency of the U.S. government

ii. Provide a means to detect the presence of an intrusive process, such as an Intrusion Detection System

7.5.2 Protection Against External Threats

a. Voting systems that use public telecommunications networks shall implement protections against external threats to which commercial products used in the system may be susceptible.

b. Voting systems that use public telecommunications networks shall provide system documentation that clearly identifies all COTS hardware and software products and communications services used in the development and/or operation of the voting system, including operating systems, communications routers, modem drivers and dial-up networking software.

i. Such documentation shall identify the name, vendor, and version used for each such component.

c. Voting systems that use public telecommunications networks shall use protective software at the receiving-end of all communications paths to:

i. Detect the presence of a threat in a transmission

ii. Remove the threat from infected files/data

iii. Prevent against storage of the threat anywhere on the receiving device

iv. Provide the capability to confirm that no threats are stored in system memory and in connected storage media

v. Provide data to the system audit log indicating the detection of a threat and the processing performed

d. Vendors shall use multiple forms of protective software as needed to provide capabilities for the full range of products used by the voting system.

7.5.3 Monitoring and Responding to External Threats

Voting systems that use public telecommunications networks may become vulnerable, by virtue of their system components, to external threats to the accuracy and integrity of vote recording, vote counting, and vote consolidation and reporting processes. Therefore, vendors of such systems shall document how they plan to monitor and respond to known threats to which their voting systems are vulnerable. This documentation shall provide a detailed description, including scheduling information, of the procedures the vendor will use to:

a. Monitor threats, such as through the review of assessments, advisories, and alerts for COTS components issued by the Computer Emergency Response Team (CERT), for which a current listing can be found at *http://www.cert.org*, the National Infrastructure Protection Center (NIPC), and the Federal Computer Incident Response Capability (FedCIRC), for which additional information can be found at *www.us-cert.gov*

b. Evaluate the threats and, if any, proposed responses

c. Develop responsive updates to the system and/or corrective procedures

d. Submit the proposed response to the test labs and appropriate states for approval, identifying the exact changes and whether or not they are temporary or permanent

e. After implementation of the proposed response is approved by the state, assist clients, either directly or through detailed written procedures, how to update their systems and/or to implement the corrective procedures within the timeframe established by the state

f. Address threats emerging too late to correct the system by:

i. Providing prompt, emergency notification to the accredited test labs and the affected states and user jurisdictions

ii. Assisting client jurisdictions directly or advising them through detailed written procedures to disable the public telecommunications mode of the system

iii. Modifying the system after the election to address the threat, submitting the modified system to an accredited test lab and the EAC or state certification authority for approval, and assisting client jurisdictions directly or advising them through detailed written procedures, to update their systems and/or to implement the corrective procedures after approval

7.5.4 Shared Operating Environment

Ballot recording and vote counting can be performed in either a dedicated or non-dedicated environment. If ballot recording and vote counting operations are performed in an environment that is shared with other data processing functions, both hardware and software features shall be present to protect the integrity of vote counting and of vote data.

Systems that use a shared operating environment shall:

a. Use security procedures and logging records to control access to system functions

b. Partition or compartmentalize voting system functions from other concurrent functions at least logically, and preferably physically as well

c. Control system access by means of passwords, and restrict account access to necessary functions only

d. Have capabilities in place to control the flow of information, precluding data leakage through shared system resources

7.5.5 Incomplete Election Returns

If the voting system provides access to incomplete election returns and interactive inquiries before the completion of the official count, the system shall:

a. Be designed to provide external access to incomplete election returns (for equipment that operates in a central counting environment), only if that access for these purposes is authorized by the statutes and regulations of the using agency. This requirement applies as well to polling place equipment that contains a removable memory module or that may be removed in its entirety to a central place for the consolidation of polling place returns

b. Design voting system software and its security environment such that data accessible to interactive queries resides in an external file or database created and maintained by the elections software under the restrictions applying to any other output report:

i. The output file or database has no provision for write access back to the system

ii. Persons whose only authorized access is to the file or database are denied write access, both to the file or database, and to the system

7.6 Use of Public Communications Networks

Voting systems that transmit data over public telecommunications networks face security risks that are not present in other voting systems. This section describes standards applicable to voting systems that use public telecommunications networks.

7.6.1 Data Transmission

All systems that transmit data over public telecommunications networks shall:

a. Preserve the secrecy of voter ballot selections and prevent anyone from violating ballot privacy

b. Employ digital signatures for all communications between the vote server and other devices that communicate with the server over the network

c. Require that at least two authorized election officials activate any critical operation regarding the processing of ballots transmitted over a public communications network, i.e. the passwords or cryptographic keys of at least two employees are required to perform processing of votes

7.6.2 Casting Individual Ballots

Systems designed for transmission of telecommunications over public networks shall meet security standards that address the security risks attendant with the casting of ballots from polling places controlled by election officials using voting devices configured and installed by election officials and/or their vendor or contractor, and using in-person authentication of individual voters.

7.6.2.1 Documentation of Mandatory Security Activities

Vendors of voting systems that cast individual ballots over a public telecommunications network shall provide detailed descriptions of:

a. All activities mandatory to ensuring effective voting system security to be performed in setting up the system for operation, including testing of security before an election

b. All activities that should be prohibited during voting equipment setup and during the timeframe for voting operations, including both the hours when polls are open and when polls are closed

7.6.2.2 Ability to Operate During Interruption of Service

These systems shall provide the following capabilities to provide resistance to interruptions of telecommunications service that prevent voting devices at the polling place from communicating with external components via telecommunications:

a. Detect the occurrence of a telecommunications interruption at the polling place and switch to an alternative mode of operation that is not dependent on the connection between polling place voting devices and external system components

b. Provide an alternate mode of operation that includes the functionality of a conventional electronic voting system without losing any single vote

c. Create and preserve an audit trail of every vote cast during the period of interrupted communication and system operation in conventional electronic voting system mode

d. Upon reestablishment of communications, transmit and process votes accumulated while operating in conventional electronic voting system mode with all security safeguards in effect

e. Ensure that all safeguards related to voter identification and authentication are not affected by the procedures employed by the system to counteract potential interruptions of telecommunications capabilities

7.7 Wireless Communications

This section provides requirements for implementing and using wireless communications within a voting system. These requirements reduce, but do not eliminate, the risk of using wireless communications for voting systems.

Wireless is defined as any means of communications that occurs without wires. This normally covers the entire electromagnetic spectrum. For the purposes of this section, wireless includes radio frequency, infrared, and microwave. This section provides requirements and considerations that apply to external wireless communications capabilities existing on voting equipment or as a component within a voting system. These requirements may be applied to internal wireless communications, but this is not required when the physical container that houses the voting equipment or voting system is considered adequate to protect the internal wireless between or among voting system components.

Since the wireless communications path on which the signals travel is via the air and not a wire or cable, devices other than those intended to receive the wireless signal (e.g. voting data) can receive (intentionally and unintentionally) the wireless signals. Some of the wireless communications paths (i.e. signals) are weakened by walls and distance, but are not stopped. This makes it possible to eavesdrop from a distance as well as transmit wireless signals (e.g., interference or intrusive data) from a distance. In many cases, the wireless signals cannot be seen, heard, or felt, thus making the presence of wireless communication hard to determine by the human senses. The requirements in this section mitigate the risks associated with wireless by controlling and identifying usage, and protecting the transmitted data and path.

There are other concerns when evaluating wireless usage; specifically radio frequency (RF). A device's radio frequencies usage and the power output are governed by Federal Communications Commission (FCC) regulations and therefore all RF wireless communications devices are subject to the applicable FCC requirements. However, these FCC regulations do not fully address RF wireless interference caused by multiple FCC compliant devices. That is, the RF wireless used in a voting system may be using the same radio frequency as another non-voting wireless system and which may potentially cause a degradation of the

wireless performance or a complete wireless failure for the voting system.

Sometimes a particular wireless technology permits a power output range, which may be used to overcome interference received from another device. A radio emissions site test can determine the extent of potential existing interference at the location where the wireless voting system is to be used. A radio emission site test can also determine the extent that the RF wireless transmission of the voting system escapes the building in which the RF wireless voting system is used.

7.7.1 Controlling Usage

a. If wireless communications are used in a voting system, then the vendor shall supply documentation describing how to use all aspects of wireless communications in a secure manner. This documentation shall include:

i. A complete description of the uses of wireless in the voting system including descriptions of the data elements and signals that are to be carried by the wireless mechanism

ii. A complete description of the vulnerabilities associated with this proposed use of wireless, including vulnerabilities deriving from the insertion, deletion, modification, capture or suppression of wireless messages

iii. A complete description of the techniques used to mitigate the risks associated with the described vulnerabilities including techniques used by the vendor to ensure that wireless cannot send or receive messages other than those situations specified in the documentation. Cryptographic techniques shall be carefully and fully described, including a description of cryptographic key generation, management, use, certification, and destruction

iv. A rationale for the inclusion of wireless in the proposed voting system, based on a careful and complete description of the perceived advantages and disadvantages of using wireless for the documented uses compared to using non-wireless approaches

Discussion: In general, convenience is not a sufficiently compelling reason, on its own, to justify the inclusion of wireless communications in a voting system. Convenience must be balanced against the difficulty of working with cryptographic keys.

b. The details of all cryptographic protocols used for wireless communications, including the specific features and data, shall be documented.

c. The wireless documentation shall be closely reviewed for accuracy, completeness, and correctness.

d. There shall be no undocumented use of the wireless capability, nor any use of the wireless capability that is not entirely controlled by an election official.

Discussion: This can be tested by reviewing all of the software, hardware, and documentation, and by testing the status of wireless activity during all phases of testing.

e. If a voting system includes wireless capabilities, then the voting system shall be able to accomplish the same function if wireless capabilities are not available due to an error or no service.

i. The vendor shall provide documentation how to accomplish these functions when wireless is not available.

f. The system shall be designed and configured so it is not vulnerable to a single point of failure using wireless communications that causes a total loss of any voting capabilities.

g. If a voting system includes wireless capabilities, then the system shall have the ability to turn on the wireless capability when it is to be used and to turn off the wireless capability when the wireless capability is not in use.

h. If a voting system includes wireless capabilities, then the system shall not activate the wireless capabilities without confirmation from an elections official.

7.7.2 Identifying Usage

Since there are a wide variety of wireless technologies (both standard and proprietary) and differing physical properties of wireless signals, it is important to identify some of the characteristics of the wireless technologies used in the voting system.

a. If a voting system provides wireless communications capabilities, then there shall be a method for determining the existence of the wireless communications capabilities.

b. If a voting system provides wireless communications capabilities, then there shall be an indication that allows one to determine when the wireless communications (such as radio frequencies) capability is active.

c. The indication shall be visual.

d. If a voting system provides wireless communications capabilities, then the type of wireless communications used (such as radio frequencies) shall be identified either via a label or via the voting system documentation.

7.7.3 Protecting Transmitted Data

The transmitted data, especially via wireless communications, needs to be protected to ensure confidentiality and integrity. Examples of election information that needs to be protected include: ballot definitions, voting device counts, precinct counts, opening of poll signal, and closing of poll signal. Examples of other information that needs to be protected include: protocol messages, address or device identification information, and passwords.

Since radio frequency wireless signals radiate in all directions and pass through most construction material, anyone may easily receive the wireless signals. In contrast, infrared signals are line of sight and do not pass through most construction material. However, infrared signals can still be received by other devices that are in the line of sight. Similarly, wireless signals can be transmitted by others to create unwanted signals. Thus, encryption is required to protect the privacy and confidentiality of the voting information.

a. All information transmitted via wireless communications shall be encrypted and authenticated—with the exception of wireless T-coil coupling—to protect against eavesdropping and data manipulation including modification, insertion, and deletion.

i. The encryption shall be as defined in Federal Information Processing Standards (FIPS) 197, ''Advanced Encryption Standard (AES).''

ii. The cryptographic modules used shall comply with FIPS 140–2, Security Requirements for Cryptographic Modules.

b. The capability to transmit non-encrypted and non-authenticated information via wireless communications shall not exist.

c. If audible wireless communication is used, and the receiver of the wireless transmission is the human ear, then the information shall not be encrypted.

Discussion: This specifically covers wireless T-Coil coupling for assistive devices used by people who are hard of hearing.

7.7.4 Protecting the Wireless Path

If wireless communications are used, then the following capabilities shall exist in order to mitigate the effects of a denial of service (DoS) attack:

a. The voting system shall be able to function properly throughout a DoS attack, since the DoS attack may continue throughout the voting period.

b. The voting system shall function properly as if the wireless capability were never available for use.

c. Alternative procedures or capabilities shall exist to accomplish the same functions that the wireless communications capability would have done.

d. If infrared is being used, the shielding shall be strong enough to

prevent escape of the voting system signal, as well as strong enough to prevent infrared saturation jamming.

Discussion: Since infrared has the line-of-sight property, securing the wireless path can be accomplished by shielding the path between the communicating devices with an opaque enclosure. However, this is only practical for short distances. This shielding would also help prevent accidental eye damage from the infrared signal.

7.7.5 Protecting the Voting System

Physical security measures to prevent access to a voting system are not possible when using a wireless communications interface because there is no discrete physical communications path that can be secured.

a. The security requirements in Subsection 2.1.1 shall be applicable to systems with wireless communications.

b. The accuracy requirements in Subsection 2.1.2 shall be applicable to systems with wireless communications.

c. The use of wireless communications that may cause impact to the system accuracy through electromagnetic stresses is prohibited.

d. The error recovery requirements in Subsection 2.1.3 shall be applicable to systems with wireless communications.

e. All wireless communications actions shall be logged.

i. The log shall contain at least the following entries: times when the wireless is activated and deactivated, services accessed, identification of device to which data was transmitted to or received from, identification of authorized user, and successful and unsuccessful attempts to access wireless communications or service.

Discussion: Other information such as the number of frames or packets transmitted or received at various logical layers may be useful, but is dependent on the wireless technology used.

f. Device authentication shall occur before any access to, or services from, the voting system are granted through wireless communications.

Discussion: Authentication is an important element to protect the security of wireless communications. Authentication verifies the identity and legitimacy of users, devices, and services.

i. User authentication shall be at least level 2 as per NIST Special Publication 800–63 Version 1.0.1, Electronic Authentication Guideline.

7.8 Independent Verification Systems

7.8.1 Overview

Independent verification (IV) systems are electronic voting systems that produce multiple independent cast vote records of voter ballot selections, which can be audited to a high level of precision. For this to happen, the cast vote records must be handled according to the following protocol:

- At least two cast vote records of the voter's selections are produced and one of the records is then stored in a manner that it cannot be modified by the voting system. For example, the voting system creates a record of the voter's selections and then copies it to unalterable storage media.
- The voter must be able to verify that both cast vote records are correct and match before leaving the polling place, *e.g.*, verify his or her selections on the voting machine summary screen and also verify the second record on the unalterable storage media.
- The verification processes for the two cast vote records must be independent of each other, and at least one of the records must be verified directly by the voter.
- The contents of the two cast vote records also can be checked later for consistency through the use of unique identifiers that allow the records to be linked.

The cast vote records would be formatted so that at least one set is usable in an efficient counting process by the electronic voting system and the other set is usable in an efficient process of auditing or verifying the agreement between the two sets.

Given these conditions, the multiple cast vote records are considered to be distinct and independently verifiable, that is, both records are not under the control of the same system processes. As a result of this independence, the audit records can be used to check the accuracy of the counted records. Because the records are separately stored, an attacker who can compromise one will also have to compromise the other.

The voter verifiable paper audit trail (VVPAT) methodology is one of several classes of IV systems. In this approach, the voter can directly compare the electronic summary screen of the voting machine with the printed paper audit record. (This is not to be confused with the paper ballot that is produced by optical scan voting systems that the voter visually verifies before placing it in the ballot box or tabulator.) Requirements for DREs with a VVPAT feature are provided below to reflect the fact that a number of States currently require this feature.

There are a variety of other IV approaches for the voter to verify his or her selections with systems that produce an electronic record for verification. Appendix C describes the characteristics of these systems in more detail. They include:

- Split process systems, which use separate devices for the voters to record and verify their ballot selections
- Cryptographic systems, which provide voters with coded receipts that can be used to verify their ballot selections
- Witness systems, which use an independent module to create the second record

7.8.2 Basic Characteristics of IV Systems

This section describes a preliminary set of basic characteristics that apply to all types of IV systems. This information is provided for the purpose of introducing these concepts for consideration in voting system design. It is anticipated that future voting systems will be required to provide some type of independent verification feature to enable voters to have confidence that their ballot selections are correctly recorded and counted.

An independent verification system produces at least two independent cast vote records of ballot selections via interactions with the voter, such that one record can be compared against the other to check their equality of content.

Discussion: This is the fundamental characteristic of IV systems. The records can be checked against one another to determine whether or not the voter selections are correctly recorded.

The voter verifies the content of each cast vote record and either (a) verifies at least one of the records directly or (b) verifies both records indirectly if the records are each under the control of independent processes.

Discussion: Direct verification involves using human senses; for example, directly reading a paper record via one's eyesight. Indirect verification involves using an intermediary to perform the verification; for example, verifying an electronic ballot image on the voting machine.

The creation, storage and handling of the cast vote records are sufficiently separate that the failure or compromise of one record does not cause the failure or compromise of another.

Discussion: The records must be stored on different media and handled independently of each other so that no one process could compromise all records. If an attack can alter one record, it should still be very difficult to alter the other record.

Both cast vote records are highly resistant to damage or alteration and capable of long-term storage.

Discussion: The records should be difficult to alter or damage so that they could be used in case the counted records are damaged or lost.

The processes of verification for the cast vote records do not all depend on the same device, software module, or system for their integrity, and are sufficiently separate that each record provides evidence of the voter's selections independently of its corresponding record.

Discussion: For example, the verification of the summary screen (electronic record) of a DRE is sufficiently separate from the verification of a paper record printed by a VVPAT component or a copy of the electronic record stored on a separate system.

The multiple cast vote records are linked to their corresponding audit records by including a unique identifier within each record.

Discussion: The identifier serves the purpose of uniquely identifying and linking the records for cross-checking.

Each cast vote record includes information identifying the following:

- An identification of the polling place and precinct
- Whether the balloting is provisional, early, or on election day
- Ballot style
- A timestamp generated when the voting machine is enabled to begin a voting session that can be used to correctly group the cast vote records
- A unique identifier associated with the voting machine

Discussion: The identifier could be a serial number or other unique ID.

The cryptographic software used in IV systems is approved by the U.S. Government's Cryptographic Module Validation Program, as applicable.

Discussion: IV voting systems may use cryptographic software for a number of different purposes, including calculating checksums, encrypting records, authentication, generating random numbers, and for digital signatures. This software should be reviewed and approved by the Cryptographic Module Validation Program (CMVP). There may by cryptographic voting schemes where the cryptographic algorithms used are necessarily different from any algorithms that have approved CMVP implementations, thus CMVP-approved software shall be used where feasible. The CMVP Web site is *http://csrc.nist.gov/cryptval.*

7.9 Voter Verifiable Paper Audit Trail Requirements

This section contains requirements for DREs with a Voter Verifiable Paper Audit Trail (VVPAT) component. VVPAT capability is not required for national certification. However, these requirements will be applied for certification testing of DRE systems that are intended for use in states that require DREs to provide this capability. The vendor's certification testing application to the EAC must indicate whether the system being presented for testing includes this capability, as provided under Subsection 1.6.2.5 extensions.

7.9.1 Display and Print a Paper Record

a. The voting system shall print and display a paper record of the voter ballot selections prior to the voter making his or her selections final by casting the ballot.

Discussion: This is the basic requirement for VVPAT capability. It requires the paper record to be created as a distinct representation of the voter ballot selections. It requires the paper record to contain the same information as the electronic record and be suitable for use in verifications of the voting machine's electronic records.

b. The paper record shall constitute a complete record of ballot selections that can be used to assess the accuracy of the voting machine's electronic record, to verify the election results, and, if required by state law, in full recounts.

Discussion: This requirement exists to make clear that it is possible to use the paper record for checks of the voting machine's accuracy in recording voter ballot selections, as well as usable for election audits (such as mandatory 1% recounts). The paper record shall also be suitable for use in full recounts of the election if required by state law.

c. The paper record shall contain all voter selection information stored in the electronic (ballot image) record.

Discussion: The electronic ballot image record cannot hide any information related to ballot selections; all information relating to voter selections must be equally present in both records. The electronic record may contain other items that don't necessarily need to be on the paper record, such as digital signature information.

7.9.2 Approve or Void the Paper Record

a. The voting equipment shall allow the voter to approve or void the paper record.

Discussion: There are three possible scenarios regarding the voter's disposition of the paper record.

- The voter can verify that the ballot selections displayed on the DRE summary screen and those printed on the paper record are the same. If they are, and the voter is satisfied with these selections, the voter can proceed to cast his or her ballot, thereby approving the paper record.
- If the selections match, but the voter wishes to change one or more selections, the paper record must be voided so a new paper record can be created to compare to the new summary screen displayed after the voter changes his or her ballot selections.
- In the event the selections do not match between the summary screen and the paper record, the voter shall immediately request assistance from a poll worker. A non-match could indicate a potential voting machine or printer malfunction.

b. The voting equipment shall, in the presence of the voter, mark the paper record as being approved by the voter if the ballot selections are accepted; or voided or if the voter decides to change one or more selections.

c. If the records do not match, the voting equipment shall mark and preserve the paper record and shall provide a means to preserve the corresponding electronic record so the source of error or malfunction can be analyzed.

Discussion: The voting machine shall be withdrawn from service immediately and its use discontinued in accordance with jurisdiction procedures.

d. The voting machine shall not record the electronic record until the paper record has been approved by the voter.

e. Vendor documentation shall include procedures to enable the election official to return a voting machine to correct operation after a voter has used it incompletely or incorrectly. This procedure shall not cause discrepancies between the tallies of the electronic and paper records.

7.9.3 Electronic and Paper Record Structure

a. All cryptographic software in the voting system shall be approved by the U.S. Government's Cryptographic Module Validation Program, as applicable.

Discussion: Cryptographic software may be used for a number of different purposes, including calculating checksums, encrypting records, authentication, generating random numbers, and digital signatures. This software should be reviewed and approved by the Cryptographic Module Validation Program (CMVP). There may be cryptographic voting schemes where the cryptographic algorithms used are necessarily different from any algorithms that have approved CMVP implementations, thus CMVP approved software should be used where feasible but is not required. The CMVP website is *http://csrc.nist.gov/cryptval.*

b. The electronic ballot image and paper records shall include information about the election.

i. The voting equipment shall be able to include an identification of the particular election, the voting site and precinct, and the voting machine.

Discussion: If the voting site and precinct are different, both should be included.

ii. The records shall include information identifying whether the balloting is provisional, early, or on election day, and information that identifies the ballot style in use.

iii. The records shall include a voting session identifier that is generated when the voting equipment is placed in voting mode, and that can be used to identify the records as being created during that voting session.

Discussion: If there are several voting sessions on the same voting machine on the same day, the voting session identifiers must be different. They should be generated from a random number generator.

c. The electronic ballot image and paper records shall be linked by including a unique identifier within each record that can be used to identify each record uniquely and each record's corresponding record.

Discussion: The identifier serves the purpose of uniquely identifying and linking the records for cross-checking.

d. The voting machine should generate and store a digital signature for each electronic record.

e. The electronic ballot image records shall be able to be exported for auditing or analysis on standards-based and /or COTS information technology computing platforms.

i. The exported electronic ballot image records shall be in a publicly available, non-proprietary format.

Discussion: It is advantageous when all electronic records, regardless of manufacturer, use the same format or can easily be converted to a publicly available, non-proprietary format; for example, the OASIS Election Markup Language (EML) Standard.

ii. The records should be exported with a digital signature, which shall be calculated on the entire set of electronic records and their associated digital signatures.

Discussion: This is necessary to determine if records are missing or substituted.

iii. The voting system vendor shall provide documentation as to the structure of the exported ballot image records and how they shall be read and processed by software.

iv. The voting system vendor shall provide a software program that will display the exported ballot image records and that may include other capabilities such as providing vote tallies and indications of undervotes.

v. The voting system vendor shall provide full documentation of procedures for exporting electronic ballot image records and reconciling those records with the paper audit records.

f. The paper record should be created in a format that may be made available across different manufacturers of electronic voting systems.

Discussion: There may be a future requirement for some commonality in the format of paper records.

g. The paper record shall be created such that its contents are machine readable.

Discussion: This can be done by using specific OCR fonts or barcodes.

i. The paper record shall contain error correcting codes for the purpose of detecting read errors and for preventing other markings on the paper record from being misinterpreted when machine reading the paper record.

Discussion: This requirement is not mandatory if a state prohibits the paper record from containing any information that cannot be read and understood by the voter. This requirement serves the purpose of detecting scanning errors and preventing stray or deliberate markings on the paper from being interpreted as valid data.

h. If barcode is used, the voting equipment shall be able to print a barcode with each paper record that contains the human-readable contents of the paper record.

Discussion: This requirement is not mandatory if a state prohibits the paper record from containing any information that cannot be read and understood by the voter.

i. The barcode shall use an industry standard format and shall be able to be read using readily available commercial technology.

Discussion: Examples of such codes are Maxi Code or PDF417.

ii. If the corresponding electronic record contains a digital signature, the digital signature shall be included in the barcode on the paper record.

iii. The barcode shall not contain any information other than the paper record's human-readable content, error correcting codes, and digital signature information.

7.9.4 Equipment Security and Reliability

a. The voting machine shall provide a standard, publicly documented printer port (or the equivalent) using a standard communication protocol.

Discussion: Using a standard, publicly documented printer protocol assists in security evaluations of system software.

b. Tamper-evident seals or physical security measures shall protect the connection between the printer and the voting machine.

c. If the connection between the voting machine and the printer has been broken, the voting machine shall detect this event and record it in the DRE internal audit log.

d. The paper path between the printing, viewing and storage of the paper record shall be protected and sealed from access except by authorized election officials.

e. The printer shall not be permitted to communicate with any system or machine other than the voting machine to which it is connected.

f. The printer shall only be able to function as a printer; it shall not contain any other services (e.g., provide copier or fax functions) or network capability.

g. The voting machine shall detect errors and malfunctions such as paper jams or low supplies of consumables such as paper and ink that may prevent paper records from being correctly displayed, printed or stored.

Discussion: This could be accomplished in a variety of different ways; for example, a printer that is out of paper or jammed could issue a different audible alarm for each condition.

h. If an error or malfunction occurs, the voting machine shall suspend voting operations and should present a clear indication to the voter and election officials of the malfunction.

i. The voting machine shall not record votes if an error or malfunction occurs.

j. Printing devices should contain sufficient supplies of paper and ink to avoid reloading or opening equipment covers or enclosures and thus potential circumvention of security features; or be able to reload paper and ink with minimal disruption to voting and without circumvention of security features such as seals.

k. Vendor documentation shall include procedures for investigating and resolving printer malfunctions including, but not limited to; printer operations, misreporting of votes, unreadable paper records, and power failures.

l. Vendor documentation shall include printer reliability specifications including Mean Time Between Failure estimates, and shall include recommendations for appropriate quantities of backup printers and supplies.

m. Protective coverings intended to be transparent on voting equipment shall be maintainable via a predefined cleaning process. If the coverings become damaged such that they obscure the paper record, they shall be replaceable.

n. The paper record shall be sturdy, clean, and of sufficient durability to be

used for verifications, reconciliations, and recounts conducted manually or by automated processing.

7.9.5 Preserving Voter Privacy

VVPAT records can be printed and stored by two different methods:

- Printed and stored on a continuous spool-to-spool paper roll where the voter views the paper record in a window
- Printed on separate pieces of paper, which are deposited in a secure receptacle.

If a requirement applies to only one method, that will be specified. Otherwise, the requirement applies to both.

a. Voter privacy shall be preserved during the process of recording, verifying and auditing his or her ballot selections.

Discussion: The privacy requirements from Section 3 also apply to voting equipment with VVPAT.

b. When a VVPAT with a spool-to-spool continuous paper record is used, a means shall be provided to preserve the secrecy of the paper record of voter selections.

c. When a VVPAT with a spool-to-spool continuous paper record is used, no record shall be maintained of which voters used which voting machine or the order in which they voted.

d. The electronic and paper records shall be created and stored in ways that preserve the privacy of the voter.

Discussion: For VVPAT systems that use separate pieces of paper for the record, this can be accomplished in various ways including shuffling the order of the records or other methods to separate the order of stored records.

e. The privacy of voters whose paper records contain an alternative language shall be maintained.

f. Unique identifiers shall not be displayed in a way that is easily memorable by the voter.

Discussion: Unique identifiers on the paper record are displayed or formatted in such a way that they are not memorable to voters, such as by obscuring them in other characters.

g. Both paper rolls and paper record secure receptacles shall be controlled, protected, and preserved with the same security as a ballot box.

7.9.6 VVPAT Usability

a. All usability requirements from Subsection 3.1 shall apply to voting machines with VVPAT.

Discussion: The requirements in this section are in addition to those in Subsection 3.1.

b. The voting equipment shall be capable of showing the information on the paper in a font size of at least 3.0 mm and should be capable of showing the information in at least two font ranges; 3.0–4.0 mm, and 6.3–9.0 mm, under control of the voter or poll worker.

Discussion: In keeping with requirements in Subsection 3.1, the paper record should use the same font sizes as displayed by the voting machine, but at least be capable of 3.0 mm. While larger font sizes may assist voters with poor vision, certain disabilities such as tunnel vision are best addressed by smaller font sizes.

c. The voting equipment shall display, print and store the paper record in any of the written alternative languages chosen for the ballot.

i. To assist with manual auditing, candidate names on the paper record shall be presented in the same language as used on the DRE summary screen.

ii. Information on the paper record not needed by the voter to perform verification shall be in English.

Discussion: In addition to the voter ballot selections, the marking of the paper record as accepted or void, and the indication of the ballot page number need to be printed in the alternative language. Other information, such as precinct and election identifiers, shall be in English to facilitate use of the paper record for auditing.

d. The paper and electronic records shall be presented to allow the voter to read and compare the records without the voter having to shift his or her position.

e. If the paper record cannot be displayed in its entirety on a single page, a means shall be provided to allow the voter to view the entire record.

Discussion: Possible solutions include scrolling the paper or printing a new sheet of paper. The voter should be notified if it is not possible to scroll in reverse, so they will know to complete verification in one pass.

f. If the paper record cannot be displayed in its entirety on a single page, each page of the record shall be numbered and shall include the total count of pages for the record.

Discussion: Possible numbering schemes include ''Page X of Y.''

g. The instructions for performing the verification process shall be made available to the voter in a location on the voting machine.

Discussion: All instructions must meet the usability requirements contained in Subsection 3.1.

7.9.7 VVPAT Accessibility

a. All accessibility requirements from Subsection 3.2 shall apply to voting machines with VVPAT.

b. If the normal voting procedure includes VVPAT, the accessible voting equipment should provide features that enable voters who are visually impaired and voters with an unwritten language to perform this verification. If state statute designates the paper record produced by the VVPAT to be the official ballot or the determinative record on a recount, the accessible voting equipment shall provide features that enable visually impaired voters and voters with an unwritten language to review the paper record.

Discussion: For example, the accessible voting equipment might provide an automated reader that converts the paper record contents into audio output.

8 Quality Assurance Requirements

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8 Quality Assurance Requirements

8.1 Scope

Quality assurance provides continuous confirmation that a voting system conforms with the Guidelines and to the requirements of state and local jurisdictions. Quality assurance is a vendor function that is initiated prior to system development and continues throughout the maintenance life cycle of the voting system. Quality assurance focuses on building quality into a voting system and reducing dependence on system tests at the end of the life cycle to detect deficiencies, thus helping ensure the system:

- Meets stated requirements and objectives
- Adheres to established standards and conventions
- Functions consistently with related components and meets dependencies for use within the jurisdiction
- Reflects all changes approved during its initial development, internal testing, national certification, and, if applicable, state certification processes

8.2 General Requirements

The voting system vendor is responsible for designing and implementing a quality assurance program to ensure that the design, workmanship, and performance requirements are achieved in all delivered systems and components. At a minimum, this program shall:

a. Include procedures for specifying, procuring, inspecting, accepting, and

controlling parts and raw materials of the requisite quality

b. Require the documentation of the hardware and software development process

c. Identify and enforce all requirements for:

i. In-process inspection and testing that the manufacturer deems necessary to ensure proper fabrication and assembly of hardware

ii. Installation and operation of software and firmware

d. Include plans and procedures for post-production environmental screening and acceptance testing

e. Include a procedure for maintaining all data and records required to document and verify the quality inspections and tests

8.3 Components from Third Parties

A vendor who does not manufacture all the components of its voting system, but instead procures components as standard commercial items for assembly and integration into a voting system, shall verify that the supplier vendors follow documented quality assurance procedures that are at least as stringent as those used internally by the voting system vendor.

8.4 Responsibility for Tests

The manufacturer or vendor shall be responsible for performing all quality assurance tests, acquiring and documenting test data, and providing test reports for examination by the test lab as part of the national certification process. These reports shall also be provided to the purchaser upon request.

8.5 Parts and Materials Special Tests and Examinations

In order to ensure that voting system parts and materials function properly, vendors shall:

a. Select parts and materials to be used in voting systems and components according to their suitability for the intended application. Suitability may be determined by similarity of this application to existing standard practice or by means of special tests

b. Design special tests, if needed, to evaluate the part or material under conditions accurately simulating the actual voting system operating environment

c. Maintain the resulting test data as part of the quality assurance program documentation

8.6 Quality Conformance Inspections

The vendor performs conformance inspections to ensure the overall quality of the voting system and components delivered to the test lab for national certification testing and to the jurisdiction for implementation.

To meet the conformance inspection requirements the vendor or manufacturer shall:

a. Inspect and test each voting system or component to verify that it meets all inspection and test requirements for the system

b. Deliver a record of tests or a certificate of satisfactory completion with each system or component

8.7 Documentation

Vendors are required to produce documentation to support the independent testing required for their products to be granted national certification. Volume II, Section 2, Description of the Technical Data Package, identifies the documentation required for the national certification testing process. This documentation shall be sufficient to serve the needs of the test lab, election officials, and maintenance technicians. It shall be prepared and published in accordance with standard commercial practice for information technology and electronic and mechanical equipment. It shall include, at a minimum, the following:

- System overview
- System functionality description
- System hardware specification
- Software design and specifications
- System security specification
- System test and verification specification
- System operations procedures
- System maintenance procedures
- Personnel deployment and training requirements
- Configuration management plan
- Quality assurance program
- System change notes

9 Configuration Management Requirements

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9 Configuration Management Requirements

9.1 Scope

This section contains specific requirements for configuration management of voting systems. For the purpose of the Guidelines, configuration management is defined as a set of activities and associated practices that ensures full knowledge and control of the components of a system, starting with its initial development and progressing through its ongoing maintenance and enhancement. This section describes activities in terms of their purposes and outcomes. It does not describe specific procedures or steps to be employed to accomplish them. Specific steps and procedures are left to the vendor to select.

Vendors are required to submit these procedures as part of the Technical Data Package for system certification. State or local election legislation, regulations, or contractual agreements may require the vendor to conform to additional requirements for configuration management or to adopt specific required procedures. EAC and state and local election officials reserve the right to inspect vendor facilities and operations to determine conformance with the vendor's reported procedures and with these requirements.

9.1.1 Configuration Management Requirements

Configuration management addresses a broad set of record keeping, auditing, and reporting activities that contribute to full knowledge and control of a system and its components. These activities include:

- Identifying discrete system components
- Creating records of a formal baseline and later versions of components
- Controlling changes made to the system and its components
- Releasing new versions of the system
- Auditing the system, including its documentation, against configuration management records
- Controlling interfaces to other systems
- Identifying tools used to build and maintain the system

9.1.2 Organization of Configuration Management Requirements

The requirements for configuration management include:

- Application of configuration management requirements
- Configuration management policy
- Configuration identification

- Baseline, promotion, and demotion procedures
- Configuration control procedures
- Release process
- Configuration audits
- Configuration management resources

9.1.3 Application of Configuration Management Requirements

Requirements for configuration management apply to all components of voting systems regardless of the specific technologies employed. These components include:

- Software
- Hardware
- Communications
- Documentation
- Identification and naming conventions (including changes to these conventions) for software programs and data files
- Development and testing artifacts such as test data and scripts
- File archiving and data repositories

9.2 Configuration Management Policy

The vendor shall describe its policies for configuration management in the Technical Data Package. This description shall address the following elements:

- Scope and nature of configuration management program activities
- Breadth of application of the vendor's policies and practices to the voting system, i.e., extent to which policies and practices apply to the total system, and extent to which policies and practices of suppliers apply to particular components, subsystems or other defined system elements

9.3 Configuration Identification

Configuration identification is the process of identifying, naming, and acquiring configuration items. Configuration identification encompasses all system components.

9.3.1 Classification and Naming Configuration Items

The vendor shall describe the procedures and conventions used to classify configuration items into categories and subcategories, uniquely number or otherwise identify configuration items and name configuration items.

9.3.2 Versioning Conventions

When a system component is part of a higher level system element such as a subsystem, the vendor shall describe the conventions used to:

a. Identify the specific versions of individual configuration items and sets of items that are incorporated in higher level system elements such as subsystems

b. Uniquely number or otherwise identify versions

c. Name versions

9.4 Baseline and Promotion Procedures

The vendor shall establish formal procedures and conventions for establishing and providing a complete description of the procedures and related conventions used to:

a. Establish a particular instance of a component as the starting baseline

b. Promote subsequent instances of a component to baseline status as development progresses through to completion of the initial completed version released to the accredited test lab for testing

c. Promote subsequent instances of a component to baseline status as the component is maintained throughout its life cycle until system retirement (i.e., the system is no longer sold or maintained by the vendor)

9.5 Configuration Control Procedures

Configuration control is the process of approving and implementing changes to a configuration item to prevent unauthorized additions, changes or deletions. The vendor shall establish such procedures and related conventions, providing a complete description of those procedures used to:

a. Develop and maintain internally developed items

b. Acquire and maintain third-party items

c. Resolve internally identified defects for items regardless of their origin

d. Resolve externally identified and reported defects (i.e., by customers and accredited test labs)

9.6 Release Process

The release process is the means by which the vendor installs, transfers or migrates the system to the accredited test lab and, eventually, to its customers. The vendor shall establish such procedures and related conventions, providing a complete description of those used to:

a. Perform a first release of the system to an accredited test lab

b. Perform a subsequent maintenance or upgrade release of the system or particular components, to an accredited test lab

c. Perform the initial delivery and installation of the system to a customer, including confirmation that the installed version of the system matches exactly the certified system version

d. Perform a subsequent maintenance or upgrade release of the system or a particular component to a customer, including confirmation that the installed version of the system matches exactly the certified system version

9.7 Configuration Audits

The Guidelines require two types of configuration audits: Physical Configuration Audits (PCA) and Functional Configuration Audits (FCA).

9.7.1 Physical Configuration Audit

The Physical Configuration Audit is conducted by the accredited test lab to compare the voting system components submitted for certification to the vendor's technical documentation.

For the PCA, a vendor shall provide:

a. Identification of all items that are to be a part of the software release

b. Specification of compiler (or choice of compilers) to be used to generate executable programs

c. Identification of all hardware that interfaces with the software

d. Configuration baseline data for all hardware that is unique to the system

e. Copies of all software documentation intended for distribution to users, including program listings, specifications, operations manual, voter manual, and maintenance manual

f. User acceptance test procedures and acceptance criteria

g. Identification of any changes between the physical configuration of the system submitted for the PCA and that submitted for the FCA, with a certification that any differences do not degrade the functional characteristics

h. Complete descriptions of its procedures and related conventions used to support this audit by:

i. Establishing a configuration baseline of the software and hardware to be tested

ii. Confirming whether the system documentation matches the corresponding system components

9.7.2 Functional Configuration Audit

The Functional Configuration Audit is conducted by the accredited test lab to verify that the system performs all the functions described in the system documentation. The vendor shall:

a. Completely describe its procedures and related conventions used to support this audit for all system components

b. Provide the following information to support this audit:

i. Copies of all procedures used for module or unit testing, integration testing, and system testing

ii. Copies of all test cases generated for each module and integration test, and sample ballot formats or other test cases used for system tests

iii. Records of all tests performed by the procedures listed above, including error corrections and retests

In addition to such audits performed by the accredited test lab during the national certification process, elements of this audit may also be performed by state election organizations during the system certification process and individual jurisdictions during system acceptance testing.

9.8 Configuration Management Resources

Often, configuration management activities are performed with the aid of automated tools. Assuring that such tools are available throughout the system life cycle—including whether the vendor is acquired by or merged with another organization—is critical to effective configuration management. Vendors may choose the specific tools they use to perform the record keeping, auditing, and reporting activities of the configuration management standards.

The resources documentation requirements focus on assuring that procedures are in place to record information about the tools to help ensure that they, and the data they contain, can be transferred effectively and promptly to a third party should the need arise. Within this context, a vendor is required to develop and provide a complete description of the procedures and related practices for maintaining information about:

a. Specific tools used, current version, and operating environment specifications

b. Physical location of the tools, including designation of computer directories and files

c. Procedures and training materials for using the tools

Appendix A: Glossary

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A Glossary

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A.2 Sources

Appendix A: Glossary

This glossary contains terms needed to understand voting systems and related areas such as security, human factors, and testing. Sources consulted in preparing the definitions are listed in section A.2.

A.1 Glossary

A

abandoned ballot: Ballot that the voter did not place in the ballot box or record as cast on DRE before leaving the polling place

absentee ballot: Ballot cast by a voter unable to vote in person at his or her polling place on election day

acceptance testing: Examination of a voting system and its components by the purchasing election authority (usually in a simulated-use environment) to validate performance of delivered units in accordance with procurement requirements, and to validate that the delivered system is, in fact, the certified system purchased

Access Board: Independent federal agency whose primary mission is accessibility for people with disabilities and a leading source of information on accessible design

accessibility: Measurable characteristics that indicate the degree to which a system is available to, and usable by, individuals with disabilities. The most common disabilities include those associated with vision, hearing and mobility, as well as cognitive disabilities.

accessible voting station: Voting station equipped for individuals with disabilities

accreditation: Formal recognition that a laboratory is competent to carry out specific tests or calibrations

accreditation body: (1) Authoritative body that performs accreditation (2) An independent organization responsible for assessing the performance of other organizations against a recognized standard, and for formally confirming the status of those that meet the standard

accuracy: (1) Extent to which a given measurement agrees with an accepted standard for that measurement (2) Closeness of the agreement between the result of a measurement and a true value of the particular quantity subject to measurement. Accuracy is a qualitative concept and is not interchangeable with precision.

accuracy for voting systems: Ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data.

adequate security: Security commensurate with the risk and the magnitude of harm resulting from the loss, misuse, unauthorized access to, or modification of, information. This includes ensuring that systems and applications operate effectively and provide appropriate confidentiality, integrity, and availability, through the use of cost-effective management, personnel, operational, and technical controls.

alternative format: The ballot or accompanying information is said to be in an alternative format if it is in a representation other than the standard ballot language and format. Examples include, but are not limited to languages other than English, Braille, ASCII text, large print, recorded audio.

audio ballot: a ballot in which a set of offices is presented to the voter in spoken, rather than written, form

audio-tactile interface (ATI): Voter interface designed to not require visual reading of a ballot. Audio is used to convey information to the voter and sensitive tactile controls allow the voter to communicate ballot selections to the voting system.

audit: Systematic, independent, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements are fulfilled

audit trail: Recorded information that allows election officials to review the activities that occurred on the voting equipment to verify or reconstruct the steps followed without compromising the ballot or voter secrecy

audit trail for direct-recording equipment: Paper printout of votes cast, produced by direct-recording electronic (DRE) voting machines, which election officials may use to crosscheck electronically tabulated totals

availability: The percentage of time during which a system is operating properly and available for use

B

ballot: The official presentation of all of the contests to be decided in a particular election. See also, audio ballot, ballot image, video ballot, electronic voter interface.

ballot configuration: Particular set of contests to appear on the ballot for a particular election district, their order, the list of ballot positions for each contest, and the binding of candidate names to ballot positions

ballot counter: Process in a voting device that counts the votes cast in an election

ballot counting logic: The software logic that defines the combinations of voter choices that are valid and invalid on a given ballot and that determines how the vote choices are totaled in a given election

ballot format: The concrete presentation of the contents of a ballot appropriate to the particular voting technology being used. The contents may be rendered using various methods

of presentation (visual or audio), language or graphics.

ballot image: Electronically produced record of all votes cast by a single voter. See also cast vote record.

ballot instructions: Information provided to the voter during the voting session that describes the procedure for executing a ballot. Such material may (but need not) appear directly on the ballot.

ballot measure: (1) A question that appears on the ballot for approval or rejection. (2) A contest on a ballot where the voter may vote yes or no.

ballot position: A specific place in a ballot where a voter's selection for a particular contest may be indicated. Positions may be connected to row and column numbers on the face of a voting machine or ballot, particular bit positions in a binary record of a ballot (for example, an electronic ballot image), the equivalent in some other form. Ballot positions are bound to specific contests and candidate names by the ballot configuration.

ballot preparation: Selecting the specific contests and questions to be contained in a ballot format and related instructions; preparing and testing election-specific software containing these selections; producing all possible ballot formats; and validating the correctness of ballot materials and software containing these selections for an upcoming election

ballot production: Process of generating ballots for presentation to voters, e.g., printing paper ballots or configuring the ballot presentation on a DRE

ballot rotation: Process of varying the order of the candidate names within a given contest

ballot scanner: Device used to read the voter selection data from a paper ballot or ballot card

ballot style: See ballot configuration

C

candidate: Person contending in a contest for office. A candidate may be explicitly presented as one of the choices on the ballot or may be a write-in candidate.

candidate register: Record that reflects the total votes cast for the candidate. This record is augmented as each ballot is cast on a DRE or as digital signals from the conversion of voted paper ballots are logically interpreted and recorded.

canvass: Compilation of election returns and validation of the outcome that forms the basis of the official results by political subdivision

cast ballot: Ballot that has been deposited by the voter in the ballot box or electronically submitted for tabulation

cast vote record: Permanent record of all votes produced by a single voter whether in electronic, paper or other form. Also referred to as ballot image when used to refer to electronic ballots.

catastrophic system failure: Total loss of function or functions, such as the loss or unrecoverable corruption of voting data or the failure of an on board battery of volatile memory

central count voting system: A voting system that tabulates ballots from multiple precincts at a central location. Voted ballots are placed into secure storage at the polling place. Stored ballots are transported or transmitted to a central counting place which produces the vote count report.

certification: Procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements. See also state certification and national certification.

certification testing: Testing performed under either national or state certification processes to verify voting system conformance to requirements

challenged ballot: Ballot provided to an individual who claim they are registered and eligible to vote but whose eligibility or registration status cannot be confirmed when they present themselves to vote. Once voted, such ballots must be kept separate from other ballots and are not included in the tabulation until after the voter's eligibility is confirmed. Michigan is an exception in that they determine voter eligibility before a ballot is issued. See also provisional ballot

checksum: Value computed from the content of a document or data record. Typically this is the sum of the numeric representations of all the characters in the text. Checksums are used to aid in detecting errors or alterations during transmission or storage.

claim of conformance: Statement by a vendor declaring that a specific product conforms to a particular standard or set of standard profiles; for voting systems, NASED qualification or EAC certification provides independent verification of a claim

closed primary: Primary election in which voters receive a ballot listing only those candidates running for office in the political party with which the voters are affiliated. In some states, non-partisan contests and ballot issues may be included. In some cases, political parties may allow unaffiliated voters to vote in their party's primary

commercial off-the-shelf (COTS): Commercial, readily available hardware devices (such as card readers, printers or personal computers) or software products (such as operating systems, programming language compilers, or database management systems)

Common Industry Format (CIF): Refers to the format described in ANSI/INCITS 354–2001 ''Common Industry Format (CIF) for Usability Test Reports

component: Element within a larger system; a component can be hardware or software. For hardware, it is a physical part of a subsystem that can be used to compose larger systems (*e.g.*, circuit boards, internal modems, processors, computer memory). For software, it is a module of executable code that performs a well-defined function and interacts with other components.

confidentiality: Prevention of unauthorized disclosure of information

configuration management: Discipline applying technical and administrative direction and surveillance to identify and document functional and physical characteristics of a configuration item, control changes to these characteristics, record and report change processing and implementation status, and verify compliance with specified requirements

configuration management plan: Document detailing the process for identifying, controlling and managing various released items (such as code, hardware and documentation)

configuration status accounting: An element of configuration management, consisting of the recording and reporting of information needed to manage a configuration effectively. This includes a listing of the approved configuration identification, the status of proposed changes to the configuration, and the implementation status of approved changes.

conformance: Fulfillment of specified requirements by a product, process or service

conformance testing: Process of testing an implementation against the requirements specified in one or more standards. The outcomes of a conformance test are generally a pass or fail result, possibly including reports of problems encountered during the execution. Also known as certification testing.

contest: Decision to be made within an election, which may be a contest for office or a referendum, proposition and/or question. A single ballot may contain one or more contests.

count: Process of totaling votes. See tabulation.

counted ballot: Ballot that has been processed and whose votes are included in the candidates and measures vote totals

corrective action: Action taken to eliminate the causes of an existing

deficiency or other undesirable situation in order to prevent recurrence

cross filing: Endorsement of a single candidate or slate of candidates by more than one political party. The candidate or slate appears on the ballot representing each endorsing political party. Also referred to as cross-party endorsement.

cryptographic key: Value used to control cryptographic operations, such as decryption, encryption, signature generation or signature verification

cryptography: Discipline that embodies the principles, means, and methods for the transformation of data in order to hide their semantic content, prevent their unauthorized use, prevent their undetected modification and establish their authenticity

cumulative voting: A method of voting exclusive to multi-member district election (*e.g.* county board) in which each voter may cast as many votes as there are seats to be filled and may cast two or more of those votes for a single candidate

D

data accuracy: (1) Data accuracy is defined in terms of ballot position error rate. This rate applies to the voting functions and supporting equipment that capture, record, store, consolidate and report the specific selections, and absence of selections, made by the voter for each ballot position. (2) The system's ability to process voting data absent internal errors generated by the system. It is distinguished from data integrity, which encompasses errors introduced by an outside source.

data integrity: Invulnerability of the system to accidental intervention or deliberate, fraudulent manipulation that would result in errors in the processing of data. It is distinguished from data accuracy that encompasses internal, system-generated errors.

decertification: Revocation of national or state certification of voting system hardware and software

decryption: Process of changing encrypted text into plain text

device: Functional unit that performs its assigned tasks as an integrated whole

digital signature: An asymmetric key operation where the private key is used to digitally sign an electronic document and the public key is used to verify the signature. Digital signatures provide data authentication and integrity protection

direct-recording electronic (DRE) voting system: An electronic voting system that utilizes electronic components for the functions of ballot presentation, vote capture, vote recording, and tabulation which are logically and physically integrated into a single unit. A DRE produces a tabulation of the voting data stored in a removable memory component and in printed hardcopy.

directly verifiable: Voting system feature that allows the voter to verify at least one representation of his or her ballot with his/her own senses, not using any software or hardware intermediary. Examples include a marksense paper ballot and a DRE with a voter verifiable paper record feature.

disability: With respect to an individual; (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; (3) being regarded as having such an impairment (definition from the Americans with Disabilities Act).

dynamic voting system software: Software that changes over time once it is installed on the voting equipment. See also voting system software.

E

EAC: Election Assistance Commission (*www.eac.gov*)

early voting: Broadly, voting conducted before election day where the voter completes the ballot in person at a county office or other designated polling place or ballot drop site prior to election day

election: A formal process of selecting a person for public office or of accepting or rejecting a political proposition by voting

election databases: Data file or set of files that contain geographic information about political subdivisions and boundaries, all contests and questions to be included in an election, and the candidates for each contest

election definition: Definition of the contests and questions that will appear on the ballot for a specific election

election district: Contiguous geographic area represented by a public official who is elected by voters residing within the district boundaries. The district may cover an entire state or political subdivision, may be a portion of the state or political subdivision, or may include portions of more than one political subdivision.

election management system: Set of processing functions and databases within a voting system that defines, develops and maintains election databases, performs election definitions and setup functions, format ballots, count votes, consolidates and report results, and maintains audit trails

election officials: The people associated with administering and conducting elections, including government personnel and poll workers

election programming: Process by which election officials or their designees use voting system software to logically define the ballot for a specific election

electronic cast vote record: An electronic version of the cast vote record

electronic voter interface: Subsystem within a voting system which communicates ballot information to a voter in video, audio or other alternative format which allows the voter to select candidates and issues by means of vocalization or physical actions

electronic voting machine: Any system that utilizes an electronic component. Term is generally used to refer to DREs. See also voting equipment, voting system.

electronic voting system: An electronic voting system is one or more integrated devices that utilize an electronic component for one or more of the following functions: ballot presentation, vote capture, vote recording, and tabulation. A DRE is a functionally and physically integrated electronic voting system which provides all four functions electronically in a single device. An optical scan (also known as marksense) system where the voter marks a paper ballot with a marking instrument and then deposits the ballot in a tabulation device is partially electronic in that the paper ballot provides the presentation, vote capture and vote recording functions. An optical scan system employing a ballot marking device adds a second electronic component for ballot presentation and vote capture functions.

encryption: Process of obscuring information by changing plain text into ciphertext for the purpose of security or privacy. See also cryptography and decryption.

error correcting code: coding system that allows data being read or transmitted to be checked for errors and, when detected, corrects those errors

F

Federal Information Processing Standards: Standards for federal computer systems developed by NIST. These standards are developed when there are no existing industry standards to address federal requirements for system interoperability, portability of data and software, and computer security.

firmware: Computer programming stored in programmable read-only memory thus becoming a permanent part of the computing device. It is created and tested like software.

Functional Configuration Audit (FCA): Exhaustive verification of every system function and combination of functions cited in the vendor's documentation. The FCA verifies the accuracy and completeness of the system's Voter Manual, Operations Procedures, Maintenance Procedures, and Diagnostic Testing Procedures.

functional test: Test performed to verify or validate the accomplishment of a function or a series of functions

G

general election: Election in which voters, regardless of party affiliation, are permitted to select candidates to fill public office and vote on ballot issues

guidelines: See product standard

H

hash: Algorithm that maps a bit string of arbitrary length to a fixed-length bit string.

hash function: A function that maps a bit string of arbitrary length to a fixed length bit string. Approved hash functions satisfy the following properties: 1. (One-way) It is computationally infeasible to find any input that maps to any pre-specified output, and 2. (Collision resistant) It is computationally infeasible to find any two distinct inputs that map to the same output.

I

indirectly verifiable: Voting system feature that allows a voter to verify his or her selections via a hardware or software intermediary. An example is a touch screen DRE where the voter verifies the ballot selections through the assistance of audio stimuli.

implementation statement: Statement by a vendor indicating the capabilities, features, and optional functions as well as extensions that have been implemented. Also known as implementation conformance statement.

Independent Testing Authority (ITA): Replaced by ''accredited testing laboratories'' and ''test labs.'' Prior usage referred to independent testing organizations accredited by the National Association of State Election Directors (NASED) to perform voting system qualification testing.

information security: Protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability

inspection: Examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements. Inspection of a process may include inspection of staffing, facilities, technology and methodology.

integrity: Guarding against improper information modification or destruction, and ensuring information non-repudiation and authenticity

internal audit log: A human readable record, resident on the voting machine, used to track all activities of that machine. This log records every activity performed on or by the machine indicating the event and when it happened.

K

key management: Activities involving the handling of cryptographic keys and other related security parameters (e.g., passwords) during the entire life cycle of the keys, including their generation, storage, establishment, entry and output, and zeroization.

L

logic and accuracy testing: Testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.

logical correctness: Condition signifying that, for a given input, a computer program will satisfy the program specification and produce the required output

M

marksense: System by which votes are recorded by means of marks made in voting response fields designated on one or both faces of a ballot card or series of cards. Marksense systems may use an optical scanner or similar sensor to read the ballots. Also known as optical scan.

measure register: Record that reflects the total votes cast for and against a specific ballot issue. This record is augmented as each ballot is cast on a DRE or as digital signals from the conversion of voted paper ballots are logically interpreted and recorded.

mechanical lever voting machine: Machine that directly records a voter's choices via mechanical lever-actuated controls into a counting mechanism that tallies the votes without using a physical ballot

multi-seat contest: Contest in which multiple candidates can run, up to a specified number of seats. Voters may vote for no more than the specified number of candidates

N

NASED: National Association of State Election Directors, (*www.nased.org*)

national certification testing: Examination and testing of a voting system to determine if the system complies with the performance and other requirements of the national certification standards and with its own specifications

national certification test report: Report of results of independent testing of a voting system by an accredited test lab delivered to the EAC with a recommendation regarding granting a certification number

NIST: National Institute of Standards and Technology

non-partisan office: Elected office for which candidates run without political party affiliation

nonvolatile memory: Memory in which information can be stored indefinitely with no power applied. ROMs and PROMs are examples of nonvolatile memory.

NVLAP: The National Voluntary Laboratory Accreditation Program operated by NIST

O

open primary: Primary election in which any voters can participate, regardless of their political affiliation. Some states require voters to publicly declare their choice of party ballot at the polling place, after which the poll worker provides or activates the appropriate ballot. Other states allow the voters to make their choice of party ballot within the privacy of the voting booth.

operational environment: All software, hardware (including facilities, furnishings and fixtures), materials, documentation, and the interface used by the election personnel, maintenance operator, poll worker, and voter, required for voting equipment operations.

optical scan, optical scan system: System by which votes are recorded by means of marks made in voting response fields designated on one or both faces of a ballot card or series of cards. An optical scan system reads and tabulates ballots, usually paper ballots, by scanning the ballot and interpreting the contents. Also known as marksense.

overvote: Voting for more than the maximum number of selections allowed in a contest

P

paper-based voting system: Voting system that records votes, counts votes, and tabulates the vote count, using one or more ballot cards or paper ballots

paper record: Paper cast vote record that can be directly verified by a voter. See also ballot image, cast vote record.

partisan office: An elected office for which candidates run as representatives of a political party

personal assistive device: A device that is carried or worn by an individual with some physical impairment whose primary purpose is to help compensate for that impairment

Physical Configuration Audit (PCA): Inspection by an accredited test laboratory that compares the voting system components submitted for certification testing to the vendor's technical documentation and confirms that the documentation submitted meets the national certification requirements. Includes witnessing of the build of the executable system to ensure that the certified release is built from the tested components.

political subdivision: Any unit of government, such as counties and cities, school districts, and water and conservation districts having authority to hold elections for public offices or on ballot issues

polling location: Physical address of a polling place

polling place: Facility to which voters are assigned to cast in-person ballots

precinct: Election administration division corresponding to a contiguous geographic area that is the basis for determining which contests and issues the voters legally residing in that area are eligible to vote on

precinct count: Counting of ballots in the same precinct in which those ballots have been cast

precinct count voting system: a voting system that tabulates ballots at the polling place. These systems typically tabulate ballots as they are cast and print the results after the close of polling. For DREs, and for some paper-based systems, these systems provide electronic storage of the vote count and may transmit results to a central location over public telecommunication networks.

precision: (1) Extent to which a given set of measurements of the same sample agree with their mean. Thus, precision is commonly taken to be the standard deviation estimated from sets of duplicate measurements made under conditions of repeatability, that is, independent test results obtained with the same method on identical test material, in the same laboratory or test facility, by the same operator using the same equipment within short intervals of time. (2) Degree of refinement in measurement or specification, especially as represented by the number of digits given.

primary election: Election held to determine which candidate will represent a political party for a given office in the general election. Some states have an open primary, while others have a closed primary. Sometimes elections for nonpartisan offices and ballot issues are held during primary elections.

primary presidential delegation nomination: Primary election in which voters choose the delegates to the presidential nominating conventions allotted to their states by the national party committees

privacy: The ability to prevent others from determining how an individual voted

private key: The secret part of an asymmetric key pair that is typically used to digitally sign or decrypt data

product standard: Standard that specifies requirements to be fulfilled by a product or a group of products, to establish its fitness for purpose

provisional ballot: Ballot provided to individuals who claim they are registered and eligible to vote but whose eligibility or registration status cannot be confirmed when they present themselves to vote. Once voted, such ballots must be kept separate from other ballots and are not included in the tabulation until after the voter's eligibility is confirmed. In some jurisdictions called an affidavit ballot. See also challenged ballot.

public key: Public part of an asymmetric key pair that is typically used to verify digital signatures or encrypt data

public network direct-recording electronic (DRE) voting system: A DRE that transmits vote counts to a central location over a public telecommunication network

Q

qualification number: A number issued by NASED (National Association of State Election Directors) to a system that has been tested by an accredited Independent Testing Authority for compliance with the voting system standards. Issuance of a qualification number indicates that the system conforms to the national standards.

qualification test report: Report of results of independent testing of a voting system by an Independent Test Authority documenting the specific system configuration tested, the scope of tests conducted and when testing was completed.

qualification testing: Examination and testing of a voting system by a NASED-accredited Independent Test Authority to determine if the system conforms to the performance and other requirements of the national certification standards and the vendor's own specifications.

R

ranked order voting: Practice that allows voters to rank candidates in a contest in order of choice: 1, 2, 3 and so on. A candidate receiving a majority of the first choice votes wins that election. If no candidate receives a majority, the last place candidate is deleted, and all ballots are counted again, with each ballot cast for the deleted candidate applied to the next choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote. The practice is also known as instant runoff voting, preferences or preferential voting, or choice voting.

recall issue with options: Process that allows voters to remove elected representatives from office prior to the expiration of their terms of office. The recall may involve not only the question of whether a particular officer should be removed, but also the question of naming a successor in the event that there is an affirmative vote for the recall.

recertification: Re-examination, and possibly retesting of a voting system that was modified subsequent to receiving national and/or state certification. The object of is to determine if the system as modified still conforms to the requirements.

recount: Retabulation of the votes cast in an election

referendum: Process whereby a state law or constitutional amendment may be referred to the voters before it goes into effect

reproducibility: Ability to obtain the same test results by using the same test method on identical test items in different testing laboratories with different operators using different equipment

requirement: Provision that conveys criteria to be fulfilled

residual vote: Total number of votes that cannot be counted for a specific contest. There may be multiple reasons for residual votes (e.g., declining to vote for the contest, overvoting in a contest).

risk assessment: The process of identifying the risks to system security and determining the probability of occurrence, the resulting impact, and safeguards that would mitigate this impact

runoff election: Election to select a winner following a primary or a general election, in which no candidate in the contest received the required minimum percentage of the votes cast. The two candidates receiving the most votes for

the contest in question proceed to the runoff election.

S

secure receptacle: The container for storing VVPAT paper audit records

security analysis: An inquiry into the potential existence of security flaws in a voting system. Includes an analysis of the system's software, firmware, and hardware, as well as the procedures associated with system development, deployment, operation and management.

security controls: Management, operational, and technical controls (i.e., safeguards or countermeasures) prescribed for an information system to protect the confidentiality, integrity, and availability of the system and its information.

semi-static voting system software: Software that may change in response to the voting equipment on which it is installed or to election-specific programming.

split precinct: A precinct that contains an election district subdivision, e.g., a water district or school board district, requiring an additional ballot configuration

spoiled ballot: Ballot that has been voted but will not be cast

state certification: State examination and possibly testing of a voting system to determine its compliance with state requirements for voting systems

static voting system software: Software that does not change based on the election being conducted or the voting equipment upon which it is installed, e.g., executable code

straight party voting: Mechanism that allows voters to cast a single vote to select all candidates on the ballot from a single political party

support software: Software that aids in the development, maintenance, or use of other software, for example, compilers, loaders and other utilities

symmetric (secret) encryption algorithm: Encryption algorithms using the same secret key for encryption and decryption

T

tabulation: Process of totaling votes. See also count.

t-coil: Inductive coil used in some hearing aids to allow reception of an audio band magnetic field signal, instead of an acoustic signal. The magnetic or inductive mode of reception is commonly used in conjunction with telephones, auditorium loop systems and other systems that provide the required magnetic field output.

tabulator: Device that counts votes

technical data package: Vendor documentation relating to the voting system required to be submitted with the system as a precondition of certification testing

telecommunications: Transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received

test: Technical operation that consists of the determination of one or more characteristics of a given product, process or service according to a specified procedure

test campaign: Sum of the work by a voting system test lab on a single product or system from contract through test plan, conduct of testing for each requirement (including hardware, software, and systems), reporting, archiving, and responding to issues afterwards

testing standard: Standard that is concerned with test methods, sometimes supplemented with other provisions related to testing, such as sampling, use of statistical methods or sequence of tests

test method: Specified technical procedure for performing a test

test plan: Document created prior to testing that outlines the scope and nature of testing, items to be tested, test approach, resources needed to perform testing, test tasks, risks and schedule

touch screen voting machine: A voting machine that utilizes a computer screen to display the ballot and allows the voter to indicate his or her selections by touching designated locations on the screen

U

undervote: Occurs when the number of choices selected by a voter in a contest is less than the maximum number allowed for that contest or when no selection is made for a single choice contest

usability: Effectiveness, efficiency and satisfaction with which a specified set of users can achieve a specified set of tasks in a particular environment. Usability in the context of voting refers to voters being able to cast valid votes as they intended quickly, without errors, and with confidence that their ballot choices were recorded correctly. It also refers to the usability of the setup and operation in the polling place of voting equipment.

usability testing: Encompasses a range of methods that examine how users in the target audience actually interact with a system, in contrast to analytic techniques such as usability inspection

V

valid vote: Vote from a ballot or ballot image that is legally acceptable according to state law

validation: Process of evaluating a system or component during or at the end of the development process to determine whether it satisfies specified requirements

verification: Process of evaluating a system or component to determine whether the products of a given development phase satisfy the conditions (such as specifications) imposed at the start of the phase

video ballot: Electronic voter interface which presents ballot information and voting instructions as video images. See also ballot.

vote for N of M: A ballot choice in which voters are allowed to vote for a specified number (''N'') of candidates in a multi-seat (''M'') contest

voted ballot: Ballot that contains all of a voter's selections and has been cast

voter verifiable: A voting system feature that provides the voter an opportunity to verify that his or her ballot selections are being recorded correctly, before the ballot is cast

voter verifiable audit record: Human-readable printed record of all of a voter's selections presented to the voter to view and check for accuracy

voting equipment: All devices, including the voting machine, used to display the ballot, accept voter selections, record voter selections, and tabulate the votes

voting machine: The mechanical, electromechanical and electric components of a voting system that the voter uses to view the ballot, indicate their selections, verify their selections. In some instances, the voting machine also casts and tabulates the votes. See voting equipment.

voting officials: Term used to designate the group of people associated with elections, including election personnel, poll workers, ballot designers and those responsible for the installation, operation and maintenance of the voting systems.

voting position: Specific response field on a ballot where the voter indicates the selection of a candidate or ballot proposition response

voting station: The location within a polling place where voters may record their votes. A voting station includes the area, location, booth or enclosure where voting takes place as well as the voting machine. See voting machine.

voting system: The total combination of mechanical, electromechanical or electronic equipment (including the software, firmware, and documentation

required to program, control, and support the equipment) that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information; and the practices and associated documentation used to identify system components and versions of such components; to test the system during its development and maintenance; to maintain records of system errors and defects; to determine specific system changes to be made to a system after the initial qualification of the system; and to make available any materials to the voter (such as notices, instructions, forms or paper ballots).

voting system software: All the executable code and associated configuration files needed for the proper operation of the voting system. This includes third party software such as operating systems, drivers, and database management tools. See also dynamic voting system software, semi-static voting system software, and static voting system software.

voting system testing: Examination and testing of a computerized voting system by using test methods to determine if the system complies with the requirements in the Voluntary Voting System Guidelines and with its own specifications.

voting system test laboratory: Test laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) to be competent to test voting systems. When NVLAP has completed its evaluation of a test lab, the Director of NIST will forward a recommendation to the EAC for the completion of the accreditation process.

W

write-in voting: To make a selection of an individual not listed on the ballot. In some jurisdictions, voters may do this by using a marking device to physically write their choice on the ballot or they may use a keypad, touch screen or other electronic means to enter the name.

A.2 Sources

Definitions in this glossary are either extracted from or based on the following sources:

44 U.S.C. 35 United States Code, Title 44, Chapter 35, Information Security, Section 3542, Definitions.

ACM SIGCHI ACM's Special Interest Group on Computer-Human Interaction, *http://www.acm.org/sigchi/* (February 2005).

ADA Americans with Disabilities Act of 1990.

ANSI Dictionary American National Dictionary for Information Processing Systems, American National Standards Committee X3, Information Processing Systems, 1982.

ANSI 354 American National Standards Institute, International Committee for Information Technology Standards, Common Industry Format for Usability Test Reports, ANSI/INCITS 354–2001

ANSI C63.19 American National Standards for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, 2001.

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FIPS 81 Federal Information Processing Standard 81, DES Modes of Operations, December, 1980.

FIPS 140–2 Federal Information Processing Standard 140–2, Security Requirements for Cryptographic Modules, May 2001.

FIPS 199 Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems, December 2003.

FIPS 201 Federal Information Processing Standard 201, Personal Identity Verification for Federal Employees and Contractors, February 2005.

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IEA International Ergonomics Association, *http://www.iea.cc/*, (February 2005).

IEEE 1583 IEEE P1583/D5.3.2 Draft Standard for the Evaluation of Voting Equipment, December 6, 2004.

ISO 5725 ISO/IEC 5725:1994 Accuracy (trueness and precision) of measurement methods and results.

ISO 9241 ISO/IEC 9241:1997 Ergonomic requirements for office work with visual display terminals (VDT).

ISO 17000 ISO/IEC 17000:2004 Conformity assessment—Vocabulary and general principles.

ISO Guide 2–4 ISO/IEC Guide 2:2004 Standardization and related activities—General vocabulary.

ISO Guide 2–6 ISO/IEC Guide 2:1996 Standardization and related activities—General vocabulary.

NASS National Association of Secretaries of State Election Reform Key Terms, *http://www.nass.org/Election%20Reform%20Key%20Terms.pdf* (February 2005).

NIST HB 143 NIST Handbook 143 State Weights and Measures Laboratories Program Handbook.

NIST HB 150 NIST and book 150:2001 NVLAP Procedures and General Requirements.

NIST HF Rpt. NIST Special Publication 500–256 Improving the Usability and Accessibility of Voting Systems and Products, May 2004.

NIST SP 800–30 NIST Special Publication 800–30 Risk Management Guide for Information Technology Systems, July 2002.

NIST SP 800–49 NIST Special Publication 800–49 Federal S/MIME V3 Client Profile, November 2002.

NIST SP 800–53 NIST Special Publication 800–53 Recommended Security Controls for Federal Information Systems, Appendix B, Glossary.

NIST SP 800–59 NIST Special Publication 800–59 Guideline for Identifying an Information System as a National Security System, August 2003.

NIST SP 800–63 NIST Special Publication 800–63 Electronic Authentication Guideline: Recommendations of the National Institute of Standards and Technology, June 2004.

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VSS 2002 Voting Systems Standards, Volumes I and II. Federal Election Commission.

Whatis.com *http://Whatis.com*, IT Encyclopedia

Appendix B: References

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B.1 Documents Incorporated in the Guidelines

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B.1 Documents Incorporated in the Guidelines

The following publications have been incorporated into the Guidelines. When specific provisions from these publications have been incorporated, specific references are made in the body of the Guidelines.

Federal Regulations

Code of Federal Regulations, Title 29, Part 1910, Occupational Safety and Health Act
Code of Federal Regulations, Title 36, Part 1194, Architectural and Transportation Barriers Compliance Board, Electronic and Information Technology Standards—Final Rule
Code of Federal Regulations, Title 47, Parts 15 and 18, Rules and Regulations of the Federal Communications Commission
Code of Federal Regulations, Title 47, Part 15, ''Radio Frequency Devices'', Subpart J, ''Computing Devices'', Rules and Regulations of the Federal Communications Commission

American National Standards Institute (ANSI)

ANSI C63.4 Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9Khz to 40 GHz
ANSI C63.19 American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids
ANSI–NCITS Industry Usability Reporting and the Common Industry Format 354–2001

International Electrotechnical Commission (IEC)

IEC 61000–4–2 (1995–010 Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 2 Electrostatic Discharge Immunity Test (Basic EMC publication).
IEC 61000–4–3 (1996) Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 3 Radiated Radio-Frequency Electromagnetic Field Immunity Test.
IEC 61000–4–4 (1995–01) Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 4 Electrical Fast Transient/Burst Immunity Test.
IEC 61000–4–5 (1995–02) Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 5 Surge Immunity Test.
IEC 61000–4–6 (1996–04) Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 6 Immunity to Conducted Disturbances Induced by Radio-Frequency Fields.
IEC 61000–4–8 (1993–06) Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 8 Power-Frequency Magnetic Field Immunity Test. (Basic EMC publication).
IEC 61000–4–11 (1994–06) Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 11. Voltage Dips, Short Interruptions and Voltage Variations Immunity Tests.
IEC 61000–5–7 Ed. 1.0 b:2001 Electromagnetic compatibility (EMC) Part 5–7: Installation and mitigation guidelines—Degrees of protection provided by enclosures against electromagnetic disturbances

National Institute of Standards and Technology

FIPS 140–2 Security Requirements for Cryptographic Modules
FIPS 180–2 Secure Hash Standard, August 2002
FIPS 186–2 Digital Signature Standard, February 2000
FIPS 188 Standard Security Label for Information Transfer
FIPS 196 Entity Authentication Using Public Key Cryptography
FIPS 197 Advanced Encryption Standard (AES)
SP 800–63 Electronic Authentication Guideline, Version 1.0.1

Military Standards

MIL–STD–498 Software Development and Documentation Standard, 1989
MIL–STD–810D(2) Environmental Test Methods and Engineering Guidelines, 19 July 1983

B.2 Other Documents Used in Developing the Guidelines

The following publications have been used for guidance in the revision of the Guidelines.

American National Standards Institute (ANSI), International Organization for Standardization (ISO), International Electro-technical Commission (IEC)

ANSI/ISO/IEC TR 9294.1990 Information Technology Guidelines for the Management of Software Documentation
ISO/IEC TR 13335–4:2000 Information technology—Guidelines for the management of IT Security—Part 4: Selection of safeguards
ISO/IEC TR 13335–3:1998 Information technology—Guidelines for the management of IT Security—Part 3 Techniques for the management of IT security
ISO/IEC TR 13335–2:1997 Information technology—Guidelines for the management of IT Security—Part 2: Managing and planning IT security
ISO/IEC TR 13335–1:1996 Information technology—Guidelines for the management of IT Security—Part 1: Concepts and models for IT security
ISO 10007:1995 Quality Management Guidelines for Configuration Management
ISO 10005–1995 Quality Managment Guidelines for Quality Plans
ANSI/ISO/ASQC QS9000–3–1997 QM and QA standards Part 3: Guidelines for the application of ANSI/ISO/ASQC Q9000–1994 to the Development, Supply, Installation, and Maintenance of Computer Software

Electronic Industries Alliance Standards

MB2, MB5, MB9 Maintainability Bulletins
EIA 157 Quality Bulletin
EIA QB2–QB5 Quality Bulletins
EIA RB9 Failure Mode and Effect Analysis, Revision 71
EIA SEB1–SEB4 Safety Engineering Bulletins
RS–232–C Interface Between Data Terminal Equipment and Data Communications Equipment Employing Serial Binary Data Interchange
RS–366–A Interface Between Data Terminal Equipment and Automatic Calling Equipment for Data Communication
RS–404 Standard for Start-Stop Signal Quality Between Data Terminal Equipment and Non-synchronous Data Communication Equipment

National Institute of Standards and Technology

NISTIR 4909 Software Quality Assurance: Documentation and Reviews

Institute of Electrical and Electronics Engineers

610.12–1990 IEEE Standard Glossary of Software Engineering Terminology
730–1998 IEEE Standard for Software Quality Assurance Plans
828–1998 IEEE Standard for Software Configuration Management Plans
829–1998 IEEE Standard for Software Test Documentation
830–1998 IEEE Recommended Practice for Software Requirements Specifications

Military Standards

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Americans With Disabilities Act of 1990, Pub. L. 101–336, 42 U.S.C. Sections 12101–12213
42 U.S.C. 1974
Occupational Safety and Health Act, Pub. L. 91–596, 29 U.S.C. Sections 651–678, 42 U.S.C. Section 3142–1

Architectural Barriers Act of 1968, Pub. L. 90–480, 42 U.S.C. Sections 4151–4157

Voting Rights Act of 1965, Pub. L. 89–110, 42 U.S.C. Sections 1973; 1973a–p; 1973aa; 1973aa–1–6; 1973bb; 1973bb–1

B.4 Additional References

The following publications contain information that is useful in understanding and complying with the Guidelines.

American National Standards Institute (ANSI), International Organization for Standardization (ISO), International Electro-technical Commission (IEC)

ANSI/ISO/IEC TR Information Technology Guidelines for the Preparation of 10176.1998 Programming Language Standards

ANSI/ISO/IEC 6592.2000 Information Technology Guidelines for the Documentation of Computer Based Application Systems

ANSI/ISO/ASQC 1997 Quality management and quality assurance standards Part 3: Q9000–3—Guidelines for the application of ANSI/IAO/ASQC Q9001–1994 to the Development, supply, installation and maintenance of computer software

ANSI/ISO/ASQC Q9000–1–1994 Quality Management and Quality Assurance Standards—Guidelines for Selection and Use

ANSI/ISO/ASQC Q10007–1995 Quality Management Guidelines for Configuration Management

ANSI X9.31–1998 Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry, 1998

ANSI X9.62–1998 Public Key Cryptography for Financial Services Industry: The Elliptic Curve Digital Signature Algorithm, 1998

ISO/IEC 8:2001 ITU–T Recommendation X.509 (2000), Information technology—9594—Open Systems Interconnection—The Directory: Public-key and attribute certificate frameworks

National Institute of Standards and Technology

FIPS 102 Guideline for Computer Security Certification and Accreditation

FIPS 112 Password Usage (3)

FIPS 113 Computer Data Authentication

Institute of Electrical and Electronics Engineers

488–1987 IEEE Standard Digital Interface for Programmable Instrumentation

796–1983 IEEE Standard Microcomputer System Bus IEEE/ANSI Software Engineering Standards

750.1–1995 IEEE Guide for Software Quality Assurance Planning

1008–1987 IEEE Standard for Software Unit Testing

1016–1998 IEEE Recommended Practice for Software Design Descriptions

1012–1998 IEEE Guide for Software Verification and Validation Plans

Military Standards

MIL–HDBK–454 Standard General Requirements for Electronic Equipment

MIL–HDBK–470 Maintainability Program for Systems & Equipment

MIL–HDBK–781A Handbook for Reliability Test Methods, Plans, and Environments for Engineering, Development Qualification, and Production

MIL–STD–882 Systems Safety Program Requirements

MIL–STD–1472 Human Engineering Design Criteria for Military Systems, Equipment and Facilities

MIL–STD–973 Configuration Management, 30 September 2000

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NIST Special Publication 500–256, Improving the Usability and Accessibility of Voting Systems and Products, *http://vote.nist.gov*.

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RSA Laboratories Technical Note, Extensions and Revisions to PKCS #7, May 13, 1997.

The Americans with Disabilities Act Accessibility Guidelines (ADAAG 2202), Access Board; *http://www.access-board.gov/adaag/html/adaag.htm*.

Appendix C: Independent Verification Systems

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Appendix C: Independent Verification Systems

Appendix C is an informative section that describes Independent Verification systems followed by characteristics of the types of Independent Verification systems which will be used as the basis for future requirements. This information is preliminary and will be evolving with further research.

C.1 Independent Verification Systems

A primary objective for using electronic voting systems is the production of voting records that are highly precise, highly reliable, and easily counted—in essence, an accurate representation of ballot selections whose handling requirements are reasonable. To meet this objective, there are many factors to consider in an electronic voting system design, including:

- The environment provided for voting, including the physical and environmental factors
- The ease with which voters can use the voting system, i.e., its usability
- The robustness and reliability of the voting equipment
- The capability of the records to be used in audits

Independent Verification (IV) systems have as their primary objective the production of independent records of voter ballot selections that are capable of being used in audits in which their correctness can be audited to a very high level of precision. The primary voting security and integrity issues addressed by IV systems are:

• Whether electronic voting systems are accurately recording ballot selections

• Whether the ballot record contents can be audited precisely post-election

The threats addressed by IV systems are those that could cause a voting system to inaccurately record the voter's selections or cause damage to the voting system records. These threats could occur via any number of means including human error, accident or fraudulent activity. The threats are addressed mainly by providing, in the voting system design, the capability for ballot record audits to detect precisely whether specific records are correct as recorded or damaged, missing, or fraudulent.

C.1.1 Improved Accuracy in Independent Verification Audits

Independent Verification is the top-level categorization for electronic voting systems that produce multiple records of ballot selections that can be audited to a high level of precision. For this to happen, the records must be produced and made verifiable by the voter, and then subsequently handled according to the following protocol:

• At least two records of voter selections are produced and one of the records is then stored such that it cannot be modified by the voting system, e.g., the voting system creates a record of voter selections and then copies it to some unalterable media

• The voter must be able to verify that both records are correct, e.g., verify his or her selections on the voting system's display and also verify the second record of selections stored on the unalterable storage media

• The verification processes for the two records must be independent of each other and (a) at least one of the records must be verified directly by the voter, or (b) it is acceptable for the voter to indirectly verify both records if they are stored on independent systems

• The content of the two records can be checked later for consistency through the use of identifiers that allow the records to be linked An assumption is made that at least one set of records is usable in an efficient counting process such as an automated tabulator, and the other set of records is usable in an efficient process of verifying its agreement with the other set of records used in the counting process. The sets of records would preferentially be different in form and thus have more resistance to accidental or deliberate damage.

Given these conditions, the multiple records are said to be distinct and independently verifiable; that is, both records are not under the control of the same processes. As a result of this independence, one record can be used to audit or check the accuracy of the other record. Because the storage of the records is separate, an attacker who can compromise one of the records still will face a difficult task in compromising the other.

C.1.2 Example Independent Verification Systems

The following sections present overviews of several types of IV systems. Some of these systems have not been marketed as yet but are included here to help clarify approaches to independent verification systems. The Independent Verification systems discussed are:

• Voting systems with a split process architecture [3]

• End-to-end voting systems that include cryptographic audit schemes

• Witness systems that take a picture of or otherwise capture an indirect verification of ballot selections

• Direct independent verification, including voting systems that produce an optically scanned ballot or that produce a voter verifiable paper audit trail

C.1.2.1 The Split Process Architecture for IV Systems

A voting machine with a split process architecture consists of vote capture and verification stations that are separate, i.e., two physical devices. A voter inserts an object called a token into the capture station to make ballot selections and then takes the token object to the verification station to review and store his or her votes. The token object could be paper or unalterable media. Two records of the vote are created: one on the token object and one by the verification station. Either could be used in the final count.

For any split process voting system, the interaction between the voter and the split process operates as follows:

• A voter is given a token object that has been initialized to be blank

• Supporting information is written to the token object including the ballot and identification information about the election and precinct

• The voter inserts the token object into a capture station such as a DRE, which reads the ballot information from the token and then displays the ballot to the voter by some means such as a touch screen. The voter makes his or her ballot selections, which causes a record of the vote to be recorded on the token object

• The voter takes the token object to a separate verification station, which reads the recorded votes from the token object, makes an electronic copy, and displays it to the voter

• The voter verifies that the information is correct and then deposits the token object in a secure container so it can be archived and used later for recounts or audits against the electronic records

Two sets of records are produced: the electronic records and the token records. Typically, the electronic records recorded by the verification station would be counted in the election. The records should be different in form and be resistant to accidental or deliberate damage to be useful for audits and recounts.

In theory, the physical separation of vote capture from vote verification may make analysis of the capture and verification devices easier or less costly. The rationale is that the user interface software on the capture station is expected to be complex and difficult to verify for correctness. On the other hand, the verification station's software is expected to be less complicated because it need only copy the contents of the token, display it to the voter, and store the ballot selections. In general, segregating functions by placing them on physically different systems is a standard computer security practice for making those functions easier to test for correctness and easier to manage securely.

C.1.2.2 End to End Cryptographic IV Systems

End to end systems use cryptographic techniques to store an encrypted copy of the voter's ballot selections. In this way, ballot selections can be audited and demonstrated to have been included in the election count.

End to end systems in existence today generally operate as follows:

• A voter uses a voting machine such as a DRE to make ballot selections

• The DRE issues a paper receipt to the voter that contains information that permits the voter to verify that the choices were recorded correctly. The information does not permit the voter to reveal his or her selections

• The voter may have the option to check that his or her ballot selections were included in the election count, e.g., by checking a web site of values

[3] The split process architecture is otherwise known as the frog protocol, which was first described in the Caltech—MIT report: Voting: What Is, What Could Be, as part of a modular voting architecture. The frog term, i.e., the token, was chosen specifically to convey no information about the physical form of the object used to carry vote information between two separate modules of the voting station. The report is avaialble for download at *http://www.vote.caltech.edu/*.

that (should) match the information on the voter's paper receipt

End to end systems are sometimes referred to as receipt-based systems. They may provide an assurance not only that the correct set of ballot choices was recorded, but that those selections were included in the election count. Some analyses of auditing and cryptographic systems assert that very small numbers of self-audits are required to verify the correctness of an election.

C.1.2.3 Witness IV Systems

A witness system creates the second record of ballot choices by using a separate module to record or witness the voter's verification of the first record. The primary feature of a witness system is that the creation of the record does not require action by the voter. This may result in quicker voting times or voting systems that are simpler to use than other approaches that involve multiple, direct verifications by the voter.

An example of a witness system is a DRE with a camera mounted above its screen. The camera takes pictures and saves them independently of the DRE. It would operate as follows:

- A voter makes ballot selections at the DRE and then presses a button to record his or her vote
- The DRE records the ballot selections and uses them in the election count
- At the time the button is pressed, the camera takes a picture of the DRE summary screen and saves the image. The voter would not be included in the picture.
- This collection of images constitutes a second ballot record that can be used in audits and recounts

As can be seen by this example, the voter's interactions are reduced to making ballot selections at the DRE and pressing a button to make the selections final. If the DRE were to be compromised such that it secretly recorded the ballot choices incorrectly, the stored photographic images would reflect what the voter had seen and verified at the DRE summary screen.

Because the voter may not be able to verify that the creation of the second record was performed accurately, it is important that the creation process be highly reliable and very resistant to accidental or deliberate damage. Also, the suitability of the records for manual or automated auditing is a factor when considering this approach.

C.1.2.4 Direct IV Systems

Direct Independent Verification systems produce a record that the voter may verify directly with the voter's senses and which is then preserved for auditing or counting. Some optical scan voting systems fit this category, as well as DREs with VVPAT capability.

The optical scan voting systems in this category are those in which two records are created: a paper and an electronic record. This system uses Optical Scan Recognition (OCR) to create an electronic record from the paper record after the paper record has been directly verified by the voter. The general operation of this system is:

- A voter uses a marking device such as a DRE to mark a ballot and then presses a button to print the marked ballot
- The voter directly reviews the printed paper record to ensure its correctness, and if correct, places the paper record into a scanner. A procedure would be needed to handle voided ballots.
- The scanner converts the paper record into an electronic format. To reduce errors that may result from scanning the paper record, the paper records might contain a barcode representation of the human readable portion of the ballot.
- The paper record is deposited in a secure receptacle

No verification of the scanned paper record is performed in the above approach. One may assume that the scanning process is highly accurate and can be trusted to create the electronic record correctly; however it would be preferential for the voter to somehow verify that the record was, in fact, created correctly.

A DRE with VVPAT capability is similar to that of the optical scan above but consists typically of a DRE that both creates and records an electronic record, and a printer that creates a paper record of the voter's selections. Like the optical scan system, it creates two distinct representations of the voter's ballot selections: an electronic record and a paper record.

Typically, a voter would use the voting system as follows:

- A voter makes ballot selections and indicates that his or her selections are complete
- A paper record is printed of the voter's ballot selections as displayed on the summary screen. An alternative approach is to print the voter's ballot selections as they are made.
- The voter inspects and directly verifies that the paper record matches the displayed electronic record
- The paper record is deposited in a secure receptacle

Both approaches described here produce paper records that are verified directly by the voter through visual inspection. Voters with sight impairments would require an accessible device for verification that can produce an audible representation of the paper record.

C.1.3 Handling Multiple Records Produced by IV Systems

There are several fundamental questions that need to be addressed when designing the structure and selecting the physical characteristics of IV system records, including:

- How to tell if the records are authentic and not forged
- How to tell if the integrity of the records has remained intact from the time they were recorded
- The suitability of the records for various types of auditing
- How best to address problems if there are errors in the records

Whenever an electronic voting system produces multiple records of votes, there is some possibility that one or more of the records may not match. Records can be lost, or deliberately or accidentally damaged, or stolen, or fabricated. Keeping the two records in correspondence with each other can be made more or less difficult depending on the technologies used for the records and the procedures used to handle the records.

It is important to structure the records so that errors and other anomalies can be readily detected during audits. There are a number of techniques that can be used:

- Associating unique identifiers with corresponding records, e.g., an individual paper record sharing a unique identifier with its corresponding electronic record
- Including an identification of the specific voting system that produced the records, such as a serial number identifier, or by having the voting system digitally sign the records
- Including other information about the election and the precinct or location where the records were created
- Creating checksums of the electronic records and having the voting system digitally sign the entire sets of records so that missing or inserted records can be detected
- Structuring the records in open, publicly documented formats that can be readily analyzed on different computing platforms

The ease with which records can be handled is a factor in the practical capability to conduct precise audits, given that some types of records are better suited to auditing and different voting environments than others. The factors that make certain types of records more suitable than others could

vary greatly depending upon many other criteria, both objective and subjective. For example, paper records may require manual handling by poll workers and thus be more susceptible to accidental or deliberate damage, loss, and theft. At the same time, the extent to which the paper records must be handled will vary depending on the type of voting system in use. Electronic records may by their nature be more suitable for automated audits; however electronic records are still subject to accidental or deliberate damage, loss, and theft.

C.2 Core Characteristics for Independent Verification Systems

This section contains a preliminary set of characteristics for IV systems. These characteristics are fundamental in nature and apply to all categories of IV systems. They will form the basis for future requirements for independent verification systems.

• A voting machine equipped with independent verification produces two independent records of ballot selections via interactions with the voter such that one record can be compared against the other to check their equality of content.

Discussion: This is the fundamental characteristic of IV systems. The records can be checked against one another to determine whether or not the voter's selections were correctly recorded.

• The voter verifies the content of each record and either (a) verifies at least one of the records directly or (b) verifies both records indirectly if the records are each under the control of independent processes.

• The creation, storage, and handling of the records are sufficiently separate such that the failure or compromise of one record does not cause the failure or compromise of another.

Discussion: The records must be stored on different media and handled independently of each other, so that no one process could compromise all records. If an attack can alter one record, it should still be very difficult to alter the other record.

—Both records are highly resistant to damage or alteration and should be capable of long-term storage.

• The records are linked to their corresponding records by including a unique identifier within each record that can be used to identify the corresponding record.

• The processes of verification for the multiple records do not all depend for their integrity on the same device or software module, and are sufficiently separate such that each record provides evidence of the voter's selections independently of the corresponding record.

• The records can be used in checks of one another, such that if one set of records can be used in an efficient counting process, the other set of records can be used for checking its agreement with the first set of records.

Discussion: For example, an electronic record can be used in an efficient counting process. A paper record can be used to verify the accuracy of the electronic record. However, it is less suitable for efficient counting unless it can be corrected by an automated scan process.

• Each record includes an identification of the polling place and precinct.

Discussion: If the voting site and precinct are different, both should be included.

• The records include information identifying whether the balloting is provisional, early, or on election day, and information that identifies the ballot style in use.

• The records include a voting session identifier that is generated when the voting station is placed in voting mode and that can be used to identify the records as being created during that voting session.

Discussion: If there are several voting sessions on the same voting station on the same day, the voting session identifiers must be different. They should be generated from a random number generator.

• The records include a unique identifier associated with the voting station

Discussion: The identifier could be a serial number or other unique ID.

• The cryptographic software in voting systems with independent verification is approved by the U.S. Government's Cryptographic Module Validation Program (CMVP) as applicable.

Discussion: Cryptographic software may be used for a number of different purposes, including calculating checksums, encrypting records, authentication, generating random numbers, and for digital signatures. This software should be reviewed and approved by the Cryptographic Module Validation Program. There may be cryptographic voting schemes where the cryptographic algorithms used are necessarily different from any algorithms that have approved CMVP implementations, thus CMVP approved software shall be used where feasible. The CMVP web site is *http://csrc.nist.gov/cryptval.*

C.3 Split Process Independent Verification Systems

This section contains characteristics specific to split process IV systems. The characteristics build on and are in addition to the core characteristics for IV systems. Split process systems consist of separate vote capture and verification stations, i.e., two physical devices. A voter inserts an object called a token into the capture station to make ballot selections and then takes the token object to the verification station to review and store his or her votes. Two records of the vote are created: one on the token object and one by the verification station.

C.3.1 Capture and Verification Stations

• The verification station is able to add information to the token object but cannot change prior recorded information.

• The capture and verification stations do not permit any communications between them except via the token object.

• The verification station shall log all rejected votes, including the precise contents of the votes and the identifier of the token object.

Discussion: The voter could reject and thereby void his or her ballot. This is to prevent the verification station from recording ballot selections that are different from what was entered at the capture station.

• The capture and verification stations could be purchased from different manufacturers and could use different operating systems.

Discussion: The greater the independence of the capture and verification stations, the less likely they could be compromised by the same threats, e.g., software viruses, or by a single conspiracy.

C.3.2 Data Formats for Token Objects

• The format for data written to the token object is specified and publicly available for use without licensing fees.

• The verification station verifies the correctness of the data on the token object and provides an indication of any errors to the voter.

Discussion: The verification station needs to verify that the data written to the token object was formatted properly according to the format specification and reject improperly formatted data. It also checks that the votes are consistent with the voting instructions, e.g., ''vote for one, vote for two.''

• The record on the token object is digitally signed using a private key known only to the vote capture station and whose public key is distributed in an authenticated way to auditing systems and the verification station.

• The record created by the verification station is digitally signed using a private key known only to the verification station and whose public key is distributed in an authenticated way to auditing systems.

• The capture station associates a unique identifier with each record of

voter selections to identify that record and link it to the corresponding record created by the verification station.

Discussion: The identifier serves the purpose of uniquely identifying the record to identify duplicates and/or for cross-checking two record types.

• The records from the verification station are randomly shuffled in memory when exported, so that the order of the records cannot be used to relate the votes to a specific voter.

• Rejected token objects are stored separately from accepted token objects for later auditing.

C.3.3 Storage and Communications of Records

• The verification station exports its records of voter choices accompanied by a digital signature on the entire set of electronic records and their associated digital signatures.

Discussion: This is necessary to determine if records are missing or substituted.

• The token objects are stored and transported in a physically secure way, using chain-of-custody mechanisms to ensure their integrity.

• The records from each station are randomly shuffled, so that an attacker learning the contents of those records at any point in the voting process can learn nothing about the order of votes cast.

C.4 Witness IV Systems

Witness IV systems are composed of two physically separate devices: the vote capture station that captures and stores records of voter selections, and the witness device that captures voter verifications of the records at the vote capture station. Because there are two devices, a number of the definitions for split verification systems apply equally well to witness systems. Because the vote capture station is in essence a DRE, a number of the definitions for DREs with VVPAT also apply to vote capture stations. A witness system fits somewhat loosely in the independent verification category because the voter performs only an indirect verification of ballot choices at the DRE. It is important that the witness device be tested extensively for accuracy and reliability and that malfunctions of the device be made immediately obvious to the voter and poll workers.

• A witness device records only a voter's verification at the vote capture station and stores the record so that it can be used for audit.

• A witness device acts as a passive device that cannot perform any operation with respect to the voting station other than to capture voter ballot selections as the voter verifies them.

Discussion: The witness device is synchronized with the voter verification of the ballot selections.

• A witness device, if attached to the vote capture station, is attached such that it can capture only the voter's verification of ballot selections.

Discussion: For example, the witness device could be connected only to the display unit and not the vote capture station's memory or disk drive.

• The vote capture station is able to detect whether the witness device is connected or in operation.

Discussion: If the witness device is not in operation, the vote capture station should cease recording voter selections.

• The vote capture station and the witness device are connected using a publicly available, published communications interface, such as RS232 or USB.

• Because voters must trust that the witness device records their verifications accurately, assessments of its software and functionality are straightforward, readily performed, and include extensive evaluation and penetration testing above and beyond what may be performed on voting systems that do not contain witness devices.

Discussion: Witness device manufacturers will be required to fully document their systems and conduct stringent testing.

• A voter should be able to inspect the record of his or her verification upon request.

Discussion: It is desirable that a voter have the ability to verify that the witness device is operating as specified.

• The witness device clearly indicates any malfunction in a way that is obvious to the voter and poll workers.

• The records captured by the witness device are able to be used in highly accurate verifications of the voting records of the voting station.

• The records contain unique identifiers that correspond to records stored by the vote capture station.

• The records are digitally signed by the witness device so that the integrity and authenticity of its records can be verified.

• A witness device is able to export its records in an open, nonproprietary format such that the records can be used in automated audits.

• The records are stored in the witness device and exported such that voter privacy is protected, e.g., by randomizing the order of the records.

C.5 End to End Cryptographic IV Systems

This section contains very preliminary definitions for end to end cryptographic-based IV systems. They are consistent with the characteristics of IV systems and build on the core characteristics of IV systems.

End to end voting systems use cryptographic mechanisms as a substitute for some physical, computer-security, or procedural mechanisms used to secure other types of voting systems. These cryptographic mechanisms can be used by a voter to verify that ballot selections were recorded correctly and counted in the election. Some auditing procedures normally performed by voting officials at the tabulation center can be done by voters or their designated representatives, using receipts issued by the voting system that work in conjunction with the cryptographic mechanisms. Typically, multiple individuals, known as designated trustees, hold key information that is combined to form encryption and decryption keys; thus, no one person is able to encrypt or decrypt. Several types of cryptographic voting approaches have been proposed or implemented, with varying properties. There are many cryptographic techniques (such as secure multiparty computation and homomorphic) that could be applied in novel ways in future voting systems.

• End to end systems record voters ballot selections at electronic voting machines and encrypt the records of votes for later counting by designated trustees.

Discussion: The voting station would operate much as a DRE.

• End to end systems produce a receipt that can be used by the voter in a process defined by voting officials that would enable the voter to verify that the voter's ballot selections were recorded correctly and counted in the election.

Discussion: The receipt could have a variety of different forms but likely would be printed on paper for the voter's ease of handling.

• No one designated trustee is able to decrypt the records; decryption of the records is performed by a process that involves multiple designated trustees.

• The receipt preserves voter privacy by not containing any information that can be used to show the voter's selections.

• The process used to verify that ballot selections were recorded correctly and counted preserves voter privacy by not revealing any information that can be used to identify the voter's selections.

• End to end systems store backup records of voter ballot selections that can be used in contingencies such as damage or loss of its counted records.

Discussion: This is necessary because the handling of the encrypted records requires the same chain of custody procedures as records produced by other voting systems and are thus subject to loss or damage. This could be paper for example.

• The backup records contain unique identifiers that correspond to unique identifiers in its counted records, and the backup records are digitally signed so that they can be verified for their authenticity and integrity in audits.

• Cryptographic software in end to end systems is documented thoroughly and subject to extensive verification testing for correctness. The documentation includes extensive discussion of how cryptographic keys are to be generated, distributed, managed, used, certified, and destroyed.

• Vote capture stations used in end to end systems must meet all the security, usability, and accessibility requirements.

• Reliability, usability, and accessibility requirements for printers in other voting systems apply as well to receipt printers used in end to end systems.

• Trustee systems are subject to the same evaluations and assessments as other voting systems.

• Systems for verifying that voter ballot selections were recorded properly and counted are implemented in a robust secure manner.

Discussion: Many of the cryptographic approaches have a ''public append-only bulletin board'' as a component; this is an important part of the system and needs to be implemented in a robust secure manner.

Appendix D: Technical Guidance for Color, Contrast, and Text Size

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D Technical Guidance for Color, Contrast, and Text Size

Appendix D: Technical Guidance for Color, Contrast, and Text Size

Although estimates vary, it is generally agreed that there are approximately 10 million visually impaired people in the United States. This estimate includes the 600,000 people who are legally blind. 8.1 million people were estimated to have a functional limitation in seeing in 1994, including both those with ''non-severe limitation'' (e.g., difficulty seeing words and letters) and those with ''severe limitation'' (e.g., unable to see words and letters). Approximately 1.8 million people in the U.S. have severe visual impairments but are not legally blind.[4] Low vision includes dimness of vision, haziness, film over the eye, foggy vision, extreme near-sightedness or far-sightedness, distortion of vision, color distortion or blindness, visual field defects, spots before the eyes, tunnel vision, lack of peripheral vision, abnormal sensitivity to light or glare and night blindness. For the purposes of this discussion low vision is defined as having a visual acuity greater than 20/70.

People with low vision or color blindness will benefit from high contrast and selection of color combinations that are appropriate for their needs. Between 7% and 10% of all men have color vision deficiencies. Certain color combinations in particular cause problems. Therefore, use of color combinations with good contrast is required.

However, some users are very sensitive to very bright displays and cannot use them for long. An overly bright background causes a visual ''white-out'' which makes these users unable to distinguish individual letters. Contrast ratio between 6:1 and 15:1 is optimal.[5]

When color selection is provided the 16-color pallet as used in Microsoft Windows for 16 color displays and recognized by HTML 4.0 provides a sufficient range of both saturated and non-saturated color options. Use of non-saturated color options is an advantage for some people. The use of the 16-color palette or a larger color palette is suggested when voter adjustment of color is provided.

Number	Color name (Color names are per HTML 4.0)	RGB value (Hexadecimal)
1	Black	#000000
2	Blue	#0000FF
3	Lime	#00FF00
4	Red	#FF0000
5	Aqua	#00FFFF
6	Fuchsia	#FF00FF
7	Yellow	#FFFF00
8	White	#FFFFFF
9	Navy	#000080
10	Green	#008000
11	Maroon	#800000
12	Teal	#008080
13	Purple	#800080
14	Olive	#808000
15	Grey	#808080
16	Silver	#C0C0C0

Large fonts provide significant help to users with low or impaired vision. A voting system is required to provide letters of at least 6.3 mm, for capital letters. A capital ''X'' is often used to make this measurement. It is not the size per se, but visual angle that is of primary importance. Visual angle is a measure, in degrees, of the size of the retinal image subtended by a viewed object. It represents the apparent size of an object based on the relationship between an object's distance from the viewer and its size (perpendicular to the viewer's line of sight). An object of constant size will subtend a smaller visual angle as it is moved farther from the viewer. Visual angle is typically defined in terms of minutes of visual arc. For people with normal vision, it is recommended that the height of characters in displayed text or labels be at least 16 minutes of arc (4.6 milliradians), and the preferred character height should be 22 minutes of arc (6.4 milliradians), which is preferred for reading tasks.

[4] See the following sites for futher detail: *http://blue.census.gov/hhes/www/disable, http://www.afb.org/ info_document_view.asp?documentid=1367, http://www.brailleinstitute.org.*

[5] Cushman, W.H. and Rosenberg, D.J., *Human Factors in Product Design*. New York: Elsevier, 1991.

The size required for low vision accessibility is somewhat arbitrary, in that the larger the size the greater the number of low vision voters who can be accommodated. The Usability/Accessibility Task Group for IEEE P1583 recommends 30 minutes of arc, depending upon the presumed viewing distance. A table in the usability section of IEEE P1583 provides the following recommendations based on three possible viewing distances:

- For a distance of 51cm (20in): 4.43mm (.17in).
- For a distance of 64cm (25in): 5.54mm (.22in).
- for a distance of 76cm (30in): 6.65mm (.26in).

People with tunnel vision can only see a small part of the ballot at one time. For these users it is helpful to have letters at the lower end of the font size range in order to allow them to see more letters at the same time. Thus, there is a need to provide font sizes at both ends of the recommended range.

Use of sans serif fonts is also recommended for computer displays. Sans serif fonts have proven to be easier to read on computer screens than stylized fonts.

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Voluntary Voting System Guidelines Overview

The United States Congress passed the Help America Vote Act of 2002 (HAVA) to modernize the administration of federal elections, marking the first time in our nation's history that the federal government has funded an election reform effort. HAVA provides federal funding to help the states meet the law's uniform and non-discretionary administrative requirements, which include the following new programs and procedures: (1) provisional voting, (2) voting information, (3) statewide voter registration lists and identification requirements for first-time registrants, (4) administrative complaint procedures, and (5) updated and upgraded voting equipment.

HAVA also established the U.S. Election Assistance Commission (EAC) to administer the federal funding and to provide guidance to the states in their efforts to comply with the HAVA administrative requirements. Section 202 directs the EAC to adopt voluntary voting system guidelines, and to provide for the testing, certification, decertification, and recertification of voting system hardware and software. The purpose of the guidelines is to provide a set of specifications and requirements against which voting systems can be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems.

This document, the Voluntary Voting System Guidelines (referred to herein as the Guidelines and/or VVSG), is the third iteration of national level voting system standards that has been developed. The Federal Election Commission published the Performance and Test Standards for Punchcard, Marksense and Direct Recording Electronic Voting Systems in 1990. This was followed by the Voting Systems Standards in 2002.

As required by HAVA, the EAC formed the Technical Guidelines Development Committee (TGDC) to develop an initial set of recommendations for the Guidelines. This committee of 15 experts began their work in July 2004 and submitted their recommendations to the EAC in the 9-month timeline prescribed by HAVA. The TGDC was provided with technical support by the National Institute for Standards and Technology (NIST), which was given nearly $3 million dollars by the EAC to complete this work.

The EAC reviewed and revised the TGDC recommendations and, as required by HAVA, published the proposed Guidelines for a 90 day public comment period. The document was also provided to both the Board of Advisors and the Standards Board for their review and comment. During the comment period the EAC conducted 3 public hearings on the Guidelines in New York City, Pasadena and Denver. Over 6000 comments were received from the public and the Boards. Each of these comments was reviewed and considered by the EAC in consultation with NIST in the development of this final version.

Purpose and Scope of the Guidelines

The purpose of the Voluntary Voting System Guidelines is to provide a set of specifications and requirements against which voting systems can be tested to determine if they provide all the basic functionality, accessibility and security capabilities required to ensure the integrity of voting systems. The VVSG specifies the functional requirements, performance characteristics, documentation requirements, and test evaluation criteria for the national certification of voting systems. The VVSG is composed of two volumes: Volume I, Voting System Performance Guidelines and Volume II, National Certification Testing Guidelines.

Effective Date

The 2005 Voluntary Voting System Guidelines will take effect 24 months after their final adoption in December 2005 by the EAC. At that time, all new systems submitted for national certification will be tested for conformance with these guidelines. In addition, if a modification to a system qualified or certified to a previous standard is submitted for national certification after this date, every

component of the modified system will be tested against the 2005 VVSG. All previous versions of national standards will become obsolete at this time. This effective date provision does not have any impact on the mandatory January 1, 2006, deadline for states to comply with the HAVA Section 301 requirements.

Summary of Changes

Volume I of the Guidelines, entitled Voting System Performance Guidelines, includes new requirements for usability, accessibility, voting system software distribution, generation of software reference information, validation of software during voting system setup, and the use of wireless communications. System functional requirements have been revised to comply with HAVA Section 301 requirements. Environmental criteria have been updated. This volume also includes requirements for a voter verifiable paper audit trail component for direct-recording electronic voting systems for use by states that require this feature. In addition, this volume includes an updated glossary and a conformance clause.

Volume II of the Guidelines, entitled National Certification Testing Guidelines, has been revised to reflect the new EAC process for national certification of voting systems. This process was initiated in 2005 and replaces the voting system qualification process conducted by the National Association of State Election Directors (NASED) since 1994. In addition, revisions have been made to the testing procedures to reflect new requirements for the conduct of usability and accessibility testing. Volume II also includes an updated appendix on procedures for testing system error rates. Terminology in both volumes has been revised to reflect new terminology introduced by HAVA.

Volume I: Voting System Performance Guidelines Summary

Volume I, the Voting System Performance Guidelines, describes the requirements for the electronic components of voting systems. It is intended for use by the broadest audience, including voting system developers, manufacturers and suppliers; voting system testing labs; state organizations that certify systems prior to procurement; state and local election officials who procure and deploy voting systems; and public interest organizations that have an interest in voting systems and voting system standards. It contains the following sections:

Section I describes the purpose and scope of the Voting System Performance Guidelines.

Section 2 describes the functional capabilities required of voting systems. This section has been revised to reflect HAVA Section 301 requirements.

Section 3 describes new standards that make voting systems more usable and accessible for as many eligible citizens as possible, whatever their physical abilities, language skills, or experience with technology. This section reflects the HAVA 301 (a)(3) accessibility requirements.

Sections 4 through 6 describe specific performance standards for election system hardware, software, telecommunications, and security. Environmental criteria have been updated in Section 4.

Section 7 describes voting system security requirements and includes new requirements for voting system software distribution, generation of software reference information, validation of software during system setup, and the use of wireless. It also includes requirements for voter verifiable paper audit trail components for direct-recording electronic voting systems.

Sections 8 and 9 describe requirements for vendor quality assurance and configuration management practices and the documentation about these practices required for the EAC certification process.

Appendix A contains a glossary of terms.

Appendix B provides a list of related standards documents incorporated into the Guidelines by reference, documents used in the preparation of the Guidelines, and referenced legislation.

Appendix C presents an introductory discussion of independent verification systems as a potential concept for future voting system security design.

Appendix D contains technical guidance on color, contrast and text size adjustment for individuals with low vision or color blindness.

Volume II: National Certification Testing Guidelines Summary

Volume II, the National Certification Testing Guidelines, is a complementary document to Volume I. Volume II provides an overview and specific detail of the national certification testing process, which is performed by independent voting system test labs accredited by the EAC. It is intended principally for use by vendors: test labs: and election officials who certify, procure, and accept voting systems. This volume contains the following sections:

Section 1 describes the purpose of the National Certification Testing Guidelines.

Section 2 provides a description of the Technical Data Package that vendors are required to submit with their system for certification testing.

Section 3 describes the basic functionality testing requirements.

Sections 4 through 6 define the requirements for hardware, software and system integration testing. Section 6 has been revised to reflect new requirements for usability and accessibility testing.

Section 7 describes the required examination of vendor quality assurance and configuration management practices.

Appendix A provides the requirements for the National Certification Test Plan that is prepared by the voting system test lab and provided to the EAC for review.

Appendix B describes the scope and content of the National Certification Test Report which is prepared by the test lab and delivered to the EAC along with a recommendation for certification.

Appendix C describes the guiding principles used to design the voting system certification testing process. It also contains a revised section on testing system error rates.

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Introduction

1.1 Overview of the National Certification Testing Guidelines

Volume II, National Certification Testing Guidelines, is a complementary document to Volume I, Voting System Performance Guidelines. Volume I specifies the requirements that a voting system must conform to in order to be nationally certified as acceptable for use in federal elections. Volume II describes the testing process that is designed to provide a documented independent verification by an accredited voting system test lab that a voting system has been demonstrated to conform to the Volume I requirements and therefore should receive national certification.

Volume II, National Certification Testing Guidelines, provides the specific detail about the testing process that is needed for the accredited test labs, voting system vendors and election officials participating in the system certification process.

Independent Accredited Test Labs: Test labs that are accredited to perform conformance testing of voting systems will use Volume II to guide the development of test plans, the testing of systems, and the preparation of test reports and recommendations for granting national certification. Organizations wishing to become accredited as voting system test labs can refer to Volume II to understand the requirements and obligations placed on an accredited voting system test lab.

Voting System Vendors: Voting system vendors will use Volume II to guide the design, construction, documentation, internal testing, and maintenance of voting systems. They will also use this document to help define the responsibilities of organizations that support the system, such as suppliers, testers and consultants.

Election Officials: Election officials will use Volume II to guide their state certification, procurement, and acceptance processes and requirements. Certification at the state level may entail system conformance with additional requirements beyond those required for national certification to comply with state election laws or procedures.

1.2 Overview of the National Certification Testing Process

Certification testing encompasses the examination and testing of software; tests of hardware under conditions simulating the intended storage, operation, transportation, and maintenance environments; the inspection and evaluation of system documentation; and operational tests to validate system performance and functioning under normal and abnormal conditions. The testing also evaluates the completeness of the vendor's developmental test program, including the sufficiency of vendor tests conducted to demonstrate compliance with stated system design and performance specifications, and the vendor's documented quality assurance and configuration management practices. The tests address individual system components or elements, as well as the integrated system as a whole.

Beginning in 1994, the National Association of State Election Directors (NASED) began accrediting Independent Test Authorities for the purpose of conducting qualification testing of voting systems. The qualification testing process was originally based on the 1990 voting system standards and evolved to encompass the new requirements contained in the 2002 version of the standards.

The Help America Vote Act (HAVA) directs the U.S. Election Assistance Commission (EAC) to provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories. HAVA also introduces different terminology for these functions. Under the EAC process, test labs are ''accredited'' and voting systems are ''certified.'' The term ''standards'' has been replaced with the term ''Guidelines.'' As prescribed by HAVA, the EAC process was initially based on the 2002 Voting Systems Standards and will transition to the revised standards issued through the 2005 Voluntary Voting System Guidelines.

1.3 Testing Scope

The national certification testing process is intended to discover vulnerabilities that, should they appear in actual election use, could result in failure to complete election operations in a satisfactory manner. There are four focuses that guide the overall process:

- Operational accuracy in the recording and processing of voting data, as measured by target error rate, for which the maximum acceptable error rate is no more than one in ten million ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions
- Operational failures or the number of unrecoverable failures under conditions simulating the intended storage, operation, transportation, and maintenance environments for voting systems, using an actual time-based period of processing test ballots
- System performance and function under normal and abnormal conditions
- Completeness and accuracy of the system documentation and configuration management records to enable purchasing jurisdictions to effectively install, test, and operate the system 1.3.1 Test Categories The certification test procedure is presented in several parts:
- Functionality testing
- Hardware testing
- Software evaluation
- System level integration tests, including audits
- Examination of documented vendor practices for quality assurance and for configuration management

In practice, there may be concurrent indications of hardware and software function, or failure to function, during certain examinations and tests. Operating tests of hardware partially exercise the software as well and therefore supplement software testing. Security tests exercise hardware, software and communications capabilities. Documentation review conducted during software qualification supplements the review undertaken for system-level testing.

Not all systems being tested are required to complete all categories of testing. For example, if a previously certified system has had hardware modifications, the system may be subject only to non-operating environmental stress testing of the modified component and system level integration testing. If a system consisting of general purpose COTS hardware, or one that was previously certified has had modifications to its software, the system is subject only to software testing and system level

integration tests, not hardware testing. However, in all cases the system documentation and configuration management records will be examined to confirm that they completely and accurately reflect the components and component versions that comprise the voting system.

1.3.1.1 Focus of Functionality Tests

Functionality testing is performed to confirm the functional capabilities of a voting system. The accredited test lab designs and performs procedures to test a voting system against the requirements outlined in Volume I, Section 2. In order to best complement the diversity of the voting systems industry, this part of the testing process is not rigidly defined. Although there are basic functionality testing requirements, additions or variations in testing are appropriate depending on the system's use of specific technologies and configurations, the system capabilities, and the outcomes of previous testing.

1.3.1.2 Focus of Hardware Tests

Hardware testing begins with non-operating tests that require the use of an environmental test facility. These are followed by operating tests that are performed partly in an environmental facility and partly in a standard accredited test laboratory or shop environment.

The non-operating tests are intended to evaluate the ability of the system hardware to withstand exposure to the various environmental conditions incidental to voting system storage, maintenance, and transportation. The procedures are based on test methods contained in Military Standards (MIL-STD) 810F, modified where appropriate, and include such tests as: bench handling, vibration, low and high temperature, and humidity.

The operating tests involve running the system for an extended period of time under varying temperatures and voltages. This period of operation ensures with confidence that the hardware meets or exceeds the minimum requirements for reliability, data reading, and processing accuracy contained in Volume I, Section 4. The procedure emphasizes equipment operability and data accuracy; it is not an exhaustive evaluation of all system functions. Moreover, the severity of the test conditions, in most cases, has been reduced from that specified in the Military Standards to reflect commercial and industrial practice.

1.3.1.3 Focus of Software Evaluation

The software tests encompass a number of interrelated examinations, involving assessment of application source code for its compliance with the requirements spelled out in Volume I, Section 5. Essentially, the accredited test lab will look at programming completeness, consistency, correctness, modifiability, structure, and traceability, along with its modularity and construction. The code inspection will be followed by a series of functional tests to verify the proper performance of all system functions controlled by the software.

The accredited test lab may inspect COTS generated software source code in the preparation of test plans and conduct some minimal scanning or sampling to check for embedded code or unauthorized changes. Otherwise, the COTS source code is not subject to the full code review and testing. For purposes of code analysis, the COTS units shall be treated as unexpanded macros.

1.3.1.4 Focus of System Integration Tests

The functionality, hardware, and software certification tests supplement a fuller evaluation performed by the system level integration tests. System level tests focus on these aspects jointly, throughout the full range of system operations. They include tests of fully integrated system components, internal and external system interfaces, usability and accessibility, and security. During this process election management functions, ballot-counting logic, and system capacity are exercised. The process also includes the Physical Configuration Audit (PCA) and the Functional Configuration Audit (FCA).

The accredited test lab tests the interface of all system modules and subsystems with each other against the vendor's specifications. Some systems use telecommunications capabilities as defined in Volume 1, Section 6. For those systems that do use such capabilities, components that are located at the poll site or separate vote counting site are tested for effective interface, accurate vote transmission, failure detection, and failure recovery. For voting systems that use telecommunications lines or networks that are not under the control of the vendor (e.g., public telephone networks), the accredited test lab tests the interface of vendor-supplied components with these external components for effective interface, vote transmission, failure detection, and failure recovery.

The security tests focus on the ability of the system to detect, prevent, log, and recover from a broad range of security risks as identified in Volume 1, Section 7. The range of risks tested is determined by the design of the system and potential exposure to risk. Regardless of system design and risk profile, all systems are tested for effective access control and physical data security. For systems that use public telecommunications networks, to transmit election management data or official election results (such as ballots or tabulated results), security tests are conducted to ensure that the system provides the necessary identity-proofing, confidentiality, and integrity of transmitted data. The tests determine if the system is capable of detecting, logging, preventing, and recovering from types of attacks known at the time the system is submitted for qualification. The accredited test lab may meet these testing requirements by confirming the proper implementation of proven commercial security software.

The interface between the voting system and its users, both voters and election officials, is a key element of effective system operation and confidence in the system. Guidelines for usability by individual voters with disabilities have been defined in Volume 1, Section 3. Voting systems are tested to ensure that an accessible voting station is included in the system configuration and that its design and operation conforms to these guidelines.

The Physical Configuration Audit (PCA) compares the voting system components submitted for qualification to the vendor's technical documentation and confirms that the documentation submitted meets the requirements of the Guidelines. As part of the PCA, the accredited test lab also witnesses the build of the executable system to ensure that the qualified executable release is built from the tested components.

The Functional Configuration Audit (FCA) is an exhaustive verification of every system function and combination of functions cited in the vendor's documentation. Through use, the FCA verifies the accuracy and completeness of the system Technical Data Package (TDP). The various options of software counting logic that are claimed in the vendor's documentation shall be tested during the system-level FCA. Generic test ballots or test entry data for DRE systems, representing particular sequences of ballot-counting events, will test the counting logic during this audit.

1.3.1.5 Focus of Vendor Documentation Examination

The accredited test lab reviews the documentation submitted by the vendor for its completeness and accuracy in describing the system. The accredited

test lab also reviews the documentation to evaluate the extent to which it conforms to the requirements outlined in Volume 1, Sections 8 and 9 for vendor configuration and quality assurance practices. The accredited test lab examines the conformance of other documentation and information provided by the vendor with the vendor's documented practices for quality assurance and configuration management.

The Guidelines do not require on-site examination of the vendor's quality assurance and configuration management practices during the system development process. However, the accredited test lab conducts several activities while at the vendor site to witness the system build that enable assessment of the vendor's quality assurance and configuration management practices and conformance with them. These include surveys, interviews with individuals at all levels of the development team, and examination of selected internal work products such as system change requests and problem tracking logs.

1.4 Testing Sequence

The overall testing process progresses through several stages involving pre-testing, testing, and post-testing activities. National certification testing involves a series of physical tests and other examinations that are conducted in a particular sequence. The sequence is intended to maximize overall testing effectiveness, as well as conduct testing in as efficient a manner as possible. The accredited test lab will follow the general sequence outlined below. Test anomalies and errors are communicated to the system vendor throughout the process.

a. Initial examination of the system and the technical documentation provided by the vendor to ensure that all components and documentation needed to conduct testing have been submitted, and to help determine the scope and level of effort of testing needed

b. Examination of the vendor's Quality Assurance Program and Configuration Management Plan

c. Development of a detailed system test plan that reflects the scope and complexity of the system, and the status of system certification (i.e., initial certification or a re-certification to incorporate modifications)

d. Code review for selected software components

e. Witnessing of a system 'build' conducted by the vendor to conclusively establish the system version and components being tested

f. Operational testing of hardware components, including environmental tests, to ensure that operational performance requirements are achieved

g. Functional and performance testing of hardware components

h. System installation testing and testing of related documentation for system installation and diagnostic testing i. Functional and performance testing of software components

j. Functional and performance testing of the integrated system, including testing of the full scope of system functionality, performance tests for telecommunications and security; and examination and testing of the System Operations Manual

k. Examination of the system maintenance manual

l. Preparation of the National Certification Test Report

m. Delivery of the National Certification Test Report to the EAC 1.5

Documentation Submitted by Vendor

The vendor shall submit all the documentation necessary for the identification of the full system configuration submitted for evaluation and for the development of an appropriate test plan by the accredited test lab for conducting system certification testing. This documentation collectively is referred to as the Technical Data Package (TDP). The TDP provides information that defines the voting system design, method of operation, and related resources. It provides a system overview and documents the system's functionality, hardware, software, security, test and verification specifications, operations procedures, maintenance procedures, and personnel deployment and training requirements. It also documents the vendor's configuration management plan and quality assurance program. If another version of the system was previously certified, the TDP would also include appropriate system change notes.

1.6 Voting Equipment Submitted by Vendor

Vendors may seek to market a complete voting system or an interoperable component of a voting system. In all instances, vendors shall submit for testing the specific system configuration that will be offered to jurisdictions or that comprises the component to be marketed plus the other components with which the vendor recommends that the component be used. The system submitted for testing shall meet the following requirements:

a. The hardware submitted for certification testing shall be equivalent, in form and function, to the actual production version of the hardware units or the COTS hardware specified for use in the TDP

b. The software submitted for certification testing shall be the exact software that will be used in production units

c. Engineering or developmental prototypes are not acceptable, unless the vendor can show that the equipment to be tested is equivalent to standard production units both in performance and construction

d. Benchmark directory listings shall be submitted for all software/firmware elements (and associated documentation) included in the vendor's release as they would normally be installed upon setup and installation

1.7 Test Applicability

Certification tests are conducted for new systems seeking initial certification as well as for modified versions of systems that have been certified.

1.7.1 General Applicability

Voting system hardware, software, communications and documentation are examined and tested to determine suitability for elections use. Examination and testing addresses the broad range of system functionality and components, including system functionality for pre-voting, voting, and post-voting functions. All products custom designed for election use shall be tested in accordance with the applicable procedures contained in this section. COTS hardware, system software and communications components with proven performance in commercial applications other than elections, however, are exempted from certain portions of the test as long as such products are not modified for use in a voting system. Compatibility of these products with other components of the voting system shall be determined through functional tests integrating these products with the remainder of the system.

1.7.1.1 Hardware

Specifically, the hardware test requirements shall apply in full to all equipment used in a voting system with the exception of the following:

a. Commercially available models of general purpose information technology equipment that have been designed to an ANSI or IEEE standard, have a documented history of successful performance for relevant requirements of the standards, and have demonstrated

compatibility with the voting system components with which they interface

b. Production models of special purpose information technology equipment that have a documented history of successful performance under conditions equivalent to election use for relevant requirements of the standards and that have demonstrated compatibility with the voting system components with which they interface

c. Any ancillary devices that do not perform ballot definition, election database maintenance, ballot reading, ballot data processing, or the production of an official output report; and that do not interact with these system functions (e.g. modems used to broadcast results to the press, printers used to generate unofficial reports, or CRTs used to monitor the vote counting process)

This equipment shall be subject to functional and operating tests performed during software evaluation and system level testing. However, it need not undergo hardware non-operating tests. If the system is composed entirely of off-the-shelf hardware, then the system also shall not be subject to the 48-hour environmental chamber segment of the hardware operating tests.

1.7.1.2 Software

Software certification is applicable to the following:

a. Application programs that control and carry out ballot processing, commencing with the definition of a ballot, and including processing of the ballot image (either from physical ballots or electronically activated images), and ending with the system's access to memory for the generation of output reports

b. Specialized compilers and specialized operating systems associated with ballot processing

c. Standard compilers and operating systems that have been modified for use in the vote counting process

Specialized software for ballot preparation, election programming, vote recording, vote tabulation, vote consolidation and reporting, and audit trail production shall be subjected to code inspection. Functional testing of all these programs during software evaluation and system-level testing shall exercise any specially tailored software off-line from the ballot counting process (e.g. software for preparing ballots and broadcasting results).

1.7.2 Modifications to Certified Systems

Changes introduced after the system has completed certified testing will necessitate further review.

1.7.2.1 General Requirements for Modifications

The accredited test lab will determine tests necessary to certify the modified system based on a review of the nature and scope of changes, and other submitted information including the system documentation, vendor test documentation, configuration management records, and quality assurance information. Based on this review, the accredited test lab may:

a. Determine that a review of all change documentation against the baseline materials is sufficient for recommendation for certification

b. Determine that all changes must be retested against the previously certified version. This will include review of changes to source code, review of all updates to the TDP, and performance of system level and functional tests

c. Determine that the scope of the changes is substantial and will require a complete retest of the hardware, software, and/or telecommunications

1.7.2.2 Basis for Limited Testing Determinations

The accredited test lab may determine that a modified system will be subject only to limited certification testing if the vendor demonstrates that the change does not affect demonstrated compliance with these Guidelines for:

a. Performance of voting system functions

b. Voting system security and privacy

c. Overall flow of system control

d. The manner in which ballots are defined and interpreted, or voting data are processed

Limited testing is intended to facilitate the correction of defects, the incorporation of improvements, the enhancement of portability and flexibility, and the integration of vote-counting software with other systems and election software.

1.8 Certification Test Process

The certification test process may be performed by one or more accredited test labs that together perform the full scope of tests required. Where multiple accredited test labs are involved, testing shall be conducted first for the voting system hardware, firmware, and related documentation; then for the system software and communications; and finally for the integrated system as a whole. Voting system hardware and firmware testing may be performed by one accredited test lab independently of the other testing performed by other accredited test labs. Testing may be coordinated across accredited test labs so that hardware/firmware tested by one accredited test lab can be used in the overall system tests performed by another accredited test lab.

When multiple accredited test labs are being used, the development of the National Certification Test Plan (see Appendix A) and the National Certification Test Report (see Appendix B) shall be coordinated by a lead accredited test lab. The lead lab is responsible for ensuring that all testing has been performed and documented in accordance with the Guidelines.

Whether one or more accredited test labs are used, the testing generally consists of three phases:

- Pre-test Activities
- National Certification Testing
- National Certification Report Issuance and Post-test Activities

1.8.1 Pre-test Activities

Pre-test activities include the request for initiation of testing and the pre-test preparation.

1.8.1.1 Initiation of Testing

Certification testing shall be conducted at the request of the vendor, consistent with the provision of the Guidelines. The vendor shall:

a. Request the performance of certification testing from among the accredited testing laboratories

b. Enter into formal agreement with the accredited test lab for the performance of testing

c. Prepare and submit materials required for testing consistent with the requirements of the Guidelines

Certification testing shall be conducted for the initial version of a voting system as well as for all subsequent changes to the system prior to release for sale or for installation. As described in Subsection 1.6.2, the nature and scope of testing for system changes or new versions shall be determined by the accredited test lab based on the nature and scope of the modifications to the system and on the quality of system documentation and configuration management records submitted by the vendor.

1.8.1.2 Pre-test Preparation

Pre-test preparation encompasses the following activities:

a. The vendor shall prepare and submit a complete TDP to the accredited test lab. The TDP should consist of the materials described in Section 2

b. The accredited test lab shall perform an initial review of the TDP for completeness and clarity and request additional information as required

c. The vendor shall provide additional information, if requested by the accredited test lab

d. The vendor and accredited test lab shall enter into an agreement for the testing to be performed by the accredited test lab in exchange for payment by the vendor

e. The vendor shall deliver to the accredited test lab all hardware and software needed to perform testing

1.8.2 Certification Testing

Certification testing encompasses the preparation of a test plan, the establishment of the appropriate test conditions, the use of appropriate test fixtures, the witness of the system build and installation, the maintenance of certification test data, and the evaluation of the data resulting from tests and examinations.

1.8.2.1 National Certification Test Plan

The accredited test lab shall prepare a National Certification Test Plan to define all tests and procedures required to demonstrate compliance with the Guidelines, including:

Verifying or checking equipment operational status by means of manufacturer operating procedures

a. Establishing the test environment or the special environment required to perform the test

b. Initiating and completing operating modes or conditions necessary to evaluate the specific performance characteristic under test

c. Measuring and recording the value or range of values for the characteristic to be tested, demonstrating expected performance levels

d. Verifying, as above, that the equipment is still in normal condition and status after all required measurements have been obtained

e. Confirming that documentation submitted by the vendor corresponds to the actual configuration and operation of the system

f. Confirming that documented vendor practices for quality assurance and configuration management comply with the Guidelines

A recommended outline for the test plan and the details of required testing are contained in Appendix A.

1.8.2.2 Certification Test Conditions

The accredited test lab may perform the tests in any facility capable of supporting the test environment. The following practices shall be employed:

a. Preparations for testing, arrangement of equipment, verification of equipment status, and the execution of procedures shall be witnessed by at least one independent, qualified observer in the form of an accredited testing laboratory, which shall certify that all test and data acquisition requirements have been satisfied

b. When a test is to be performed at ''standard'' or ''ambient'' conditions, this requirement shall refer to a nominal laboratory or office environment, with a temperature in the range of 68 to 75 degrees Fahrenheit, and prevailing atmospheric pressure and relative humidity

c. Otherwise, all tests shall be performed at the required temperature and electrical supply voltage, regulated within the following tolerances:

i. Temperature—±4 degrees F

ii. Electrical supply voltage—±2 voltage alternating current

1.8.2.3 Certification Test Fixtures

The accredited test lab may use test fixtures or ancillary devices to facilitate testing. These fixtures and devices may include arrangements for automating the operation of voting devices and the acquisition of test data:

a. For systems that use a light source as a means of detecting voter selections, the generation of a suitable optical signal by an external device is acceptable. For systems that rely on the physical activation of a switch, a mechanical fixture with suitable motion generators is acceptable

b. The accredited test lab may use a simulation device, and appropriate software, to speed up the process of testing and eliminate human error in casting test ballots, provided that the simulation covers all voting data detection and control paths that are used in casting an actual ballot. In the event that only partial simulation is achieved, then an independent method and test procedure shall be used to validate the proper operation of those portions of the system not tested by the simulator

c. If the vendor provides a means of simulating the casting of ballots, the simulation device is subject to the same performance, reliability, and quality requirements that apply to the voting device itself

1.8.2.4 Witness of System Build and Installation

Although most testing is conducted at facilities operated by the accredited test lab, a key element of voting system testing shall be conducted at either the vendor site or the accredited test lab site. The accredited test lab responsible for testing voting system software, telecommunications, and integrated system operation (i.e., system level testing) shall witness the final system build, encompassing hardware, software and communications, and the version of associated records and documentation. The system elements witnessed, including their specific versions, shall become the specific system version that is recommended for certification.

1.8.2.5 Certification Test Data Requirements

The following test data practices shall be employed:

a. A test log of the procedure shall be maintained. This log shall identify the system and equipment by model and serial number

b. Test environment conditions shall be noted

c. All operating steps, the identity and quantity of simulated ballots, annotations of output reports, the elapsed time for each procedure step, and observations of equipment performance and, in the case of non-operating hardware tests, the condition of the equipment shall be recorded

1.8.2.6 Certification Test Practices

The accredited test lab shall conduct the examinations and tests defined in the National Certification Test Plan such that all applicable tests identified in Volume II, National Certification Testing Guidelines are executed to determine compliance with the voting system requirements described in Volume I. The accredited testing laboratory shall evaluate data resulting from examinations and tests, employing the following practices:

a. If any malfunction or data error is detected that would be classified as a relevant failure using the criteria in Volume II, National Certification Testing Guidelines, its occurrence, and the duration of operating time preceding it, shall be recorded for inclusion in the analysis of data obtained from the test, and the test shall be interrupted

b. If a malfunction is due to a defect in software, then the test shall be terminated and system returned to the vendor for correction

c. If the malfunction is other than a software defect, and if corrective action is taken to restore the equipment to a fully operational condition within 8 hours, then the test may be resumed at the point of suspension

d. If the test is suspended for an extended period of time, the accredited test lab shall maintain a record of the procedures that have been satisfactorily completed. When testing is resumed at a later date, repetition of the successfully completed procedures may be waived, provided that no design or manufacturing change has been made that would invalidate the earlier test results

e. Any and all failures that occurred as a result of a deficiency shall be classified as purged, and test results

shall be evaluated as though the failure or failures had not occurred, if the:

i. Vendor submits a design, manufacturing, or packaging change notice to correct the deficiency, together with test data to verify the adequacy of the change

ii. Examiner of the equipment agrees that the proposed change will correct the deficiency

iii. Vendor certifies that the change will be incorporated into all existing and future production units

f. If corrective action cannot be successfully taken as defined above, then the test shall be terminated, and the equipment shall be rejected

1.8.3 Post-test Activities

Certification report issuance and post-test activities encompass the activities described below.

a. The accredited test lab may issue interim reports to the vendor, informing the vendor of the testing status, findings to date, and other information.

b. The accredited test lab shall prepare a National Certification Test Report that confirms the voting system has passed the required testing. This report shall include the date testing was completed, the specific system version addressed by the report, the version numbers of all system elements separately identified with a version number by the vendor, and the scope of tests conducted. A recommended outline for the test report is contained in Appendix B.

c. Where a system is tested by multiple accredited test labs, the lead accredited test lab shall prepare a consolidated National Certification Test Report.

d. The accredited test lab shall deliver the report to the vendor and to the EAC.

e. Upon review and acceptance of the test report, EAC shall issue a Certification Number for the system to the vendor and to the accredited test lab. The issuance of a Certification Number indicates that the system has been tested by the accredited test lab for compliance with the Guidelines.

f. This number applies to the system as a whole only for the configuration and versions of the system elements tested and identified in the National Certification Test Report. The Certification Number does not apply to individual system components or untested configurations.

g. The EAC Certification Number is intended for use by the states and their jurisdictions to support state and jurisdiction processes concerning voting systems. States and their jurisdictions shall request National Certification Test Reports based on the EAC Certification Number to support their voting system certification and procurement processes.

1.8.4 Resolution of Testing Issues

Prior to the transition of this function to the EAC, the NASED Voting Systems Board (the Board) was responsible for resolving questions about the application of the Guidelines in the testing of voting systems. The EAC will have a process for the accredited test labs, vendors and election officials to request an interpretation of the Guidelines. The interpretation will be publicly documented for reference by interested parties. The EAC will periodically assess the interpretations provided to determine which topics should be reflected in a future version of the Guidelines.

2 Description of the Technical Data Package

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2 Description of the Technical Data Package

2.1 Scope

This subsection contains a description of vendor documentation relating to the voting system that shall be submitted with the system as a precondition of national certification testing. These items are necessary to define the product and its method of operation; to provide technical and test data supporting the vendor's claims of the system's functional capabilities and performance levels; and to document instructions and procedures governing system operation and field maintenance. Any information relevant to the system evaluation shall be submitted to include source code, object code, and sample output report formats.

Both formal documentation and notes of the vendor's system development

process shall be submitted for qualification tests. Documentation describing the system development process permits assessment of the vendor's systematic efforts to develop and test the system and correct defects. Inspection of this process also enables the design of a more precise test plan. If the vendor's developmental test data are incomplete, the accredited test lab shall design and conduct the appropriate tests to cover all elements of the system and to ensure conformance with all system requirements.

2.1.1 Content and Format

The content of the Technical Data Package (TDP) is intended to provide clear, complete descriptions of the following information about the system:

- Overall system design, including subsystems, modules and the interfaces among them
- Specific functional capabilities provided by the system
- Performance and design specifications
- Design constraints, applicable standards, and compatibility requirements
- Personnel, equipment, and facility requirements for system operation, maintenance, and logistical support
- Vendor practices for assuring system quality during the system's development and subsequent maintenance
- Vendor practices for managing the configuration of the system during development and for modifications to the system throughout its life cycle

The vendor shall provide a list of all documents submitted controlling the design, construction, operation, and maintenance of the system. Documents shall be listed in order of precedence.

2.1.1.1 Required Content for Initial Certification

At minimum, the TDP shall contain the following documentation:

- System configuration overview
- System functionality description
- System hardware specifications
- Software design and specifications
- System test and verification specifications
- System security specifications
- User/system operations procedures
- System maintenance procedures
- Personnel deployment and training requirements
- Configuration management plan
- Quality assurance program
- System change notes

2.1.1.2 Required Content for System Changes and Re-certification

For systems seeking re-certification, vendors shall submit System Change Notes as described in Subsection 2.13, as well as current versions of all documents that have been updated to reflect system changes.

Vendors may also submit other information relevant to the evaluation of the system, such as test documentation, and records of the system's performance history, failure analysis and corrective actions.

2.1.1.3 Format

The requirements for formatting the TDP are general in nature; specific format details are of the vendor's choosing. The TDP shall include a detailed table of contents for the required documents, an abstract of each document and a listing of each of the informational sections and appendices presented. A cross-index shall be provided indicating the portions of the documents that are responsive to documentation requirements for any item presented.

2.1.2 Other Uses for Documentation

Although all of the TDP documentation is required for national certification testing, some of these same items may also be required during the state certification process and local level acceptance testing. Therefore, it is recommended that the technical documentation required for certification and acceptance testing be deposited in escrow.

2.1.3 Protection of Proprietary Information

The vendor shall identify all documents, or portions of documents, containing proprietary information not approved for public release. Any person or accredited test lab receiving proprietary information shall agree to use it solely for the purpose of analyzing and testing the system, and shall agree to refrain from otherwise using the proprietary information or disclosing it to any other person or agency without the prior written consent of the vendor, unless disclosure is legally compelled.

2.2 System Overview

In the system overview, the vendor shall provide information that enables the accredited test lab to identify the functional and physical components of the system, how the components are structured, and the interfaces between them.

2.2.1 System Description

The system description shall include written descriptions, drawings and diagrams that present:

- A description of the functional components (or subsystems) as defined by the vendor (e.g., environment, election management and control, vote recording, vote conversion, reporting, and their logical relationships)
- A description of the operational environment of the system that provides an overview of the hardware, software, and communications structure
- A concept of operations that explains each system function, and how the function is achieved in the design
- Descriptions of the functional and physical interfaces between subsystems and components
- Identification of all COTS hardware and software products and communications services used in the development and/or operation of the voting system, identifying the name, vendor, and version used for each such component, including:
  - Operating systems
  - Database software
  - Communications routers
  - Modem drivers
  - Dial-up networking software
- Interfaces among internal components, and interfaces with external systems. For components that interface with other components for which multiple products may be used, the TDP shall provide an identification of:
  - File specifications, data objects, or other means used for information exchange
  - The public standard used for such file specifications, data objects, or other means
- Benchmark directory listings for all software (including firmware elements) and associated documentation included in the vendor's release in the order in which each piece of software would normally be installed upon system setup and installation

2.2.2 System Performance

The vendor shall provide system performance information including:

- The performance characteristics of each operating mode and function in terms of expected and maximum speed, throughput capacity, maximum volume (maximum number of voting positions and maximum number of ballot styles supported), and processing frequency
- Quality attributes such as reliability, maintainability, availability, usability, and portability
- Provisions for safety, security, privacy, and continuity of operation
- Design constraints, applicable standards, and compatibility requirements

2.3 System Functionality Description

The vendor shall declare the scope of the system's functional capabilities, thereby establishing the performance, design, test, manufacture, and acceptance context for the system.

The vendor shall provide a listing of the system's functional processing capabilities, encompassing capabilities required by the Guidelines and any additional capabilities provided by the system. This listing shall provide a simple description of each capability. Detailed specifications shall be provided in other documentation required for the TDP.

The vendor shall organize the presentation of required capabilities in a manner that corresponds to the structure and sequence of functional capabilities indicated in Volume I, Section 2. The contents of Volume I, Section 2 may be used as the basis for a checklist to indicate the specific functions provided and those not provided by the system

Additional capabilities shall be clearly indicated. They may be presented using the same structure as that used for required capabilities (i.e., overall system capabilities, pre-voting functions, voting functions, post-voting functions), or may be presented in another format of the vendor's choosing

Required capabilities that may be bypassed or deactivated during installation or operation by the user shall be clearly indicated

Additional capabilities that function only when activated during installation or operation by the user shall be clearly indicated

Additional capabilities that normally are active but may be bypassed or deactivated during installation or operation by the user shall be clearly indicated

2.4 System Hardware Specification

The vendor shall expand on the system overview by providing detailed specifications of the hardware components of the system, including specifications of hardware used to support the telecommunications capabilities of the system, if applicable.

2.4.1 System Hardware Characteristics

The vendor shall provide a detailed discussion of the characteristics of the system, indicating how the hardware meets individual requirements defined in Volume I, Section 4, including:

Performance characteristics: This discussion addresses basic system performance attributes and operational scenarios that describe the manner in which system functions are invoked, describe environmental capabilities, describe life expectancy, and describe any other essential aspects of system performance

Physical characteristics: This discussion addresses suitability for intended use, requirements for transportation and storage, health and safety criteria, security criteria, and vulnerability to adverse environmental factors

Reliability: This discussion addresses system and component reliability stated in terms of the system's operating functions, and identification of items that require special handling or operation to sustain system reliability

Maintainability: Maintainability represents the ease with which maintenance actions can be performed based on the design characteristics of equipment and software and the processes the vendor and election officials have in place for preventing failures and for reacting to failures. Maintainability includes the ability of equipment and software to self-diagnose problems and make non-technical election workers aware of a problem. Maintainability also addresses a range of scheduled and unscheduled events

Environmental conditions: This discussion addresses the ability of the system to withstand natural environments, and operational constraints in normal and test environments, including all requirements and restrictions regarding electrical service, telecommunications services, environmental protection, and any additional facilities or resources required to install and operate the system

2.4.2 Design and Construction

The vendor shall provide sufficient data, or references to data, to identify unequivocally the details of the system configuration submitted for testing. The vendor shall provide a list of materials and components used in the system and a description of their assembly into major system components and the system as a whole. Paragraphs and diagrams shall be provided that describe:

Materials, processes, and parts used in the system, their assembly, and the configuration control measures to ensure compliance with the system specification

The electromagnetic environment generated by the system

Operator and voter safety considerations, and any constraints on system operations or the use environment

Human factors considerations, including provisions for access by disabled voters

2.5 Software Design and Specification

The vendor shall expand on the system overview by providing detailed specifications of the software components of the system, including software used to support the telecommunications capabilities of the system, if applicable.

2.5.1 Purpose and Scope

The vendor shall describe the function or functions that are performed by the software programs that comprise the system, including software used to support the telecommunications capabilities of the system, if applicable.

2.5.2 Applicable Documents

The vendor shall list all documents controlling the development of the software and its specifications. Documents shall be listed in order of precedence.

2.5.3 Software Overview

The vendor shall provide an overview of the software that includes the following items:

A description of the software system concept, including specific software design objectives, and the logic structure and algorithms used to accomplish these objectives

The general design, operational considerations, and constraints influencing the design of the software

Identification of all software items, indicating items that were:
- Written in-house
- Procured and not modified
- Procured and modified, including descriptions of the modifications to the software and to the default configuration options

Additional information for each item that includes:

Item identification

General description

Software requirements performed by the item
- Identification of interfaces with other items that provide data to, or receive data from, the item
- Concept of execution for the item

The vendor shall also include a certification that procured software items were obtained directly from the manufacturer or a licensed dealer or distributor.

2.5.4 Software Standards and Conventions

The vendor shall provide information that can be used by an accredited test

lab or state certification board to support software analysis and test design. The information shall address standards and conventions developed internally by the vendor as well as published industry standards that have been applied by the vendor. The vendor shall provide information that addresses the following standards and conventions:

Software System development methodology
Software design standards, including internal vendor procedures
Software specification standards, including internal vendor procedures
Software coding standards, including internal vendor procedures
Testing and verification standards, including internal vendor procedures, that can assist in determining the program's correctness and ACCEPT/REJECT criteria
Quality assurance standards or other documents that can be used to examine and test the software. These documents include standards for program flow and control charts, program documentation, test planning, and test data acquisition and reporting

2.5.5 Software Operating Environment

This section shall describe or make reference to all operating environment factors that influence the software design.

2.5.5.1 Hardware Environment and Constraints

The vendor shall identify and describe the hardware characteristics that influence the design of the software, such as:

The logic and arithmetic capability of the processor
Memory read-write characteristics
External memory device characteristics
Peripheral device interface hardware
Data input/output device protocols
Operator controls, indicators, and displays

2.5.5.2 Software Environment

The vendor shall identify the compilers or assemblers used in the generation of executable code, and describe the operating system or system monitor.

2.5.6 Software Functional Specification

The vendor shall provide a description of the operating modes of the system and of software capabilities to perform specific functions.

2.5.6.1 Configurations and Operating Modes

The vendor shall describe all software configurations and operating modes of the system, such as ballot preparation, election programming, preparation for opening the polling place, recording votes and/or counting ballots, closing the polling place, and generating reports. For each software function or operating mode, the vendor shall provide:

A definition of the inputs to the function or mode (with characteristics, tolerances or acceptable ranges, as applicable)
An explanation of how the inputs are processed
A definition of the outputs produced (again, with characteristics, tolerances, or acceptable ranges, as applicable)

2.5.6.2 Software Functions

The vendor shall describe the software's capabilities or methods for detecting or handling:

Exception conditions
System failures
Data input/output errors
Error logging for audit record generation
Production of statistical ballot data
Data quality assessment
Security monitoring and control

2.5.7 Programming Specifications

The vendor shall provide in this section an overview of the software design, its structure, and implementation algorithms and detailed specifications for individual software modules.

2.5.7.1 Programming Specifications Overview

This overview shall include such items as flowcharts, data flow diagrams, and other graphical techniques that facilitate understanding of the programming specifications. This section shall be prepared to facilitate understanding of the internal functioning of the individual software modules. Implementation of the functions shall be described in terms of the software architecture, algorithms, and data structures.

2.5.7.2 Programming Specifications Details

The programming specifications shall describe individual software modules and their component units, if applicable. For each module and unit, the vendor shall provide the following information:

Module and unit design decisions, if any, such as algorithms used
Any constraints, limitations, or unusual features in the design of the software module or unit
The programming language used and rationale for its use, if other than the specified module or unit language
If the software module or unit consists of, or contains, procedural commands (such as menu selections in a database management system for defining forms and reports, on-line queries for database access and manipulation, input to a graphical user interface builder for automated code generation, commands to the operating system, or shell scripts), a list of the procedural commands and reference to user manuals or other documents that explain them
If the software module or unit contains, receives, or outputs data, a description of its inputs, outputs, and other data elements as applicable. (Subsection 2.5.9 describes the requirements for documenting system interfaces.) Data local to the software module or unit shall be described separately from data input to, or output from, the software module or unit
If the software module or unit contains logic, the logic to be used by the software unit, including, as applicable:
  - Conditions in effect within the software module or unit when its execution is initiated
  - Conditions under which control is passed to other software modules or units
  - Response and response time to each input, including data conversion, renaming, and data transfer operations
  - Sequence of operations and dynamically controlled sequencing during the software module's or unit's operation, including:
  - The method for sequence control
  - The logic and input conditions of that method, such as timing variations, priority assignments
  - Data transfer in and out of memory
  - The sensing of discrete input signals, and timing relationships between interrupt operations within the software module or unit
Exception and error handling
If the software module is a database, provide the information described in Subsection 2.5.8

2.5.8 System Database

The vendor shall identify and provide a diagram and narrative description of the system's databases, and any external files used for data input or output. The information provided shall include for each database or external file:

The number of levels of design and the names of those levels (such as conceptual, internal, logical, and physical)
Design conventions and standards (which may be incorporated by reference) needed to understand the design
Identification and description of all database entities and how they are implemented physically (e.g., tables, files)
Entity relationship diagrams and description of relationships
Details of table, record or file contents (as applicable) to include individual data elements and their specifications, including:
- Names/identifiers
- Data type (alphanumeric, integer, etc.)
- Size and format (such as length and punctuation of a character string)
- Units of measurement (such as meters, dollars, nanoseconds)
- Range or enumeration of possible values (such as 0–99)
- Accuracy (how correct) and precision (number of significant digits)
- Priority, timing, frequency, volume, sequencing, and other constraints, such as whether the data element may be updated and whether business rules apply
- Security and privacy constraints
- Sources (setting/sending entities) and recipients (using/receiving entities)

For external files, a description of the procedures for file maintenance, management of access privileges, and security

2.5.9 Interfaces

The vendor shall identify and provide a complete description of all internal and external interfaces, using a combination of text and diagrams.

2.5.9.1 Interface Identification

For each interface identified in the system overview, the vendor shall:
Provide a unique identifier assigned to the interface
Identify the interfacing entities (systems, configuration items, users, etc.) by name, number, version, and documentation references, as applicable
Identify which entities have fixed interface characteristics (and therefore impose interface requirements on interfacing entities) and which are being developed or modified (thus having interface requirements imposed on them)

2.5.9.2 Interface Description

For each interface identified in the system overview, the vendor shall provide information that describes:
The type of interface (such as real-time data transfer, storage-and-retrieval of data) to be implemented
Characteristics of individual data elements that the interfacing entity(ies) will provide, store, send, access, receive, etc., such as:
- Names/identifiers
- Data type (alphanumeric, integer, etc.)
- Size and format (such as length and punctuation of a character string)
- Units of measurement (such as meters, dollars, nanoseconds)
- Range or enumeration of possible values (such as 0–99)
- Accuracy (how correct) and precision (number of significant digits)
- Priority, timing, frequency, volume, sequencing, and other constraints, such as whether the data element may be updated and whether business rules apply
- Security and privacy constraints
- Sources (setting/sending entities) and recipients (using/receiving entities)

Characteristics of communication methods that the interfacing entity(ies) will use for the interface, such as:
- Communication links/bands/frequencies/media and their characteristics
- Message formatting
- Flow control (such as sequence numbering and buffer allocation)
- Data transfer rate, whether periodic/aperiodic, and interval between transfers
- Routing, addressing, and naming conventions
- Transmission services, including priority and grade
- Safety/security/privacy considerations, such as encryption, user authentication, compartmentalization, and auditing

Characteristics of protocols the interfacing entity(ies) will use for the interface, such as:
- Priority/layer of the protocol
- Packeting, including fragmentation and reassembly, routing, and addressing
- Legality checks, error control, and recovery procedures
- Synchronization, including connection establishment, maintenance, termination
- Status, identification, and any other reporting features

Other characteristics, such as physical compatibility of the interfacing entity(ies) (such as dimensions, tolerances, loads, voltages and plug compatibility)

2.5.10 Appendices

The vendor may provide descriptive material and data supplementing the various sections of the body of the Software Specifications. The content and arrangement of appendices shall be at the discretion of the vendor. Topics recommended for amplification or treatment in appendix form include:
Glossary: A listing and brief definition of all software module names and variable names, with reference to their locations in the software structure. Abbreviations, acronyms, and terms should be included, if they are either uncommon in data processing and software development or are used in an unorthodox semantic
References: A list of references to all related vendor documents, data, standards, and technical sources used in software development and testing
Program Analysis: The results of software configuration analysis algorithm analysis and selection, timing studies, and hardware interface studies that are reflected in the final software design and coding

2.6 System Security Specification

Vendors shall submit a system security specification that addresses the security requirements of Volume I, Section 7. This specification shall describe the level of security provided by the system in terms of the specific security risks addressed by the system, the means by which each risk is addressed, the process used to test and verify the effective operation of security capabilities and, for systems that use public telecommunications networks as defined in Volume I, Section 6, the means used to keep the security capabilities of the system current to respond to the evolving threats against these systems.

Information provided by the vendor in this section of the TDP may be duplicative of information required by other sections. Vendors may cross reference to information provided in other sections provided that the means used provides a clear mapping to the requirements of this section.

Information submitted by the vendor shall be used to assist in developing and executing the system certification test plan. The Security Specification shall contain the sections identified below.

2.6.1 Access Control Policy

The vendor shall specify the features and capabilities of the access control policy recommended to purchasing jurisdictions to provide effective voting system security. The access control policy shall address the general features and capabilities and individual access privileges indicated in Volume I, Subsection 7.2.

2.6.2 Access Control Measures

The vendor shall provide a detailed description of all system access control measures and mandatory procedures designed to permit access to system states in accordance with the access policy, and to prevent all other types of access to meet the specific requirements of Volume I, Subsection 7.2.

The vendor also shall define and provide a detailed description of the methods used to preclude unauthorized access to the access control capabilities of the system itself.

2.6.3 Equipment and Data Security

The vendor shall provide a detailed description of system capabilities and mandatory procedures for purchasing jurisdictions to prevent disruption of the voting process and corruption of voting data to meet the specific requirements of Volume I, Subsection 7.3. This information shall address measures for polling place security and central count location security.

2.6.4 Software Installation

The vendor shall provide a detailed description of the system capabilities and mandatory procedures for purchasing jurisdictions to ensure secure software (including firmware) installation to meet the specific requirements of Volume I, Subsection 7.4. This information shall address software installation for all system components.

2.6.5 Telecommunications and Data Transmission Security

The vendor shall provide a detailed description of the system capabilities and mandatory procedures for purchasing jurisdictions to ensure secure data transmission to meet the specific requirements of Volume I, Subsection 7.5:

For all systems, this information shall address access control, and prevention of data interception

For systems that use public communications networks as defined in Volume I, Section 6, this information shall also include:

i. Capabilities used to provide protection against threats to third party products and services

ii. Policies and processes used by the vendor to ensure that such protection is updated to remain effective over time

iii. Policies and procedures used by the vendor to ensure that current versions of such capabilities are distributed to user jurisdictions and are installed effectively by the jurisdiction

iv. A detailed description of the system capabilities and procedures to be employed by the jurisdiction to diagnose the occurrence of a denial of service attack, to use an alternate method of voting, to determine when it is appropriate to resume voting over the network, and to consolidate votes cast using the alternate method

v. A detailed description of all activities to be performed in setting up the system for operation that are mandatory to ensure effective system security, including testing of security before an election

vi. A detailed description of all activities that should be prohibited during system setup and during the timeframe for voting operations, including both the hours when polls are open and when polls are closed

2.6.6 Other Elements of an Effective Security Program

The vendor shall provide a detailed description of the following additional procedures required for use by the purchasing jurisdiction:

Administrative and management controls for the voting system and election management, including access controls Internal security procedures, including operating procedures for maintaining the security of the software for each system function and operating mode

Adherence to, and enforcement of, operational procedures (e.g., effective password management)

Physical facilities and arrangements

Organizational responsibilities and personnel screening

This documentation shall be prepared such that these requirements can be integrated by the jurisdiction into local administrative and operating procedures.

2.7 System Test and Verification Specification

The vendor shall provide test and verification specifications for:

Development test specifications

National certification test specifications

2.7.1 Development Test Specifications

The vendor shall describe the plans, procedures, and data used during software development and system integration to verify system logic correctness, data quality, and security. This description shall include:

Test identification and design, including:

Test structure

Test sequence or progression

Test conditions

Standard test procedures, including any assumptions or constraints

Special purpose test procedures including any assumptions or constraints

Test data; including the data source, whether it is real or simulated, and how test data are controlled

Expected test results

Criteria for evaluating test results

Additional details for these requirements are provided by MIL–STD–498, Software Test Plan and Software Test Description. In the event that test data are not available, the accredited test lab shall design test cases and procedures equivalent to those ordinarily used during product verification.

2.7.2 National Certification Test Specifications

The vendor shall provide specifications for verification and validation of overall software performance. These specifications shall cover:

Control and data input/output

Acceptance criteria

Processing accuracy

Data quality assessment and maintenance

Ballot interpretation logic

Exception handling

Security

Production of audit trails and statistical data

The specifications shall identify procedures for assessing and demonstrating the suitability of the software for election use.

2.8 System Operations Procedures

This documentation shall provide all information necessary for system use by all personnel who support pre-election and election preparation, polling place activities and central counting activities, as applicable, with regard to all system functions and operations identified in Subsection 2.3 above. The nature of the instructions for operating personnel will depend upon the overall system design and required skill level of system operations support personnel.

The system operations procedures shall contain all information that is required for the preparation of detailed system operating procedures, and for operator training, as described below.

2.8.1 Introduction

The vendor shall provide a summary of system operating functions and modes, in sufficient detail to permit understanding of the system's capabilities and constraints. The roles of operating personnel shall be identified and related to the operating modes of

the system. Decision criteria and conditional operator functions (such as error and failure recovery actions) shall be described.

The vendor shall also list all reference and supporting documents pertaining to the use of the system during election operations.

2.8.2 Operational Environment

The vendor shall describe the system environment, and the interface between the user or operator and the system. The vendor shall identify all facilities, furnishings, fixtures, and utilities that will be required for equipment operations, including equipment that operates at the:

Polling place
Central count facility
Other locations

2.8.3 System Installation and Test Specification

The vendor shall provide specifications for validation of system installation, acceptance, and readiness. These specifications shall address all components of the system and all locations of installation (e.g., polling place, central count facility), and shall address all elements of system functionality and operations identified in Subsection 2.3 above, including:

Pre-voting functions
Voting functions
Post-voting functions
General capabilities

These specifications also serve to provide guidance to the procuring agency in developing its acceptance test plan and procedures according to the agency's contract provisions, and the election laws of the state.

2.8.4 Operational Features

The vendor shall provide documentation of system operating features that meets the following requirements:

A detailed description of all input, output, control, and display features accessible to the operator or voter
Examples of simulated interactions to facilitate understanding of the system and its capabilities
Sample data formats and output reports
Illustrate and describe all status indicators and information messages

2.8.5 Operating Procedures

The vendor shall provide documentation of system operating procedures that meets the following requirements:

Provides a detailed description of procedures required to initiate, control, and verify proper system operation
Provides procedures that clearly enable the operator to assess the correct flow of system functions (as evidenced by system-generated status and information messages)
Provides procedures that clearly enable the operator to intervene in system operations to recover from an abnormal system state
Defines and illustrates the procedures and system prompts for situations where operator intervention is required to load, initialize, and start the system
Defines and illustrates procedures to enable and control the external interface to the system operating environment if supporting hardware and software are involved. Such information also shall be provided for the interaction of the system with other data processing systems or data interchange protocols
Provides administrative procedures and off-line operator duties (if any) if they relate to the initiation or termination of system operations, to the assessment of system status, or to the development of an audit trail
Supports successful ballot and program installation and control by election officials, provides a detailed work plan or other form of documentation providing a schedule and steps for the software and ballot installation, which includes a table outlining the key dates, events and deliverables
Supports diagnostic testing, specifies diagnostic tests that may be employed to identify problems in the system, verifies the correction of maintenance problems; and isolates and diagnoses faults from various system states

2.8.6 Operations Support

The vendor shall provide documentation of system operating procedures that meets the following requirements:

Defines the procedures required to support system acquisition, installation, and readiness testing. These procedures may be provided by reference, if they are contained either in the system hardware specifications, or in other vendor documentation
Describes procedures for providing technical support, system maintenance and correction of defects, and for incorporating hardware upgrades and new software releases

2.8.7 Appendices

The vendor may provide descriptive material and data supplementing the various sections of the body of the System Operations Manual. The content and arrangement of appendices shall be at the discretion of the vendor. Topics recommended for discussion include:

Glossary: A listing and brief definition of all terms that may be unfamiliar to persons not trained in either voting systems or computer operations
References: A list of references to all vendor documents and to other sources related to operation of the system
Detailed Examples: Detailed scenarios that outline correct system responses to faulty operator input; Alternative procedures may be specified depending on the system state
Manufacturer's Recommended Security Procedures: This appendix shall contain the security procedures that are to be executed by the system operator

2.9 System Maintenance Manual

The system maintenance procedures shall provide information in sufficient detail to support election workers, information systems personnel, or maintenance personnel in the adjustment or removal and replacement of components or modules in the field. Technical documentation needed solely to support the repair of defective components or modules ordinarily done by the manufacturer or software developer is not required.

Recommended service actions to correct malfunctions or problems shall be discussed, along with personnel and expertise required to repair and maintain the system; and equipment, materials, and facilities needed for proper maintenance. This manual shall include the sections listed below.

2.9.1 Introduction

The vendor shall describe the structure and function of the equipment (and related software) for election preparation, programming, vote recording, tabulation, and reporting in sufficient detail to provide an overview of the system for maintenance, and for identification of faulty hardware or software. The description shall include a concept of operations that fully describes such items as:

The electrical and mechanical functions of the equipment
How the processes of ballot handling and reading are performed (paper-based systems)
How vote selection and casting of the ballot are performed (DRE systems); How transmission of data over a network is performed (DRE systems, where applicable)
How data are handled in the processor and memory units

How data output is initiated and controlled
How power is converted or conditioned
How test and diagnostic information is acquired and used

2.9.2 Maintenance Procedures

The vendor shall describe preventive and corrective maintenance procedures for hardware and software.

2.9.2.1 Preventive Maintenance Procedures

The vendor shall identify and describe:

All required and recommended preventive maintenance tasks, including software tasks such as software backup, database performance analysis, and database tuning
Number and skill levels of personnel required for each task
Parts, supplies, special maintenance equipment, software tools, or other resources needed for maintenance
Any maintenance tasks that must be coordinated with the vendor or a third party (such as coordination that may be needed for off-the-shelf items used in the system)

2.9.2.2 Corrective Maintenance Procedures

The vendor shall provide fault detection, fault isolation, correction procedures, and logic diagrams for all operational abnormalities identified by design analysis and operating experience.

The vendor shall identify specific procedures to be used in diagnosing and correcting problems in the system hardware (or user-controlled software). Descriptions shall include:

Steps to replace failed or deficient equipment
Steps to correct deficiencies or faulty operations in software
Modifications that are necessary to coordinate any modified or upgraded software with other software modules
The number and skill levels of personnel needed to accomplish each procedure
Special maintenance equipment, parts, supplies, or other resources needed to accomplish each procedure
Any coordination required with the vendor, or other party, for off the shelf items

2.9.3 Maintenance Equipment

The vendor shall identify and describe any special purpose test or maintenance equipment recommended for fault isolation and diagnostic purposes.

2.9.4 Parts and Materials

Vendors shall provide detailed documentation of parts and materials needed to operate and maintain the system. Additional requirements apply for paper-based systems.

2.9.4.1 Common Standards

The vendor shall provide a complete list of approved parts and materials needed for maintenance. This list shall contain sufficient descriptive information to identify all parts by:

Type
Size
Value or range
Manufacturer's designation
Individual quantities needed
Sources from which they may be obtained

2.9.4.2 Paper-based Systems

For marking devices manufactured by multiple external sources, the vendor shall provide a listing of sources and model numbers that are compatible with the system.

The TDP shall specify the required paper stock, size, shape, opacity, color, watermarks, field layout, orientation, size and style of printing, size and location of punch or mark fields used for vote response fields and to identify unique ballot formats, placement of alignment marks, ink for printing, and folding and bleed-through limitations for preparation of ballots that are compatible with the system.

2.9.5 Maintenance Facilities and Support

The vendor shall identify all facilities, furnishings, fixtures, and utilities that will be required for equipment maintenance. In addition, vendors shall specify the assumptions made with regard to any parameters that impact the mean time to repair. These factors shall include at a minimum:

Recommended number and locations of spare devices or components to be kept on hand for repair purposes during periods of system operation
Recommended number and locations of qualified maintenance personnel who need to be available to support repair calls during system operation
Organizational affiliation (i.e., jurisdiction, vendor) of qualified maintenance personnel

2.9.6 Appendices

The vendor may provide descriptive material and data supplementing the various sections of the body of the System Maintenance Manual. The content and arrangement of appendices shall be at the discretion of the vendor.

Topics recommended for amplification or treatment in appendices include:

Glossary: A listing and brief definition of all terms that may be unfamiliar to persons not trained in either voting systems or computer maintenance
References: A list of references to all vendor documents and other sources related to maintenance of the system
Detailed Examples: Detailed scenarios that outline correct system responses to every conceivable faulty operator input; alternative procedures may be specified depending on the system state
Maintenance and Security Procedures: This appendix shall contain technical illustrations and schematic representations of electronic circuits unique to the system

2.10 Personnel Deployment and Training Requirements

The vendor shall describe the personnel resources and training required for a jurisdiction to operate and maintain the system.

2.10.1 Personnel

The vendor shall specify the number of personnel and skill levels required to perform each of the following functions:

Pre-election or election preparation functions (*e.g.*, entering an election, contest and candidate information; designing a ballot; generating pre-election reports
System operations for voting system functions performed at the polling place
System operations for voting system functions performed at the central count facility
Preventive maintenance tasks
Diagnosis of faulty hardware or software
Corrective maintenance tasks
Testing to verify the correction of problems

A description shall be presented of which functions may be carried out by user personnel, and those that must be performed by vendor personnel.

2.10.2 Training

The vendor shall specify requirements for the orientation and training of the following personnel:

Poll workers supporting polling place operations
System support personnel involved in election programming
User system maintenance technicians
Network/system administration personnel (if a network is used)
Information systems personnel
Vendor personnel

2.11 Configuration Management Plan

Vendors shall submit a Configuration Management Plan that addresses the

configuration management requirements of Volume I, Section 9. This plan shall describe all policies, processes, and procedures employed by the vendor to carry out these requirements. Information submitted by the vendor shall be used by the accredited test lab to assist in developing and executing the system certification test plan. This information is particularly important to support the design of test plans for system modifications. A well-organized, robust and detailed Configuration Management Plan will enable the accredited test lab to more readily determine the nature and scope of tests needed to fully test the modifications. The Configuration Management Plan shall contain the sections identified below.

2.11.1 Configuration Management Policy

The vendor shall provide a description of its organizational policies for configuration management, addressing the specific requirements of Volume I, Subsection 9.2. These requirements pertain to:

Scope and nature of configuration management program activities
Breadth of application of vendor's policy and practices to the voting system

2.11.2 Configuration Identification

The vendor shall provide a description of the procedures and naming conventions used to address the specific requirements of Volume I, Subsection 9.3. These requirements pertain to:

Classifying configuration items into categories and subcategories
Uniquely numbering or otherwise identifying configuration items
Naming configuration items

2.11.3 Baseline and Promotion

The vendor shall provide a description of the procedures and naming conventions used to address the specific requirements of Volume I, Subsection 9.4. These requirements pertain to:

Establishing a particular instance of a system component as the starting baseline
Promoting subsequent instances of a component to baseline throughout the system development process for the first complete version of the system submitted for testing
Promoting subsequent instances of a component to baseline status as the component is maintained throughout its life cycle until system retirement (i.e., the system is no longer sold or maintained)

2.11.4 Configuration Control Procedures

The vendor shall provide a description of the procedures used by the vendor to approve and implement changes to a configuration item to prevent unauthorized additions, changes, or deletions to address the specific requirements of Volume I, Subsection 9.5. These requirements pertain to:

Developing and maintaining internally developed items
Developing and maintaining third party items
Resolving internally identified defects
Resolving externally identified and reported defects

2.11.5 Release Process

The vendor shall provide a description of the contents of a system release, and the procedures and related conventions by which the vendor installs, transfers, or migrates the system to accredited voting system testing laboratories and customers to address the specific requirements of Volume I, Subsection 9.6. These requirements pertain to:

A first release of the system to an accredited test lab
A subsequent maintenance or upgrade release of a system, or particular components, to an accredited test lab
The initial delivery and installation of the system to a customer
A subsequent maintenance or upgrade release of a system, or particular components, to a customer

2.11.6 Configuration Audits

The vendor shall provide a description of the procedures and related conventions for the two audits required by Volume I, Subsection 9.7. These requirements pertain to:

Physical configuration audit that verifies the voting system components submitted for certification testing to the vendor's technical documentation
Functional configuration audit that verifies the system performs all the functions described in the system documentation

2.11.7 Configuration Management Resources

The vendor shall provide a description of the procedures and related conventions for maintaining information about configuration management tools required by Volume I, Subsection 9.8. These requirements pertain to information regarding:

Specific tools used, current version, and operating environment
Physical location of the tools, including designation of computer directories and files
Procedures and training materials for using the tools

2.12 Quality Assurance Program

Vendors shall submit a Quality Assurance Program that addresses the quality assurance requirements of Volume I, Section 8. This plan shall describe all policies, processes, and procedures employed by the vendor to ensure the overall quality of the system for its initial development and release and for subsequent modifications and releases. This information is particularly important to support the design of test plans by the accredited test lab. A well-organized, robust and detailed Quality Assurance Program will enable the accredited test lab to more readily determine the nature and scope of tests needed to test the system appropriately. The Quality Assurance Program shall, at a minimum, address the topics indicated below.

2.12.1 Quality Assurance Policy

The vendor shall provide a description of its organizational policies for quality assurance, including:

Scope and nature of Quality Assurance activities
Breadth of application of vendor's policy and practices to the voting system

2.12.2 Parts and Materials Tests

The vendor shall provide a description of its practices for parts and materials tests and examinations that meet the requirements of Volume I, Subsection 8.5.

2.12.3 Quality Conformance Inspections

The vendor shall provide a description of its practices for quality conformance inspections that meet the requirements of Volume I, Subsection 8.6. For each test performed, the record of tests provided shall include:

Test location
Test date
Individual who conducted the test
Test outcomes

2.12.4 Documentation

The vendor shall provide a description of its practices for documentation of the system and system development process that meet the requirements of Volume I, Subsection 8.7.

2.13 System Change Notes

Vendors submitting modifications for a system that has been tested previously

and received national certification shall submit system change notes. These will be used by the accredited test lab to assist in developing and executing the test plan for the modified system. The system change notes shall include the following information:

Summary description of the nature and scope of the changes, and reasons for each change

A listing of the specific changes made, citing the specific system configuration items changed and providing detailed references to the documentation sections changed

The specific sections of the documentation that are changed (or completely revised documents, if more suitable to address a large number of changes)

Documentation of the test plan and procedures executed by the vendor for testing the individual changes and the system as a whole, and records of test results

3 Functionality Testing

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3 Functionality Testing

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3 Functionality Testing

3.1 Scope

This section contains a description of the testing to be performed to confirm the functional capabilities of a voting system submitted for national certification. It describes the scope and basis for functionality testing, outlines the general sequence of tests within the overall test process, and provides guidance on testing for accessibility.

3.2 Breadth of Functionality Testing

In order to best complement the diversity of the voting systems industry, the certification testing process is not rigidly defined. Although there are basic functionality testing requirements, additions or variations in testing are appropriate to the use of specific technologies and configurations, system capabilities, and the outcomes of previous testing.

3.2.1 Basic Functionality Testing Requirements

The accredited test lab shall design and perform procedures to test a voting system against the functional requirements outlined in Volume I, Section 2. Test procedures shall be designed and performed that address:

Overall system capabilities
Pre-voting functions
Voting functions
Post-voting functions
System maintenance
Transportation and storage

The specific procedures to be used shall be identified in the National Certification Test Plan prepared by the accredited test lab. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for independent functionality testing.

Recognizing variations in system design and the technologies employed by different vendors, the accredited test lab shall design test procedures that account for such variations and reflect the system-specific functional capabilities in Volume I, Section 2.

3.2.2 Testing to Reflect Technologies

Voting systems are not designed according to a standard design template. Instead, system design reflects the vendor's selections from a variety of technologies and design configurations. Such variation is recognized in the definitions of voting systems in Volume I, Section 1, and serves as the basis for delineating various functional capability requirements.

Functional capabilities will vary according to the relative complexity of a system and the manner in which the system integrates various technologies. Therefore, the testing procedure designed and performed for a particular system shall reflect the specific technologies and design configurations used by that system.

3.2.3 Testing to Reflect Additional Capabilities

The requirements for voting system functionality provided by Volume I, Section 2 reflect a minimum set of capabilities. Vendors may, and often do, provide additional capabilities in systems in order to respond to the requirements of individual states. These additional capabilities shall be identified by the vendor within the TDP, as described in Volume II, Section 2. Based on this information, the accredited test lab shall design and perform system functionality testing for these additional functional capabilities.

3.2.4 Testing to Reflect Previously Tested Capabilities

The required functional capabilities of voting systems defined in Volume I, Section 2 reflect a broad range of system functionality needed to support the full life cycle of an election, including post election activities. Many systems submitted for certification are designed to address this scope, and are to be tested accordingly.

However, some new systems using a combination of new subsystems or system components interfaced with the components of a previously certified system. For example, a vendor can submit a voting system certification testing that has a new DRE voting device, but that integrates the election management component from a previously certified system.

In this situation, the vendor shall identify in the TDP the functional capabilities supported by new subsystems/components and those supported by subsystems/components taken from a previously certified system. The vendor shall indicate in its system design documentation and configuration management records the scope and nature of any modifications made to the re-used subsystems or components. This will assist the accredited test lab to develop efficient test procedures that rely in part on the results of testing of the previously certified subsystems or components.

In this situation the accredited test lab may design and perform a test procedure that draws on the results of testing performed previously on re-used subsystems or components. However, irrespective of previous testing performed, the scope of testing shall include certain functionality tests:

All functionality performed by new subsystems/modules

All functionality performed by modified subsystems/modules

Functionality that is accomplished using any interfaces to new modules, or that shares inputs or outputs from new modules

All functionality related to vote tabulation and election results reporting

All functionality related to audit trail maintenance

3.3 General Test Sequence

There is no required sequence for performing the system certification tests. For a system not previously certified, the accredited test lab may perform tests using generic test ballots, and schedule the tests in a convenient order, provided that prerequisite conditions for each test have been satisfied before the test is initiated.

Regardless of the sequence of testing used, the full certification testing process shall include functionality testing for all system functions of a voting system. Generally, in depth functionality testing will follow testing of the system hardware and the source code review of the software. The accredited test lab will usually conduct functionality testing as an integral element of the system integration testing described in Section 6.

Some functionality tests for the voting functions defined in Volume I, Section 2.may be performed as an integral part of hardware testing, enabling a more efficient testing process. Ballots processed and counted during hardware operating tests for precinct count and central count systems may serve to satisfy part of the functionality testing, provided that the ballots were cast using a test procedure that is equivalent to the procedures indicated below.

3.3.1 Testing in Parallel with Precinct Count Systems

For testing voting functions defined in Volume I, Sections 2, the following procedures shall be performed during the functionality tests of voting equipment and precinct counting equipment.

The procedure to prepare election programs shall:

Verify resident firmware, if any
Prepare software (including firmware) to simulate all ballot format and logic options for which the system will be used
Verify program memory device content
Obtain and design test ballots with formats and voting patterns sufficient to verify performance of the test election programs

The procedures to program precinct ballot counters shall:

Install program and data memory devices, or verify presence if resident
Verify operational status of hardware as specified in Volume II, Section 4

The procedures to simulate opening of the polls shall:

Perform procedures required to prepare hardware for election operations
Obtain ''zero'' printout or other evidence that data memory has been cleared
Verify audit log of pre-election operations
Perform procedure required to open the polling place and enable ballot counting

The procedure to simulate counting ballots shall cast test ballots in a number sufficient to demonstrate proper processing, error handling, and generation of audit data as specified in Volume I, Sections 2 and 5

The procedure to simulate closing of polls shall:

Perform hardware operations required to disable ballot counting and close the polls
Obtain data reports and verify correctness
Obtain audit log and verify correctness

These procedures need not be performed in the sequence listed, provided the necessary precondition of each procedure has been met.

3.3.2 Testing in Parallel with Central Count Systems

For testing voting functions defined in Volume I, Sections 2, the following procedures shall be performed during the functional tests.

The procedure to prepare election programs shall:

Verify resident firmware, if any
Prepare software (including firmware) to simulate all ballot format and logic options for which the system will be used, and to enable simulation of counting ballots from at least 10 polling places or precincts
Verify program memory device content
Procure test ballots with formats, voting patterns, and format identifications sufficient to verify performance of the test election programs

The procedure to simulate counting ballots shall count test ballots in a number sufficient to demonstrate proper processing, error handling, and generation of audit data as specified in Volume I, Sections 2 and 5

The procedure to simulate election reports shall:

Obtain reports at polling places or precinct level
Obtain consolidated reports
Provide query access, if this is a feature of the system
Verify correctness of all reports and queries
Obtain audit log and verify correctness

They need not be performed in the sequence listed, provided the necessary preconditions of each procedure have been met.

3.4 Functionality Testing for Accessibility

Volume I, Section 4 prescribes the requirements for voting system accessibility to satisfy the provisions of HAVA 301(a)(4) and 241(b)(5). To demonstrate conformance to these requirements, vendors shall conduct summative usability tests of accessible voting equipment with blind and visually impaired individuals and individuals lacking fine motor control. A description of the testing performed, the population of test subjects participating, and the results shall be documented using the Common Industry Format (CIF) by the vendor and submitted as part of the Technical Data Package. The test labs shall review this information during the system certification documentation review.

3.5 Testing for Systems that Operate on Personal Computers

For systems intended to use non-standard voting devices, such as a personal computer, provided by the local jurisdiction, the accredited test lab shall conduct functionality tests using hardware provided by the vendor that meets the minimum configuration specifications defined by the vendor.

Section 4 provides additional information on hardware to be used to conduct functionality testing of such voting devices, as well as hardware to be used to conduct security testing and other forms of testing.

4 Hardware Testing

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4 Hardware Testing

4.1 Scope

This section contains a description of the testing to be performed to confirm the proper functioning of the hardware components of a voting system. It describes the scope and basis for functionality testing, required test conditions for conducting hardware testing, guidance for the use of test fixtures, test log data requirements, and test practices for specific non-operating and operating environmental tests.

4.2 Basis of Hardware Testing

This section addresses the focus and applicability of hardware testing and specifies the vendor's obligations to produce hardware to conduct such tests.

4.2.1 Testing Focus and Applicability

The accredited test lab shall design and perform procedures that test the voting system hardware requirements identified in Volume I, Section 4. Test procedures shall be designed and performed for both operating and non-operating environmental tests:

Operating environmental tests apply to the entire system, including hardware components that are used as part of the voting system telecommunications capability

Non-operating tests apply to those elements of the system that are intended for use at poll site voting locations, such as voting machines and precinct counters. These tests address environmental conditions that may be encountered by the voting system hardware at the voting location itself, or while in storage or transit to or from the poll site

Additionally, compatibility of this equipment with the voting system environment shall be determined through functional tests integrating the standard product with the remainder of the system.

All hardware components that are custom-designed for election use shall be tested in accordance with the applicable procedures contained in this section. Unmodified COTS hardware will not be subject to all tests. Generally such equipment has been designed to rigorous industrial standards and has been in wide use, permitting an evaluation of its performance history. To enable reduced testing of such equipment, vendors shall provide the manufacturer specifications and evidence that the equipment has been tested to the equivalent of these Guidelines.

The specific testing procedures to be used shall be identified in the National Certification Test Plan prepared by the accredited test lab. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for hardware testing performed by the accredited test lab.

4.2.2 Hardware Provided by Vendor

The hardware submitted for national certification testing shall be equivalent, in form and function, to the actual production versions of the hardware units. Engineering or developmental prototypes are not acceptable unless the vendor can show that the equipment to be tested is equivalent to standard production units in both performance and construction.

4.3 Test Conditions

Certification tests may be performed in any facility capable of supporting the test environment. Preparation for testing, arrangement of equipment, verification of equipment status, and the execution of procedures shall be witnessed by at least one independent, qualified observer who shall certify that all test and data acquisition requirements have been satisfied.

When a test is to be performed at ''standard'' or ''ambient'' conditions, this requirement shall refer to a nominal laboratory environment at prevailing atmospheric pressure and relative humidity.

Otherwise, all tests shall be performed at the required temperature and electrical supply voltage, regulated within the following tolerances:

Temperature of +/−4 degrees F

Electrical supply voltage +/−2 voltage alternating current

4.4 Test Log Data Requirements

The accredited test lab shall maintain a test log of the procedure employed. This log shall identify the system and equipment by model and serial number. Test environment conditions shall be noted.

In the event that the accredited test lab deems it necessary to deviate from requirements pertaining to the test environment, the equipment arrangement and method of operation, the specified test procedure, or the provision of test instrumentation and facilities, the deviation shall be recorded in the test log. A discussion of the reasons for the deviation and the effect of the deviation on the validity of the test procedure shall also be provided.

4.5 Test Fixtures

The use of test fixtures or ancillary devices to facilitate hardware testing is encouraged. These fixtures and devices may include arrangements for automating the operation of voting devices and the acquisition of test data.

The use of a fixture to ensure correctness in casting ballots by hand is recommended. Such a fixture may consist of a template, with apertures in the desired location, so that selections may be made rapidly. Such a template will eliminate or greatly minimize errors in activating test ballot patterns, while reducing the amount of time required to cast a test ballot.

For systems that use a light source as a means of detecting voter selections, the generation of a suitable optical signal by an external device is acceptable. For systems that rely on the physical activation of a switch, a mechanical fixture with suitable motion generators is acceptable.

To speed up the process of testing and to eliminate human error in casting test ballots the tests may use a simulation device with appropriate software. Such simulation is recommended if it covers all voting data detection and control paths that are used in casting an actual ballot. In the event that only partial simulation is achieved, then an independent method and test procedure must be used to validate the proper operation of those portions of the system not tested by the simulator.

If the vendor provides a means of simulating the casting of ballots, the simulation device is subject to the same performance, reliability, and quality requirements that apply to the voting device itself so as not to contribute errors to the test processes.

4.6 Non-operating Environmental Tests

This section addresses a range of tests for voting machines and precinct counters, as such devices are stored between elections and are transported between the storage facility and polling place.

4.6.1 General

Environmental tests of non-operating equipment are intended to simulate exposure to physical shock and vibration associated with handling and transportation of voting equipment and precinct counters between a jurisdiction's storage facility and precinct polling places. These tests additionally simulate the temperature and humidity conditions that may be encountered during storage in an uncontrolled warehouse environment or precinct environment. The procedures and conditions of these tests correspond generally to those of MIL-STD–810D, ''Environmental Test Methods and Engineering Guidelines,'' 19 July 1983.

In most cases, the severity of the test conditions has been reduced to reflect commercial, rather than military, practice.

Systems exclusively designed with system-level COTS hardware whose configuration has not been modified in any manner are not subject to this segment of hardware testing. Systems made up of individual COTS components such as hard drives, motherboards, and monitors that have been packaged to build a voting machine or other device will be required to undergo the hardware testing.

Prior to each test, the equipment shall be shown to be operational by means of the procedure contained in Subsection 4.6.1.5. The equipment may then be prepared as if for actual transportation or storage, and subjected to appropriate test procedures outlined. After each procedure has been completed, the equipment status will again be verified as in Subsection 4.6.1.5.

The following requirements for equipment preparation, functional tests, and inspections shall apply to each of the non-operating test procedures.

4.6.1.1 Pretest Data

The test technician shall verify that the equipment is capable of normal operation. Equipment identification, environmental conditions, equipment configuration, test instrumentation, operator tasks, time-of-day or test time, and test results shall be recorded.

4.6.1.2 Preparation for Test

The equipment shall be prepared as for the expected non-operating use, as noted below. When preparation for transport between the storage site and the polling place is required, the equipment shall be prepared with any protective enclosures or internal restraints that the vendor specifies for such transport. When preparation for storage is required, the equipment shall be prepared using any protective enclosures or internal restraints that the vendor specifies for storage.

4.6.1.3 Mechanical Inspection and Repair

After the test has been completed, the devices shall be removed from their containers, and any internal restraints shall be removed. The exterior and interior of the devices shall be inspected for evidence of mechanical damage, failure, or dislocation of internal components. Devices shall be adjusted or repaired, if necessary.

4.6.1.4 Electrical Inspection and Adjustment

After completion of the mechanical inspection and repair, routine electrical maintenance and adjustment may be performed, according to the manufacturer's standard procedure.

4.6.1.5 Operational Status Check

When all tests, inspections, repairs, and adjustments have been completed, normal operation shall be verified by conducting an operational status check.

During this process, all equipment shall be operated in a manner and under environmental conditions that simulate election use to verify the functional status of the system. Prior to the conduct of each of the environmental hardware non-operating tests, a supplemental test shall be made to determine that the operational state of the equipment is within acceptable performance limits.

The following procedures shall be followed to verify the equipment status:

Step 1: Arrange the system for normal operation.

Step 2: Turn on power, and allow the system to reach recommended operating temperature.

Step 3: Perform any servicing, and make any adjustments necessary, to achieve operational status.

Step 4: Operate the equipment in all modes, demonstrating all functions and features that would be used during election operations.

Step 5: Verify that all system functions have been correctly executed.

4.6.1.6 Failure Criteria

Upon completion of each non-operating test, the system hardware shall be subject to functional testing to verify continued operability. If any portion of the voting machine or precinct counter hardware fails to remain fully functional, the testing will be suspended until the failure is identified and corrected by the vendor. The system will then be subject to a retest.

4.6.2 Bench Handling Test

The bench handling test simulates stresses faced during maintenance and repair of voting machines and ballot counters.

4.6.2.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL-STD–810D, Method 516.3, Procedure VI.

4.6.2.2 Procedure

Step 1: Place each piece of equipment on a level floor or table, as for normal operation or servicing.

Step 2: Make provision, if necessary, to restrain lateral movement of the equipment or its supports at one edge of the device. Vertical rotation about that edge shall not be restrained.

Step 3: Using that edge as a pivot, raise the opposite edge to an angle of 45 degrees, to a height of four inches above the surface, or until the point of balance has been reached, whichever occurs first.

Step 4: Release the elevated edge so that it may drop to the test surface without restraint.

Step 5: Repeat steps 3 and 4 for a total of six events.

Step 6: Repeat steps 2, 3, and 4 for the other base edges, for a total of 24 drops for each device.

4.6.3 Vibration Test

The vibration test simulates stresses faced during transport of voting machines and ballot counters between storage locations and polling places.

4.6.3.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL-STD–810D, Method 514.3, Category 1-Basic Transportation, Common Carrier.

4.6.3.2 Procedure

Step 1: Install the test item in its transit or combination case as prepared for transport.

Step 2: Attach instrumentation as required to measure the applied excitation.

Step 3: Mount the equipment on a vibration table with the axis of excitation along the vertical axis of the equipment.

Step 4: Apply excitation as shown in MIL–STD–810D, Method 514.3–1, ''Basic transportation, common carrier, vertical axis'', with low frequency excitation cutoff at 10 Hz, for a period of 30 minutes.

Step 5: Repeat steps 2 and 3 for the transverse and longitudinal axes of the equipment with the excitation profiles shown in Figures 514.3–2 and 514.3–3, respectively. (Note: The total excitation period equals 90 minutes, with 30 minutes excitation along each axis.)

Step 6: Remove the test item from its transit or combination case and verify its continued operability.

4.6.4 Low Temperature Test

The low temperature test simulates stresses faced during storage of voting machines and ballot counters.

4.6.4.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL–STD–810D, Method 502.2, Procedure I–Storage. The minimum temperature shall be −4 degrees F.

4.6.4.2 Procedure

Step 1: Arrange the equipment as for storage. Install it in the test chamber.

Step 2: Lower the internal temperature of the chamber at any convenient rate, but not so rapidly as to cause condensation in the chamber, and in any case no more rapidly than 10 degrees F per minute, until an internal temperature of −4 degrees F has been reached.

Step 3: Allow the chamber temperature to stabilize. Maintain this temperature for a period of 4 hours after stabilization.

Step 4: Allow the internal temperature of the chamber to return to standard laboratory conditions, at a rate not exceeding 10 degrees F per minute.

Step 5: Allow the internal temperature of the equipment to stabilize at laboratory conditions before removing it from the chamber.

Step 6: Remove the equipment from the chamber and from its containers, and inspect the equipment for evidence of damage.

Step 7: Verify continued operability of the equipment.

4.6.5 High Temperature Test

The high temperature test simulates stresses faced during storage of voting machines and ballot counters.

4.6.5.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL–STD–810D, Method 501.2, Procedure I–Storage. The maximum temperature shall be 140 degrees F.

4.6.5.2 Procedure

Step 1: Arrange the equipment as for storage. Install it in the test chamber.

Step 2: Raise the internal temperature of the chamber at any convenient rate, but in any case no more rapidly than 10 degrees F per minute, until an internal temperature of 140 degrees F has been reached.

Step 3: Allow the chamber temperature to stabilize. Maintain this temperature for a period of 4 hours after stabilization.

Step 4: Allow the internal temperature of the chamber to return to standard laboratory conditions, at a rate not exceeding 10 degrees F per minute.

Step 5: Allow the internal temperature of the equipment to stabilize at laboratory conditions before removing it from the chamber.

Step 6: Remove the equipment from the chamber and from its containers, and inspect the equipment for evidence of damage.

Step 7: Verify continued operability of the equipment.

4.6.6 Humidity Test

The humidity test simulates stresses faced during storage of voting machines and ballot counters.

4.6.6.1 Applicability

All systems and components regardless of type shall meet the requirements of this test. This test is similar to the procedure of MIL–STD–810D, Method 507.2, Procedure I–Natural Hot-Humid. It is intended to evaluate the ability of the equipment to survive exposure to an uncontrolled temperature and humidity environment during storage. This test lasts for ten days.

4.6.6.2 Procedure

Step 1: Arrange the equipment as for storage. Install it in the test chamber.

Step 2: Adjust the chamber conditions to those given in MIL–STD–810D Table 507.2–I, for the time 0000 of the HotHumid cycle (Cycle 1).

Step 3: Perform a 24-hour cycle with the time and temperature-humidity values specified in Figure 507.2–1, Cycle 1.

Step 4: Repeat Step 2 until 5, 24-hour cycles have been completed.

Step 5: Continue with the test commencing with the conditions specified for time = 0000 hours.

Step 6: At any convenient time in the interval between time = 120 hours and time = 124 hours, place the equipment in an operational configuration, and perform a complete operational status check as defined in Subsection 4.6.1.5.

Step 7: If the equipment satisfactorily completes the status check, continue with the sixth 24-hour cycle.

Step 8: Perform 4 additional 24-hour cycles, terminating the test at time = 240 hours.

Step 9: Remove the equipment from the test chamber and inspect it for any evidence of damage.

Step 10: Verify continued operability of the equipment.

4.7 Environmental Tests, Operating

This section addresses a range of tests for all voting system equipment, including equipment for both precinct count and central count systems.

4.7.1 Temperature and Power Variation Tests

This test is similar to the low temperature and high temperature tests of MIL-STD–810-D, Method 502.2 and Method 501.2, with test conditions that correspond to the requirements of the performance standards. This procedure tests system operation under various environmental conditions for at least 163 hours. During 48 hours of this operating time, the device shall be in a test chamber. For the remaining hours, the equipment shall be operated at room temperature. The system shall be powered for the entire period of this test; the power may be disconnected only if necessary for removal of the system from the test chamber.

Operation shall consist of ballot-counting cycles, which vary with system type. An output report need not be generated after each counting cycle. The interval between reports, however, should be no more than 4 hours to keep to a practical minimum the time between the occurrence of a failure or data error and its detection.

Test Ballots per Counting Cycle

Precinct count systems—100 ballots/hour

Central count systems—300 ballots/hour

The recommended pattern of votes is one chosen to facilitate visual recognition of the reported totals; this pattern shall exercise all possible voting locations. System features such as data quality tests, error logging, and audit reports shall be enabled during the test.

Each operating cycle shall consist of processing the number of ballots indicated above.

Step 1: Arrange the equipment in the test chamber. Connect as required and provide for power, control, and data service through enclosure wall.

Step 2: Set the supply voltage at 117 voltage alternating current.

Step 3: Power the equipment, and perform an operational status check as in Section 4.6.1.5.

Step 4: Set the chamber temperature to 50 degrees F, observing precautions against thermal shock and condensation.

Step 5: Begin 24 hour cycle.

Step 6: At T=4 hrs, lower the supply voltage to 105 vac.

Step 7: At T=8 hrs, raise the supply voltage to 129 vac.

Step 8: At T=11:30 hrs, return the supply voltage to 117 vac and return the

chamber temperature to lab ambient, observing precautions against thermal shock and condensation.

Step 9: At T=12:00 hrs, raise the chamber temperature to 95 degrees Fahrenheit.

Step 10: Repeat Steps 5 through 8, with temperature at 95 degrees Fahrenheit, complete at T=24 hrs.

Step 11: Set the chamber temperature at 50 degrees Fahrenheit as in Step 4.

Step 12: Repeat the 24 hour cycle as in Steps 5–10, complete at T=48 hrs.

Step 13: After completing the second 24 hour cycle, disconnect power from the system and remove it from the chamber if needed.

Step 14: Reconnect the system as in Step 2, and continue testing for the remaining period of operating time required until the ACCEPT/REJECT criteria of Subsection 4.7.1.1 have been met.

4.7.1.1 Data Accuracy

As indicated in Volume I, Section 4, data accuracy is defined in terms of ballot position error rate. This rate applies to the voting functions and supporting equipment that capture, record, store, consolidate, and report the specific selections, and absence of selections, made by the voter for each ballot position. Volume I, Subsection 4.1.1 identifies the specific functions to be tested.

For each processing function, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions. This error rate includes errors from any source while testing a specific processing function and its related equipment.

This error rate is used to determine the vote position processing volume used to test system accuracy for each function:

If the system makes one error before counting 26,997 consecutive ballot positions correctly, it will be rejected. The vendor is then required to improve the system

If the system reads at least 1,549,703 consecutive ballot positions correctly, it will be accepted

If the system correctly reads more than 26,997 ballot positions but less than 1,549,703 when the first error occurs, the testing will have to be continued until another 1,576,701 consecutive ballot positions are counted without error (a total of 3,126,404 with one error)

Appendix C provides further details of the calculation for this testing volume.

4.7.2 Maintainability Test

The accredited test lab shall test for maintainability based on the provisions of Volume I, Section 4 for maintainability, including both physical attributes and additional attributes regarding the ease of performing maintenance activities. These tests include:

Examining the physical attributes of the system to determine whether significant impediments exist for the performance of those maintenance activities that are to be performed by the jurisdiction. These activities shall be identified by the vendor in the system maintenance procedures portion of the TDP

Performing activities designated as maintenance activities for the jurisdiction in the TDP, in accordance with the instructions provided by the vendor in the system maintenance procedures, noting any difficulties encountered

Should significant impediments or difficulties be encountered that are not remedied by the vendor, the accredited test lab shall include such findings in the certification test results of the certification test report.

4.7.3 Reliability Test

The accredited test lab shall test for reliability based on the provisions of Volume I, Section 4 for the acceptable Mean Time Between Failure (MBTF). The MBTF shall be measured during the conduct of other system performance tests specified in this section, and shall be at least 163 hours. Appendix C provides further details of the calculation for this testing period.

4.7.4 Availability Test

The accredited test lab shall assess the adequacy of system availability based on the provisions of Volume I, Section 4. As described in this section, availability of voting system equipment is determined as a function of reliability, and the mean time to repair the system in the event of failure.

Availability cannot be tested directly before the voting system is deployed in jurisdictions, but can be modeled mathematically to predict availability for a defined system configuration. This model shall be prepared by the vendor, and shall be validated by the accredited testing laboratory.

The model shall reflect the equipment used for a typical system configuration to perform the following system functions:

For all paper-based systems:

Recording voter selections (such as by ballot marking)

Scanning the marks on paper ballots and converting them into digital data

For all DRE systems:

Recording and storing the voter's ballot selections

For precinct-count systems (paper-based and DRE):

Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

For central-count systems (paper-based and DRE):

Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

The model shall demonstrate the predicted availability of the equipment that supports each function. This demonstration shall reflect the equipment reliability, mean time to repair, and assumptions concerning equipment availability and deployment of maintenance personnel stated by the vendor in the TDP.

4.8 Other Environmental Tests

This section addresses a range of tests for all voting system equipment, including equipment for both precinct count and central count systems.

The test for power disturbance disruption shall be conducted in compliance with the test specified in IEC 61000–4–11 (1994–06).

The test for electromagnetic radiation shall be conducted in compliance with the FCC Part 15 Class B requirements by testing per ANSI C63.4.

The test for electrostatic disruption shall be conducted in compliance with the test specified in IEC 61000–4–2 (1995–01).

The test for electromagnetic susceptibility shall be conducted in compliance with the test specified in IEC 61000–4–3 (1996).

The test for electrical fast transient protection shall be conducted in compliance with the test specified in IEC 61000–4–4 (1995–01).

The test for lightning surge protection shall be conducted in compliance with the test specified in IEC 61000–4–5 (1995–02).

The test for conducted RF immunity shall be conducted in compliance with the test specified in IEC 61000–4–6 (1996–04).

The test for AC magnetic fields RF immunity shall be conducted in compliance with the test specified in IEC 61000–4–8 (1993–06).

5 Software Testing

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5 Software Testing

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5 Software Testing

5.1 Scope

This section contains a description of the testing to be performed by the accredited test lab to confirm the proper functioning of the software components of a voting system submitted for certification testing. It describes the scope and basis for software testing, the initial review of documentation to support software testing, and the review of the voting system source code. Further testing of the voting system software is addressed in the following sections:

Section 3 for specific tests of voting system functionality

Section 6 for testing voting system security and for testing the operation of the voting system software together with other voting system components

5.2 Basis of Software Testing

The accredited test lab shall design and perform procedures that test the voting system software requirements identified in Volume I, Section 5. All software components designed or modified for election use shall be tested in accordance with the applicable procedures contained in this section.

Unmodified, general purpose COTS non-voting software e.g., operating systems, programming language compilers, data base management systems, and Web browsers) is not subject to the detailed examinations specified in this section. However, the accredited test lab shall examine such software to confirm the specific version of software being used against the design specification to confirm that the software has not been modified. Portions of COTS software that have been modified by the vendor in any manner are subject to review.

Unmodified COTS software is not subject to code examination. However, source code generated by a COTS package and embedded in software modules for compilation or interpretation shall be provided in human readable form to the accredited test lab. The accredited test lab may inspect COTS source code units to determine testing requirements or to verify the code is unmodified.

The accredited test lab may inspect the COTS generated software source code in preparation of test plans and to provide some minimal scanning or sampling to check for embedded code or unauthorized changes. Otherwise, the COTS source code is not subject to the full code review and testing. For purposes of code analysis, the COTS units shall be treated as unexpanded macros.

Compatibility of the voting system software components or subsystems with one another, and with other components of the voting system environment, shall be determined through functional tests integrating the voting system software with the remainder of the system.

The specific procedures to be used shall be identified in the National Certification Test Plan prepared by the accredited test lab. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for software testing performed by the accredited test lab.

Recognizing the variations in system design and the technologies employed by different vendors, the accredited test lab shall design test procedures that account for these variations.

5.3 Initial Review of Documentation

Prior to initiating the software review, the accredited test lab shall verify that the documentation submitted by the vendor in the TDP is sufficient to enable:

Review of the source code

Design and conduct tests at every level of the software structure to verify that the software meets the vendor's design specifications and the requirements of the performance guidelines

5.4 Source Code Review

The accredited test lab shall compare the source code to the vendor's software design documentation to ascertain how completely the software conforms to the vendor's specifications. Source code inspection shall also assess the extent to which the code adheres to the requirements in Volume I, Section 5

5.4.1 Control Constructs

Voting system software shall use the control constructs identified in this section as follows:

If the programming language used does not provide these control constructs, the vendor shall provide them (that is, comparable control structure logic). The constructs shall be used consistently throughout the code. No other constructs shall be used to control program logic and execution

While some programming languages do not create programs as linear processes, stepping from an initial condition, through changes, to a conclusion, the program components nonetheless contain procedures (such as ''methods'' in object-oriented languages). Even in these programming languages, the procedures must execute through these control constructs (or their equivalents, as defined and provided by the vendor)

Operator intervention or logic that evaluates received or stored data shall not re-direct program control within a program routine. Program control may be re-directed within a routine by calling subroutines, procedures, and functions, and by interrupt service routines and exception handlers (due to abnormal error conditions). Do-While (False) constructs and intentional exceptions (used as GoTos) are prohibited

Conventional constructs that are inherent to the development language are permitted but must be documented in the code, adjacent to their use.

Illustrations of the following control construct techniques are provided in Figures 1 through 4.

Fig. 1 Sequence
Fig. 2 If-Then-Else
Fig. 3 Do-While
Fig. 4 Do-Until
Fig. 5 Case
Fig. 6 General loop, including the special case FOR loop

5.4.1.1 Replacement Rule

In the constructs shown, any 'process' may be replaced by a simple statement, a subroutine or function call, or any of the control constructs. In Fig 4–1 for example, ''Process A'' may be a simple statement and ''Process B'' another Sequence construct.

Using the replacement rule to replace one or both of the processes in the Sequence construct with other Sequence constructs, a large block of sequential code may be formed. The entire chain is recognized as a Sequence construct and is sometimes called a BLOCK construct. In many languages, a Sequence may need to be marked with special symbols or punctuation to delimit where it starts and where it ends. For example, a ''BEGIN'' and ''END'' may be used. This allows the scope of a Sequence used as ''Process C'' in the IF-THEN-ELSE (Fig 4–2) to be recognized as completing the IF-THEN-ELSE rather than part of a higher level Sequence that included the IF-THEN-ELSE as a component.

Figures 1-6

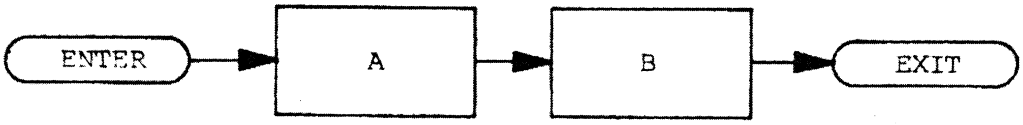

Figure 1 SEQUENCE

Control flows from "Process A" to the next in sequence, "Process B"

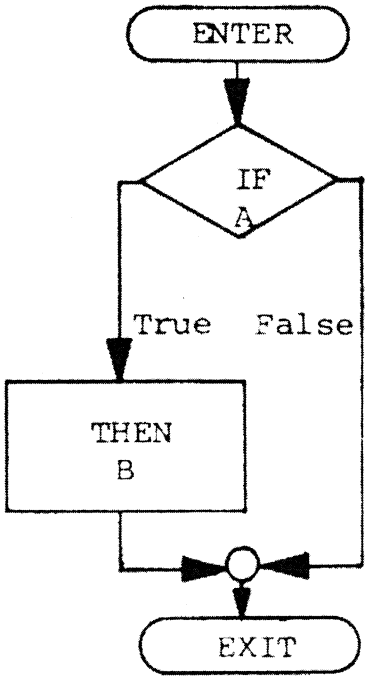

Figure 2 IF-THEN-ELSE

*In Figure 2, flow of control will skip a process pending the condition of "A."

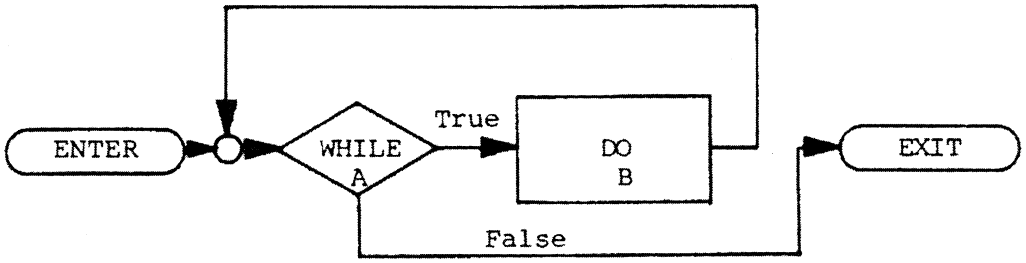

Figure 3 DO-WHILE

In Figure 4-3, condition "A" is evaluated. If found to be true, then control is passed to Process "B" and condition "A" is reevaluated. If condition "A" is found to be false, then control is passed out of the loop. Note that, if B is a BLOCK, the "DO" may be recognized as the opening symbol. A terminating symbol is needed from the language used.

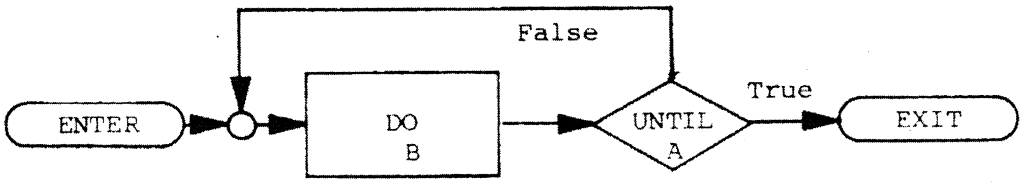

Figure 4 DO-UNTIL

Figure 4-4 is similar to a DO-WHILE, except that the test of condition A is performed after "Process B" has executed and the DO is performed upon a false "A" condition.. If condition "A" is true, control is passed out of the loop.

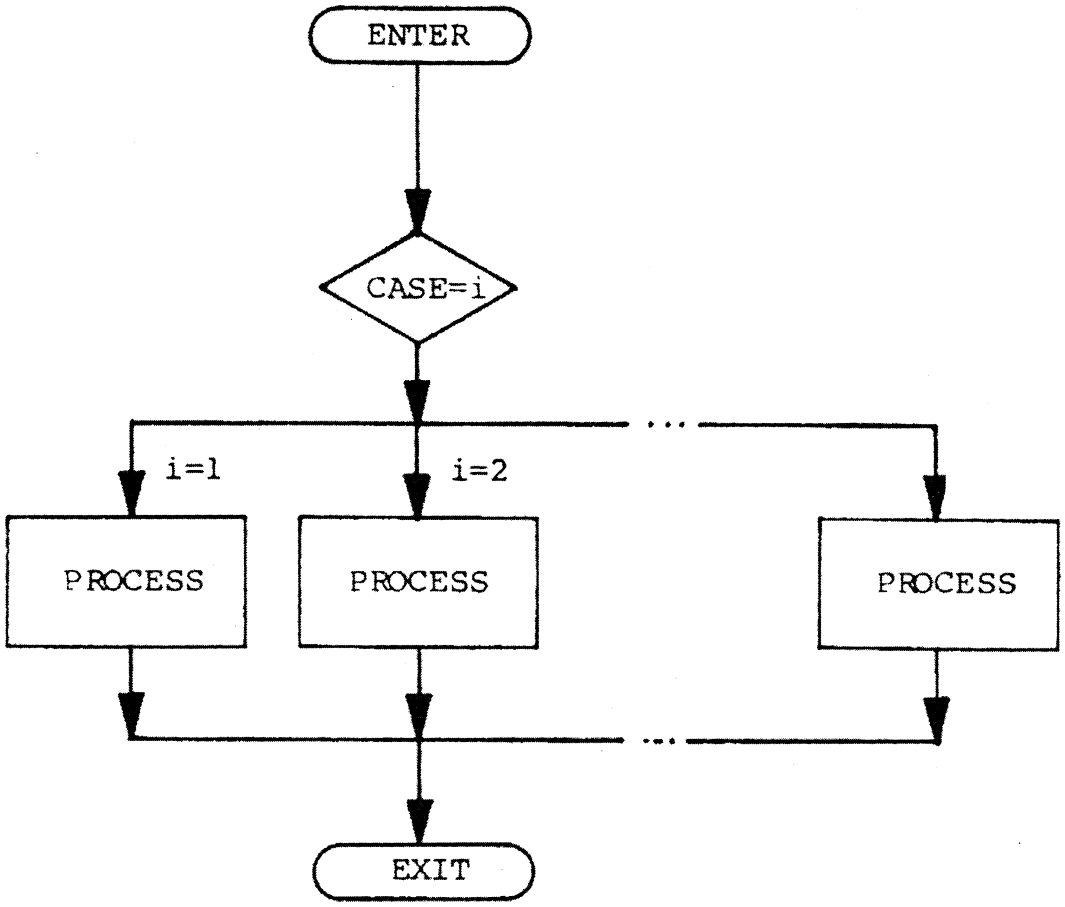

Figure 5 CASE

Control is passed to a Process based on the value of i.

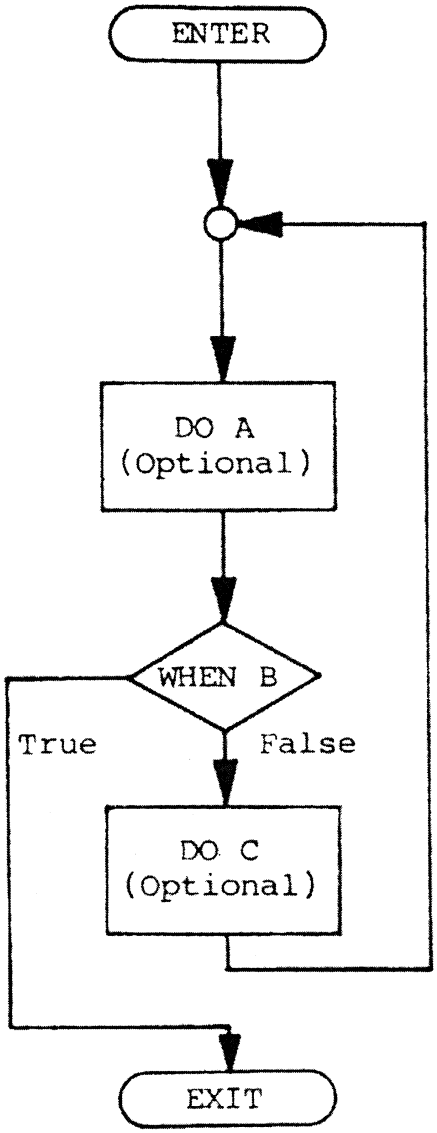

Figure 6 General LOOP

Optional process A is executed. Condition B is then evaluated. If found to be false, optional process C is executed and control is passed to process A. Condition B is then evaluated again. If condition B is true, then control is passed out of the loop.

A special case of the GENERAL LOOP is the FOR loop. The FOR loop is not strictly essential, as it can be programmed as a DO-WHILE loop. The FOR loop executes on a counter. The control FOR statement defines a counter variable or variables, a test for ending the loop, and a standard method of changing the variable(s) on each pass such as incrementing or decrementing. For example,

"FOR c = 0; c < 10; c + 1

DO process A;''

The counter is initialized to zero, if the counter test is false, the DO process is executed and the counter is incremented (or decremented). Once the counter test is true, control exits from the loop without incrementing the counter. The implementation of the FOR loop in many languages, however, can be error prone. The use of the FOR loop shall include strictly enforced coding conventions to avoid common errors such as a loop that never ends.

The GENERAL LOOP should not be used where one of the other loop structures will serve. It is error prone and may not be supported in many languages without using GOTOs type redirections. However, if defined in the language, it may be useful in defining some loops where the exit needs to occur in the middle. Also, in other languages the GENERAL LOOP logic can be used to simulate the other control constructs. Like the special case, the use of the GENERAL LOOP shall require the strict enforcement of coding conventions to avoid problems.

5.4.2 Assessment of Coding Conventions

The accredited test lab shall test for compliance with the coding conventions specified by the vendor. If the vendor does not identify an appropriate set of coding conventions in accordance with the provisions of Volume I, Subsection 5.2.6, the accredited test lab shall review the code to ensure that it:

Uses uniform calling sequences. All parameters shall either be validated for type and range on entry into each unit or the unit comments shall explicitly identify the type and range for the reference of the programmer and tester. Validation may be performed implicitly by the compiler or explicitly by the programmer

Has the return explicitly defined for callable units such as functions or procedures (do not drop through by default) for C-based languages and others to which this applies, and in the case of functions, has the return value explicitly assigned. Where the return is only expected to return a successful value, the C convention of returning zero shall be used or the use of another code justified in the comments. If an uncorrected error occurs so the unit must return without correctly completing its objective, a non-zero return value shall be given even if there is no expectation of testing the return. An exception may be made where the return value of the function has a data range including zero

Does not use macros that contain returns or pass control beyond the next statement

For those languages with unbound arrays, provides controls to prevent writing beyond the array, string, or buffer boundaries

For those languages with pointers or which provide for specifying absolute memory locations, provides controls that prevent the pointer or address from being used to overwrite executable instructions or to access inappropriate areas where vote counts or audit records are stored

For those languages supporting case statements, has a default choice explicitly defined to catch values not included in the case list

Provides controls to prevent any vote counter from overflowing. Assuming the counter size is large enough such that the value will never be reached is not adequate

Is indented consistently and clearly to indicate logical levels

Excluding code generated by commercial code generators, is written in small and easily identifiable modules, with no more than 50% of all modules exceeding 60 lines in length, no more than 5% of all modules exceeding 120 lines in length, and no modules exceeding 240 lines in length. ''Lines'' in this context, are defined as executable statements or flow control statements with suitable formatting and comments. The reviewer should consider the use of formatting, such as blocking into readable units, which supports the intent of this requirement where the module itself exceeds the limits. The vendor shall justify any module lengths exceeding this standard

Where code generators are used, the source file segments provided by the code generators should be marked as such with comments defining the logic invoked and, if possible, a copy of the source code provided to the accredited test lab with the generated source code replaced with an unexpanded macro call or its equivalent

Has no line of code exceeding 80 columns in width (including comments and tab expansions) without justification

Contains no more than one executable statement and no more than one flow control statement for each line of source code

In languages where embedded executable statements are permitted in conditional expressions, the single embedded statement may be considered a part of the conditional expression. Any additional executable statements should be split out to other lines

Avoids mixed-mode operations. If mixed mode usage is necessary, then all uses shall be identified and clearly explained by comments

Upon exit() at any point, presents a message to the user indicating the reason for the exit()

Uses separate and consistent formats to distinguish between normal status and error or exception messages. All messages shall be self-explanatory and shall not require the operator to perform any look-up to interpret them, except for error messages that require resolution by a trained technician

References variables by fewer than five levels of indirection (i.e., a.b.c.d or a[b].c->d)

Has functions with fewer than six levels of indented scope, counted as follows:

```
int function()
{
        if (a = true)
1       {
                if ( b = true )
2               {
                                        if ( c = true )
3                       {
                                                if ( d = true )
4                               {
                                        while(e > 0 )
5                                       {
                                                        code
                                                        }
                                                }
                                        }
                                }
                        }
                        }
```

Initializes every variable upon declaration where permitted

t. Has all constants other than 0 and 1 defined or enumerated, or shall have a comment which clearly explains what each constant means in the context of its use. Where "0" and "1" have multiple meanings in the code unit, even they should be identified. Example: "0" may be used as FALSE, initializing a counter to zero, or as a special flag in a non-binary category

Only contains the minimum implementation of the "a = b ? c : d" syntax. Expansions such as "j=a?(b?c:d):e;" are prohibited

Has all assert() statements coded such that they are absent from a production compilation. Such coding may be implemented by ifdef()s that remove them from or include them in the compilation. If implemented, the initial program identification in setup should identify that assert() is enabled and active as a test version

6 System Integration Testing

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6 System Integration Testing

6.1 Scope

This section contains a description of the testing to be performed by the accredited test lab to confirm the proper functioning of the fully integrated components of a voting system submitted for national certification testing. It describes the scope and basis for integration testing, testing of internal and external system interfaces, testing of security capabilities, and the configuration audits, including the testing of system documentation.

System level certification tests address the integrated operation of both hardware and software, along with any telecommunications capabilities. The system level certification tests shall include the tests (functionality, volume, stress, usability, security, performance, and recovery) indicated in the National Certification Test Plan, described in Appendix A. These tests assess the system's response to a range of both normal and abnormal conditions initiated in an attempt to compromise the system. These tests may be part of the audit of the system's functional attributes, or may be conducted separately.

The system integration tests include two audits: a Physical Configuration Audit that focuses on physical attributes of the system, and a Functional Configuration Audit that focuses on the system's functional attributes, including attributes that go beyond the specific requirements of the Standards.

6.2 Basis of Integration Testing

This subsection addresses the basis for integration testing, the system baseline for testing, and data volumes for testing.

6.2.1 Testing Breadth

The accredited test lab shall design and perform procedures that test the voting system capabilities for the system as a whole. These procedures follow the testing of the systems hardware and software, and address voting system requirements defined in Volume I, Sections 2, 4, 5 and 6.

These procedures shall also address the requirements for testing system functionality provided in Section 3. Where practical, the accredited test lab will perform coverage reporting of the software branches executed in the functional testing. The selection of the baseline test cases will follow an operational profile of the common procedures, sequencing, and options among the shared state requirements and those that are specifically recognized and supported by the vendor. The accredited test lab will use the coverage report to identify any portions of the source code that were not covered and determine:

The additional functional tests that are needed

Where more detailed source code review is needed

Both of the above

The specific procedures to be used shall be identified in the National Certification Test Plan. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for testing performed by the accredited test lab.

Recognizing variations in system design and the technologies employed by different vendors, the accredited test lab shall design test procedures that account for these variations.

6.2.2 System Baseline for Testing

The system level certification tests are conducted using the version of the system intended to be sold by the vendor and delivered to jurisdictions. To ensure that the system version tested is the correct version, the accredited test lab shall witness the build of the executable version of the system immediately prior to or as part of, the physical configuration audit. Additionally, should components of the system be modified or replaced during the testing process, the accredited test lab shall require the vendor to conduct a new ''build'' of the system to ensure that the certified executable release of the system is built from tested components.

6.2.3 Testing Volume

For all systems, the total number of ballots to be processed by each precinct counting device during these tests shall reflect the maximum number of active voting positions and the maximum number of ballot styles that the TDP claims the system can support.

6.3 Testing Interfaces of System Components

The accredited test lab shall design and perform test procedures that test the interfaces of all system modules and subsystems with each other against the vendor's specifications. These tests shall be documented in the National Certification Test Plan, and shall include the full range of system functionality provided by the vendor's specifications, including functionality that exceeds the specific requirements of these Guidelines.

Some voting systems may use components or subsystems from previously tested and qualified systems, such as ballot preparation. For these scenarios, the accredited test lab shall, at a minimum:

Confirm that the version of previously approved components and subsystems is unchanged

Test all interfaces between previously approved modules/subsystems and all other system modules and subsystems. Where a component is expected to interface with several different products, especially from different manufacturers, the vendor shall provide a public data specification of files or data objects used to exchange information

Some systems use telecommunications capabilities. For those systems that do use such capabilities, components that are located at the polling place or separate vote counting location shall be tested for effective interface, accurate vote transmission, failure detection, and failure recovery. For voting systems that use telecommunications lines or networks that are not under the control of the election official (e.g., public telephone networks), the accredited test lab shall test the interface of vendor-supplied components with these external components for effective interface, vote transmission, failure detection, and failure recovery.

6.4 Security Testing

The accredited test lab shall design and perform test procedures that test the security capabilities of the voting system against the requirements defined in Volume I, Section 7. These procedures shall focus on the ability of the system to detect, prevent, log, and recover from the broad range of security risks identified. These procedures shall also examine system capabilities and safeguards claimed by the vendor in the TDP to go beyond these risks. The range of risks tested is determined by the design of the system and potential exposure to risk. Regardless of system

design and risk profile, all systems shall be tested for effective access control and physical data security.

For systems that use public telecommunications networks, including the Internet, to transmit election management data or official election results (such as ballots or tabulated results), the accredited test lab shall conduct tests to ensure that the system provides the necessary identity-proofing, confidentiality, and integrity of transmitted data. These tests shall be designed to confirm that the system is capable of detecting, logging, preventing, and recovering from types of attacks known at the time the system is submitted for certification.

The accredited test lab may meet these testing requirements by confirming proper implementation of proven commercial security software. In this case, the vendor must provide the published standards and methods used by the U.S. Government to test and accept this software, or it may provide references to free, publicly available publications of these standards and methods, such as government web sites.

At its discretion, the accredited test lab may conduct or simulate attacks on the system to confirm the effectiveness of the system's security capabilities, employing test procedures approved by the EAC.

6.4.1 Access Control

The accredited testing laboratory shall conduct tests of system capabilities and review the access control policies and procedures submitted by the vendor to identify and verify the access control features implemented as a function of the system. For those access control features built in as components of the voting system, the accredited test lab shall design tests to confirm that these security elements work as specified.

Specific activities to be conducted by the accredited test lab shall include:

A review of the vendor's access control policies, procedures and system capabilities to confirm that all requirements of Volume I, Subsection 7.2 have been addressed completely

Specific tests designed by the accredited test lab to verify the correct operation of all documented access control procedures and capabilities, including tests designed to circumvent controls provided by the vendor. These tests shall include:

Performing the activities that the jurisdiction will perform in specific accordance with the vendor's access control policy and procedures to create a secure system, including procedures for software and firmware installation (as described in Volume I, Subsection 7.4)

Performing tests intended to bypass or otherwise defeat the resulting security environment. These tests shall include simulation of attempts to physically destroy components of the voting system in order to validate the correct operation of system redundancy and backup capabilities

This review applies to the full scope of system functionality. It includes functionality for defining the ballot and other pre-voting functions, as well as functions for casting and storing votes, vote canvassing, vote reporting, and maintenance of the system's audit trail.

6.4.2 Data Interception and Disruption

For systems that use telecommunications to transmit official voting data, the accredited test lab shall review, and conduct tests of, the data interception and prevention safeguards specified by the vendor in its TDP. The accredited test lab shall evaluate safeguards provided by the vendor to ensure their proper operation, including the proper response to the detection of efforts to monitor data or otherwise compromise the system.

For systems that use public communications networks the accredited test lab shall also review the vendor's documented procedures for maintaining protection against newly discovered external threats to the telecommunications network. This review shall assess the adequacy of such procedures in terms of:

Identification of new threats and their impact

Development or acquisition of effective countermeasures

System testing to ensure the effectiveness of the countermeasures

Notification of client jurisdictions that use the system of the threat and the actions that should be taken

Distribution of new system releases or updates to current system users

Confirmation of proper installation of new system releases

6.5 Usability and Accessibility Testing

The vendor shall design and perform procedures that test the usability and accessibility of the voting system as defined in Volume I, Section 3. Test procedures shall confirm that:

All voting machines meet the usability requirements specified in Volume I, Subsection 3.1

Voting machines intended for use by voters with disabilities provide the capabilities required by Volume I, Subsection 3.2

Voting machines intended for use by voters with disabilities operate consistently with vendor specifications and documentation

6.6 Physical Configuration Audit

The Physical Configuration Audit compares the voting system components submitted for qualification to the vendor's technical documentation, and shall include the following activities:

The audit shall establish a configuration baseline of the software and hardware to be tested. It shall also confirm whether the vendor's documentation is sufficient for the user to install, validate, operate, and maintain the voting system. MIL–STD–1521 can be used as a guide when conducting this audit

The test agency shall examine the vendor's source code against the submitted documentation during the Physical Configuration Audit to verify that the software conforms to the vendor's specifications. This review shall include an inspection of all records of the vendor's release control system. If changes have been made to the baseline version, the accredited test lab shall verify that the vendor's engineering and test data are for the software version submitted for certification

If the software is to be run on any equipment other than a COTS mainframe data processing system, minicomputer, or microcomputer, the Physical Configuration Audit shall also include a review of all drawings, specifications, technical data, and test data associated with the system hardware. This examination shall establish the system hardware baseline associated with the software baseline

To assess the adequacy of user acceptance test procedures and data, vendor documents containing this information shall be reviewed against the system's functional specifications. Any discrepancy or inadequacy in the vendor's plan or data shall be resolved prior to beginning the system integration functional and performance tests

All subsequent changes to the baseline software configuration made during the course of testing shall be subject to re-examination. All changes to the system hardware that may produce a change in software operation shall also be subject to re-examination

The vendor shall provide a list of all documentation and data to be audited, cross-referenced to the contents of the TDP. Vendor technical personnel shall be available to assist in the performance of the Physical Configuration Audit.

6.7 Functional Configuration Audit

The Functional Configuration Audit encompasses an examination of vendor tests, and the conduct of additional tests, to verify that the system hardware and software perform all the functions described in the vendor's documentation submitted for the TDP. It includes a test of system operations in the sequence in which they would normally be performed, and shall include the following activities. MIL–STD–1521 may be used as a guide when conducting this audit:

The accredited test lab shall review the vendor's test procedures and test results to determine if the vendor's specified functional requirements have been adequately tested. This examination shall include an assessment of the adequacy of the vendor's test cases and input data to exercise all system functions, and to detect program logic and data processing errors, if such be present

The accredited test lab shall perform or supervise the performance of additional tests to verify nominal system performance in all operating modes, and to verify on a sampling basis the vendor's test data reports. If vendor developmental test data is incomplete, the accredited test lab shall design and conduct all appropriate module and integrated functional tests. The functional configuration audit may be performed in the facility either of the accredited test lab or of the vendor, and shall use and verify the accuracy and completeness of the System Operations, Maintenance, and Diagnostic Testing Manuals

The vendor shall provide a list of all documentation and data to be audited, cross-referenced to the contents of the TDP. Vendor technical personnel shall be available to assist in the performance of the Functional Configuration Audit.

7 Quality Assurance Testing

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7 Quality Assurance Testing

7.1 Scope

This section contains a description of the examination performed by the accredited test lab to verify conformance with the requirements for configuration management and quality assurance of voting systems. It describes the scope and basis for the examinations, the general sequence of the examinations within the overall test process, and provides guidance on the substantive focus of the examinations.

7.2 Basis of Examinations

The accredited test lab shall design and perform procedures that examine documented vendor practices for quality assurance and configuration management as addressed by Volume I, Sections 8 and 9 and Section 2.

Examination procedures shall be designed and performed to ensure:

Conformance with the requirements to provide information on vendor practices required by these Guidelines

Conformance of system documentation and other information provided by the vendor with the documented practices for quality assurance and configuration management

The Guidelines do not require on-site examination of the vendor's quality assurance and configuration management practices during the system development process. However, the accredited test lab can conduct several activities while at the vendor site to witness the system build that enable assessment of the vendor's quality assurance and configuration management practices. These include surveys, interviews with individuals at all levels of the development team, and examination of selected internal work products such as system change requests and problem tracking logs.

It is recognized that examinations of vendor practices, and determinations of conformance, entail a significant degree of professional judgment. These guidelines for vendor practices identify specific areas of focus but heavily rely on the expertise and professional judgment, of the accredited test lab.

The specific procedures used by the accredited test lab shall be identified in the Qualification Test Plan. Recognizing variations in vendors' quality assurance and configuration management practices and procedures, the accredited test lab shall design examination procedures that account for these variations.

7.3 General Examinations Sequence

There is no required sequence for performing the examinations of quality assurance and configuration management practices. No other testing is dependent on the performance and results of these examinations. However, examinations pertaining to configuration management, in particular those pertaining to configuration identification, will generally be useful in understanding the conventions used to define and document the components of the system and will assist with other elements of the certification test process.

7.3.1 Vendor Practices in Parallel with Other Certification Testing

While not required, the accredited test lab is encouraged to initiate the examinations of quality assurance and configuration management practices early in the overall testing sequence, and to conduct them in parallel with other testing of the voting system. Conducting these examinations in parallel is recommended to minimize the overall duration of the testing process.

7.3.2 Functional Configuration Audit and System Integration Testing

As described in Volume I, Section 9, the functional configuration audit verifies that the voting system performs all the functions described in the system documentation. To help ensure an efficient test process, this audit shall be conducted by the accredited test lab as an element of the system integration testing that confirms the proper functioning of the system as a whole.

7.4 Examination of Configuration Management Practices

The examination of configuration management practices shall address the full scope of requirements described in Volume I, Section 9, and the documentation requirements described in Section 2. In addition to confirming that all required information has been submitted, the accredited test lab shall determine the vendor's conformance with the documented configuration management practices.

7.4.1 Configuration Management Policy

The accredited test lab shall examine the vendor's documented configuration management policy to confirm that it:

Addresses the full scope of the system, including components provided by external suppliers
Addresses the full breadth of system documentation

7.4.2 Configuration Identification

The accredited test lab shall examine the vendor's documented configuration identification practices policy to confirm that it:

Describes clearly the basis for classifying configuration items into categories and subcategories, for numbering of configuration items; and for naming of configuration items
Describes clearly the conventions used to identify the version of the system as a whole and the versions of any lower level elements (e.g., subsystems, individual elements) if such lower level version designations are used

7.4.3 Baseline, Promotion, and Demotion Procedures

The accredited test lab shall examine the vendor's documented baseline, promotion, and demotion procedures to confirm that they:

Provide a clear, controlled process that promotes components to baseline status when specific criteria defined by the vendor are met; and
Provide a clear, controlled process for demoting a component from baseline status when specific criteria defined by the vendor are met.

7.4.4 Configuration Control Procedures

The accredited test lab shall examine the vendor's configuration control procedures to confirm that they:

Are capable of providing effective control of internally developed system components
Are capable of providing effective control of components developed or supplied by third parties

7.4.5 Release Process

The accredited test lab shall examine the vendor's release process to confirm that it:

Provides clear accountability for moving forward with the release of the initial system version and subsequent releases
Provides the means for clear identification of the system version being replaced
Confirms that all required internal vendor tests and audits prior to release have been completed successfully
Confirms that each system version released to customers has been certified
Confirms that each system release has been received by the customer
Confirms that each system release has been installed successfully by the customer

7.4.6 Configuration Audits

The accredited test lab shall examine the vendor's configuration audit procedures to confirm that they:

Are sufficiently broad in scope to address the entire system, including system documentation
Are conducted with appropriate timing to enable effective control of system versions
Are sufficiently rigorous to confirm that all system documentation prepared and maintained by the vendor matches the actual system functionality, design, operation, and maintenance requirements

7.4.7 Configuration Management Resources

The accredited test lab shall examine the configuration management resource information submitted by the vendor to determine whether sufficient information has been provided to enable another organization to clearly identify the resources used and acquire them for use. This examination is intended to ensure that in the event the vendor concludes business operations, sufficient information has been provided to enable an in-depth audit of the system should such an audit be required by election officials and/or a law enforcement organization.

7.5 Examination of Quality Assurance Practices

The examination of quality assurance practices shall address the full scope of requirements described in Volume I, Section 8, and the documentation requirements described in Volume II, Section 2. The accredited test lab shall confirm that all required information has been submitted, and assess whether the vendor's quality assurance program provides for:

Clearly measurable quality standards
An effective testing program throughout the system development life cycle
Application of the quality assurance program to external providers of system components and supplies
Comprehensive monitoring of system performance in the field and diagnosis of system failures
Effective record keeping of system failures to support analysis of failure patterns and potential causes
Effective processes for notifying customers of system failures and corrective measures that need to be taken, and for confirming that such measures are taken

In addition to the general examinations described above, the accredited test lab shall focus on the specific elements of the vendor's quality assurance program indicated below.

7.5.1 Quality Assurance Policy

The accredited test lab shall examine the vendor's quality assurance policy to confirm that it:

Addresses the full scope of the voting system
Clearly designates a senior level individual accountable for implementation and oversight of quality assurance activities
Clearly designates the individuals, by position within the vendor's organization, who are to conduct each quality assurance activity
Provides procedures that determine compliance with, and correct deviations from, the quality assurance program at a minimum annually

7.5.2 Parts and Materials Tests

The accredited test lab shall examine the vendor's parts and materials special tests and examinations to confirm that they:

Identify appropriate criteria that are used to determine the specific system components for which special tests are required to confirm their suitability for use in a voting system
Are designed in a manner appropriate to determine suitability
Have been conducted and documented for all applicable parts and materials

7.5.3 Quality Conformance Inspections

The accredited test lab shall examine the vendor's quality conformance plans, procedures and, inspection results to confirm that:

All components have been tested according to the test requirements defined by the vendor
All components have passed the requisite tests

For each test, the test documentation identifies:

Test location
Test date
Individual who conducted the test
Test outcome

7.5.4 Documentation

The accredited test lab shall examine the vendor's voting system documentation to confirm that it meets the content requirements of Volume I, Subsection 8.7, and Section 2, and is written in a manner suitable for use by purchasing jurisdictions.

Appendix A: National Certification Test Plan

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A National Certification Test Plan

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Appendix A: National Certification Test Plan

A.1 Scope

This Appendix contains a recommended outline for the National Certification Test Plan, which is to be prepared by the test lab. The primary purpose of the test plan is to document the test lab's development of the complete or partial certification test. A sample outline is provided in Figure A–1 at the end of this Appendix.

It is intended that the test lab use this Appendix as a guide in preparing a detailed test plan, and that the scope and detail of the requirements for certification be tailored to the type of hardware, and the design and complexity of the software being tested. Required hardware tests are defined in Section 4, whereas software and system-level tests must be developed based on the vendor pre-certification tests and information available on the specific software's physical and functional configuration.

Prior to development of any test plan, the test lab must obtain the Technical Data Package (TDP) from the vendor submitting the voting system for certification. The TDP contains information necessary to the development of the test plan, such as the vendor's Hardware Specifications, Software Specifications, System Operating Manual and System Maintenance Manual.

It is specified by the Guidelines that voting systems incorporating the vendor's software and COTS hardware need only be submitted for software and system level tests. Recertification of systems with modified software or hardware is also anticipated. The test lab shall alter the test plan outline as required by these situations.

The following discussion describes the individual sections of the recommended National Certification Test Plan. The test lab shall include the identification, and a brief description of, the hardware and software to be tested, and any special considerations that affect the test design and procedure.

A.1.1 References

The test lab shall list all documents that contain material used in preparing the test plan. This list shall include specific references to applicable portions of the guidelines, and to the vendor's TDP.

A.1.2 Terms and Abbreviations

The test lab shall list and define all terms and phrases relevant to the hardware, the software, or the test plan.

A.2 Pre-certification Tests

The test lab shall evaluate vendor tests, or other lab tests in determining the scope of testing required for system certification. Pre-certification test activities may be particularly useful in designing software functional test cases and tests of system security. The test lab shall summarize pre-certification test results that support the discussion of the preceding section.

A.3 Materials Required for Testing

The following materials must be provided to the test lab to facilitate testing of the voting system:

Software
Equipment
Test materials
Deliverable materials
Proprietary data

A.3.1 Software

The test lab shall list all software required for the performance of hardware, software, telecommunications, security and system integration tests. If the test environment requires supporting software such as operating systems, compilers, assemblers, or database managers, then this software shall also be listed.

A.3.2 Equipment

The test lab shall list all equipment required for the performance of the hardware, software, telecommunications, security and system integration tests. This list shall include system hardware, general purpose data processing and communications equipment, and test instrumentation, as required.

A.3.3 Test Materials

The test lab shall list all test materials required in the performance of the test including, as applicable, test ballot layout and generation materials, test ballot sheets, test ballot cards and control cards, standard and optional output data report formats, and any other materials used to simulate preparation for, and conduct of, elections.

A.3.4 Deliverable Materials

The test lab shall list all documents and materials to be delivered as a part of the system, such as:

Hardware specification
Software specification
Voter, operator, hardware, and software maintenance manuals
Program listings, facsimile ballots, tapes
Sample output report formats

A.3.5 Proprietary Data

The test lab shall list and describe all documentation and data that are proprietary to the vendor, and hence are subject to restrictions with respect to test lab use, release, or disclosure.

A.4 Test Specifications

The test lab shall cite the pertinent hardware qualitative examinations and quantitative tests that follow from Volume I, Sections 2, 4, 5, 6, 7 and 8. The test lab shall also describe the specific test requirements that follow from the design of the software and telecommunications capabilities under test.

The certification test shall include hardware, software and telecommunications design and the development and conduct of all tests to demonstrate satisfactory performance. Environmental, non-operating tests shall be performed in the categories of simulated environmental conditions specified by the vendor or user requesting the tests. Environmental operating tests shall be performed under varying temperatures. Other functional tests shall be conducted in an

environment that simulates, as nearly as possible, the intended use environment.

Test hardware and software shall be identical to that designed to be used together in the voting system, except that software intended for use with general purpose off-the-shelf hardware may be tested using any equivalent equipment capable of supporting its operation and functions.

A.4.1 Hardware Configuration and Design

The test lab shall document the hardware configuration and design in detail sufficient to identify the specific equipment being tested. This document shall provide a basis for the specific test design and include a brief description of the intended use of the hardware.

A.4.2 Software System Functions

The test lab shall describe the software functions in sufficient detail to provide a foundation for selecting the test case designs and conditions described in Section A.4.3. On the basis of this test case design, the test lab shall prepare a table delineating software functions and how each shall be tested.

A.4.3 Test Case Design

The test lab shall examine the test case design of the following aspects of the voting system:

Hardware qualitative examination design
Hardware environmental test case design
Software module test case design and data
Software functional test case design
System level test case design

A.4.3.1 Hardware Qualitative Examination Design

The test lab shall review the results, submitted by the vendor, of any previous examinations of the equipment to be tested. The results of these examinations shall be compared to the performance characteristics specified by Section 2 of the Guidelines concerning the requirements for:

Overall system capabilities
Pre-voting functions
Voting functions
Post-voting functions

In the event that a review of the results of previous examinations indicates problem areas, the test lab shall provide a description of further examinations required prior to conducting the environmental and system level tests. If no previous examinations have been performed, or records of these tests are not available, the test agency shall specify the appropriate tests to be used in the examination.

A.4.3.2 Hardware Environmental Test Case Design

The test lab shall review the documentation, submitted by the vendor, of the results and design of any previous environmental tests of the equipment submitted for testing. The test design and results shall be compared to the tests described in Section 1. The test lab shall cite any additional tests required, based on this review and those tests requested by the vendor or the state. The test lab shall also cite any environmental tests that are not to be conducted, and note the reasons why.

For complete certification, environmental tests shall include the following tests, depending upon the design and intended use of the hardware:

Non-operating tests, including the:
Bench handling test
Vibration test
Low temperature test
High temperature test
Humidity test
Operating tests involving a series of procedures that test system reliability and accuracy under various temperatures and voltages relevant to election use

A.4.3.3 Software Module Test Case Design and Data

The test lab shall review the vendor's program analysis, documentation, and, if available, module test case design. The test lab shall evaluate the test cases for each module, with respect to flow control parameters and data on both entry and exit. All discrepancies between the Software Specifications and the test case design shall be corrected by the vendor prior to initiation of the certification test.

If the vendor's module test case design does not provide conclusive coverage of all program paths, then the test lab shall perform an independent analysis to assess the frequency and consequence of error of the untested paths. The test lab shall design additional module test cases, as required, to provide coverage of all modules containing untested paths with potential for untrapped errors.

The test lab shall also review the vendor's module test data in order to verify that the requirements of the Software Specifications have been demonstrated by the data. In the event that the vendor's module test data are insufficient, the test lab shall provide a description of additional module tests, prerequisite to the initiation of functional tests.

A.4.3.4 Software Functional Test Case Design

The test lab shall review the vendor's test plans and data to verify that the individual performance requirements described in Subsection 2.5.3, are reflected in the software.

As a part of this process, the test lab shall review the vendor's functional test case designs. The test lab shall prepare a detailed matrix of system functions and the test cases that exercise them. The test lab shall also prepare a test procedure describing all test ballots, operator procedures, and the data content of output reports. Abnormal input data and operator actions shall be defined. Test cases shall also be designed to verify that the system is able to handle and recover from these abnormal conditions.

The vendor's test case design may be evaluated by any standard or special method appropriate; however, emphasis shall be placed on those functions where the vendor data on module development reflects significant debugging problems, and on functional tests that resulted in disproportionately high error rates.

The test lab shall define ACCEPT/REJECT criteria for certification using the Software Specifications and, if the software runs on special hardware, the associated Hardware Specifications to determine acceptable ranges of performance.

The test lab shall describe the functional tests to be performed. Depending upon the design and intended use of the voting system, all or part of the functions listed below shall be tested.

Ballot preparation subsystem
Test operations performed prior to, during, and after processing of ballots, including:
Logic tests to verify interpretation of ballot styles, and recognition of precincts to be processed
Accuracy tests to verify ballot reading accuracy
Status tests to verify equipment statement and memory contents
Report generation to produce test output data
Report generation to produce audit data records

Procedures applicable to equipment used in the polling place for:

Opening the polling place and enabling the acceptance of ballots and maintaining a count of processed ballots
Monitoring equipment status

Verifying equipment response to operator input commands
Generating real-time audit messages
Closing the polling place and disabling the acceptance of ballots
Generating election data reports
Transfer of ballot counting equipment, or a detachable memory module, to a central counting location
Electronic transmission of election data to a central counting location

Procedures applicable to equipment used in a central counting place:

Initiating the processing of a ballot deck or programmable memory device for one or more precincts
Monitoring equipment status
Verifying equipment response to operator input commands
Verifying interaction with peripheral equipment, or other data processing systems
Generating real-time audit messages
Generating precinct-level election data reports
Generating summary election data reports
Transfer of a detachable memory module to other processing equipment
Electronic transmission of data to other processing equipment
Producing output data for interrogation by external display devices

A.4.3.5 System-level Test Case Design

The test lab shall provide a description of system tests of both the software and hardware. For software, these tests shall be designed according to the stated design objective without consideration of its functional specification. The test lab shall independently prepare the system test cases to assess the response of the hardware and software to a range of conditions, such as:

Volume tests: These tests investigate the system's response to processing more than the expected number of ballots/voters per precinct, to processing more than the expected number of precincts, or to any other similar conditions that tend to overload the system's capacity to process, store, and report data.

Stress tests: These tests investigate the system's response to transient overload conditions. Polling place devices shall be subjected to ballot processing at the high volume rates at which the equipment can be operated to evaluate software response to hardware-generated interrupts and wait states. Central counting systems shall be subjected to similar overloads, including, for systems that support more than one card reader, continuous processing through all readers simultaneously.

Usability tests: These tests are designed to exercise characteristics of the software such as response to input control or text syntax errors, error message content, audit message content, and other features contained in the software design objectives but not directly related to a functional specification.

Accessibility tests: The test lab shall review the vendor's documentation of the usability and accessibility testing performed during system development.

Security tests: These tests are designed to defeat the security provisions of the system including modification or disruption of pre-voting, voting, and post voting processing; unauthorized access to, deletion, or modification of data, including audit trail data; and modification or elimination of security mechanisms.

Performance tests: These tests verify accuracy, processing rate, ballot format handling capability, and other performance attributes claimed by the vendor.

Recovery tests: These tests verify the ability of the system to recover from hardware and data errors.

A.5 Test Data

A.5.1 Data Recording

The test lab shall identify all data recording requirements (e.g.; what is to be measured, how tests and results are to be recorded). The test lab shall also design or approve the design of forms or other recording media to be employed. The test lab shall supply any special instrumentation (e.g., pulse measuring device) needed to satisfy the data requirements.

A.5.2 Test Data Criteria

The test lab shall describe the criteria against which test results will be evaluated, such as the following:

Tolerances: These criteria define the acceptable range for system performance. These tolerances shall be derived from the applicable hardware performance requirements contained in Volume I, Section 4

Samples: These criteria define the minimum number of combinations or alternatives of input and output conditions that can be exercised to constitute an acceptable test of the parameters involved

Events: These criteria define the maximum number of interrupts, halts or other system breaks that may occur due to non-test conditions. This count shall not include events from which recovery occurs automatically or where a relevant status message is displayed

A.5.3 Test Data Reduction

The test lab shall describe the techniques to be used for processing test data. These techniques may include manual, semi-automatic, or fully automatic reduction procedures. However, semi-automatic and automatic procedures must be demonstrated to be capable of handling the test data accurately and properly. They shall also produce an item-by-item comparison of the data and the embedded acceptance criteria as output.

A.6 Test Procedure and Conditions

The test lab shall describe the test conditions and procedures for performing the tests. If tests are not to be performed in random order, this section shall contain the rationale for the required sequence, and the criteria that must be met, before the sequence can be continued. This section shall also describe the procedure for setting up the equipment in which the software will be tested, for system initialization, and for performing the tests. Each of the following sections that contain a description of a test procedure shall also contain a statement of the criteria by which readiness and successful completion shall be indicated and measured.

A.6.1 Facility Requirements

The test lab shall describe the space, equipment, instrumentation, utilities, manpower, and other resources required to support the test program.

A.6.2 Test Set-up

The test lab shall describe the procedure for arranging and connecting the system hardware with the supporting hardware and telecommunications equipment, if applicable. It shall also describe the procedure required to initialize the system, and to verify that it is ready to be tested.

A.6.3 Test Sequence

The test lab shall state any restrictions on the grouping or sequence of tests in this section.

A.6.4 Test Operations Procedures

The test lab shall provide the step-by-step procedures for each test case to be conducted. Each step shall be assigned a test step number and this number, along with critical test data and test procedures information, shall be tabulated onto a test report form for test control and the recording of test results.

In this section, the test lab shall also identify all test operations personnel, and their respective duties. In the event that the operator procedure is not

defined in the vendor's operations or user manual, the test lab shall also provide a description of the procedures to be followed by the test personnel.

Figure 1

Test Plan Outline

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Pre-certification Test Activity
2.2 Pre-certification Test Results

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5 Test Data

5.1 Data Recording
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6 Test Procedure and Conditions

6.1 Facility Requirements
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Appendix B: National Certification Test Report

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B National Certification Test Report

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Appendix B: National Certification Test Report

B.1 Scope

This Appendix contains a recommended outline for the National Certification Test Report to be prepared by the accredited test lab. The test report shall be organized so as to facilitate the presentation of conclusions and recommendations regarding system acceptability, a summary of the test operations, a summary of the test results, the test data records, and the analyses that support the conclusions and recommendations. The content of the report may vary based on the scope of review conducted.

B.1.1 New Certification Test Report

A full report is prepared for the initial certification testing of a voting system. This document consists of five main sections: Introduction, Certification Test Background, System Identification, System Overview, and Certification Test Results.

Detailed information about the test operations and findings, and test data, are included as appendices to the report.

Sections B.2 through B.7 describe the contents of the individual sections of this report.

B.1.2 Changes to Previously Certified Test Report

This report addresses a wide range of scenarios. After a preliminary review of the submitted changes, the accredited test lab may determine that:

A review of all change documentation against the baseline materials is sufficient for recommendation for certification
All changes must be retested against the previously certified baseline
The scope of the changes is substantial enough that a complete retest of the software is required

The format of this report will vary, based on the type of review that is performed. If only a review of change documentation against the baseline materials is performed the report is quite simple. It consists of an Introduction, a Version Description, the Testing Approach, and a Results Summary. A more extensive report is prepared, for changes that have extensive impact on the system design and/or operations.

B.2 Certification Test Background

This section contains the following information:

General information about the certification test process
A list and definition of all terms and nomenclature peculiar to the hardware, the software, or the test report

B.3 System Identification

This section gives information about the tested software and supporting hardware, including:

System name and major subsystems (or equivalent)
System version
Test support hardware
Specific documentation provided in the vendor's TDP used to support testing

B.4 System Overview

This section describes the voting system in terms of its overall design structure, technologies used, processing capacity claimed by the vendor for system components (such as ballot counters, voting machines, vote consolidation equipment), and mode of operation. It may also identify other products that interface with the voting system.

B.5 Certification Test Results and Recommendation

This section provides a summary of the results of the testing process, and indicates any special considerations that affect the conclusions derived from the test results. This summary includes:

The acceptability of the system design and construction based on the performance of the system hardware, software and communications, and on the source code inspection
The degree to which the hardware and software meet the vendor's specifications and the guidelines, and the acceptability of the vendor's technical and user documentation
General findings on the maintainability of the system including, where applicable, notation of specific maintenance activities that are determined to be difficult to perform
Identification and description of any deficiencies that remain uncorrected after completion of the certification test and that have caused or are judged to be capable of causing, the loss or corruption of voting data, providing sufficient detail to support a recommendation to reject the system being tested. Similarly, any deficiency in compliance with the security, accuracy, data retention, and audit requirements are fully described
A specific recommendation to the EAC for approval or rejection

Of note, any uncorrected deficiency that does not involve the loss or corruption of voting data shall not necessarily be cause for rejection. Deficiencies of this type may include failure to fully achieve the levels of performance specified in Volume I or failure to fully implement formal programs for quality assurance and configuration management described in Volume I, Sections 8 and 9. The nature of the deficiency is described in detail sufficient to support the recommendation either to accept or to

reject the system. The recommendation is based on consideration of the probable effect the deficiency will have on safe and efficient system operation during all phases of election use.

B.6 Appendix—Test Operations and Findings

This appendix provides additional detail about the test results to enable the understanding of test results and recommendation. This information is organized in a manner that reflects the Certification Test Plan. Summaries of the results of hardware examinations, operating and non-operating hardware tests, software module tests, software function tests, and system-level tests (including security and telecommunications tests, and the results of the Physical and Functional Configuration Audits) are provided.

B.7 Appendix—Test Data Analysis

This appendix provides summary records of the test data and the details of the analysis. The analysis includes a comparison of the vendor's hardware and software specifications to the test data, together with any mathematical or statistical procedure used for data reduction and processing.

Appendix C: National Certification Test Design Criteria

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Appendix C: National Certification Test Design Criteria

C.1 Scope

This appendix describes the guiding principles used to design the voting system certification testing process conducted by the accredited test lab.

Certification tests are designed to demonstrate that the system meets or exceeds the requirements of the Guidelines. The tests are also used to demonstrate compliance with other levels of performance claimed by the manufacturer.

Certification tests must satisfy two separate and possibly conflicting sets of considerations. The first is the need to produce enough test data to provide confidence in the validity of the test and its apparent outcome. The second is the need to achieve a meaningful test at a reasonable cost, and cost varies with the difficulty of simulating expected real-world operating conditions and with test duration. It is the test designer's job to achieve an acceptable balance of these constraints.

The rationale for, and statistical methods of, the test designs required by the Guidelines are discussed below. Technical descriptions of these designs can be found in any of several books on testing and statistical analysis.

C.2 Approach to Test Design

The certification tests specified in the Guidelines are primarily concerned with assessing the magnitude of random errors. They are also, however, capable of detecting bias errors that would result in the rejection of the system.

Test data typically produce two results. The first is an estimate of the true value of some system attribute such as speed, error rate, etc. The second is the degree of certainty that the estimate is a correct one. The estimate of an attribute's value may or may not be greatly affected by the duration of the test. Test duration, however, is very important to the degree of certainty; as the length of the test increases, the level of uncertainty decreases. An efficient test design will produce enough data over a sufficient period of time to enable an estimate at the desired level of confidence.

There are several ways to design tests. One approach involves the pre-selection of some test parameter, such as the number of failures or other detectable factors. The essential element of this type of design is that the number of observations is independent of their results. The test may be designed to terminate after 1,000 hours or 10 days, or when 5 failures have been observed. The number of failures is important because the confidence interval (uncertainty band) decreases rapidly as the number of failures increases. However, if the system is highly reliable or very accurate, the length of time required to produce a predetermined number of failures or errors using this method may be unachievably long.

Another approach is to determine that the actual value of some attribute need not be learned by testing, provided that the value can be shown to be better than some level. The test would not be designed to produce an estimate of the true value of the attribute but instead to show, for example, that reliability is at least 123 hours or the error rate is no greater than one in ten million characters.

The latter design approach, which was chosen for the Guidelines, uses what is called Sequential Analysis. Instead of the test duration being fixed, it varies depending on the outcome of a series of observations. The test is terminated as soon as a statistically valid decision can be reached that the factor being tested is at least as good as, or no worse than, the predetermined target value. A sequential analysis test design called the ''Wald Probability Ratio Test'' is used for reliability and accuracy testing.

C.3 Probability Ratio Sequential Test (PRST)

The design of a Probability Ratio Sequential Test (PRST) requires that four parameters be specified:

H0, the null hypothesis
H1, the alternate hypothesis
a, the producer's risk
b, the consumer's risk

The Guidelines anticipate using the PRST for testing both time-based and event-based failures.

This test design provides decision criteria for accepting or rejecting one of two test hypotheses: the null hypothesis, which is the Nominal Specification Value (NSV), or the alternate hypothesis, which is the MAV. The MAV could be either the Minimum Acceptable Value, or the Maximum Acceptable Value, depending upon what is being tested. Performance may be specified by means of a single value or by two values. When a single value is specified, it shall be interpreted as an upper or lower single-sided 90 percent confidence limit. If two values, these shall be interpreted as a two-sided 90 percent confidence interval, consisting of the NSV and MAV.

In the case of Mean Time Between Failure (MTBF), for example, the null hypothesis is that the true MTBF is at least as great as the desired value (NSV), while the alternate hypothesis is that the true value of the MTBF is less than some lower value (Minimum Acceptable Value). In the case of error rate, the null hypothesis is that the true error rate is less than some very small desired value (NSV), while the alternate hypothesis is that the true error rate is greater than some larger value that is the upper limit for acceptable error (Maximum Acceptable Value).

C.4 Time-based Failure Testing Criteria

The equivalence between a number of events and a time period can be established when the operating scenarios of a system can be determined with precision. Some of the performance test criteria of Volume II, Section 4, use this equivalence.

System acceptance or rejection can be determined by observing the number of relevant failures that occur during equipment operation. The probability

ratio for this test is derived from the exponential probability distribution. This distribution implies a constant hazard rate for equipment failure that is not dependent on the time of testing or the previous failures. In that case, two or more systems may be tested simultaneously to accumulate the required number of test hours, and the validity of the data is not affected by the number of operating hours on a particular unit of equipment. However, for environmental operating hardware tests, no unit shall be subjected to less than two complete 24-hour test cycles in a test chamber as required by Volume II, Subsection 4.7.1.

In this case, the null hypothesis is that the Mean Time Between Failure (MTBF), as defined in Volume I, Subsection 4.3.3 is at least as great as some value, here the Nominal Specification Value. The alternate hypothesis is that the MTBF is no better than some value, here the Minimum Acceptable Value.

For example, a typical system operations scenario for environmental operating hardware tests will consist of approximately 45 hours of equipment operation. Broken down, this time allotment involves 30 hours of equipment setup and readiness testing and 15 hours of elections operations. If the Minimum Acceptable Value is defined as 45 hours, and a test discrimination ratio of 3 is used (in order to produce an acceptably short expected time of decision), then the Nominal Specification Value equals 135 hours.

With a value of decision risk equal to 10 percent, there is no more than a 10 percent chance that a system would be rejected when, in fact, with a true MTBF of at least 135 hours, the system would be acceptable. It also means that there is no more than a 10 percent chance that a system would be accepted with a true MTBF lower than 45 hours when it should have been rejected.

Therefore,

H0: MTBF = 135 hours
H1: MTBF = 45 hours
a = 0.10
b = 0.10.

Under this PRST design, the test is terminated and an ACCEPT decision is reached when the cumulative number of equipment hours in the second column of the following table has been reached, and the number of failures is equal to or less than the number shown in the first column. The test is terminated and a REJECT decision is reached when the number of failures occurs in less than the number of hours specified in the third column. Here, the minimum time to accept (on zero failures) is 169 hours. In the event that no decision has been reached by the times shown in the last table entries, the test is terminated, and the decision is declared as indicated. Any time that 7 or more failures occur, the test is terminated and the equipment rejected. If, after 466 hours of operation, the cumulative failure score is less than 7.0, then the equipment is accepted.

Number of failures	Accept if time greater than	Reject if time less than
0	169	Continue test
1	243	Continue test
2	317	26
3	392	100
4	466	175
5	466	249
6	466	323
7	N/A	(1)

(1) Terminate and REJECT

This test is based on the table of test times of the truncated PRST design V-D in the Military Handbook MIL-HDBK–781A that is designated for discrimination ratio 3 and a nominal value of 0.10 for both a and b. The Handbook states that the true producer risk is 0.111 and the true consumer risk is 0.109. Using the theoretical formulas for either the untruncated or truncated tests will lead to different numbers.

The test design will change if given a different set of parameters. Some jurisdictions may find the Minimum Acceptable Value of 45 hours unacceptable for their needs. In addition, it may be appropriate to use a different discrimination ratio, or different, Consumer's and Producer's risk. Also, before using tests based on the MTBF, it should be determined whether time-based testing is appropriate rather than event-based or another form of testing. If MTBF-based procedures are chosen, then the appropriateness of the assumption of a constant hazard rate with exponential failures should in turn be assessed.

C.5 Accuracy Testing Criteria

Some voting system performance attributes are tested by inducing an event or series of events, and the relative or absolute time intervals between repetitions of the event has no significance. Although equivalence between a number of events and a time period can be established when the operating scenarios of a system can be determined with precision, another type of test is required when such equivalence cannot be established. It uses event-based failure frequencies to arrive at ACCEPT/REJECT criteria. This test may be performed simultaneously with time-based tests.

For example, the failure of a device is usually dependent on the processing volume that it is required to perform. The elapsed time over which a certain number of actuation cycles occur is, under most circumstances, not important. Another example of such an attribute is the frequency of errors in reading, recording, and processing vote data.

The error frequency, called ''ballot position error rate,'' applies to such functions as process of detecting the presence or absence of a voting punch or mark, or to the closure of a switch corresponding to the selection of a candidate.

Certification and acceptance test procedures that accommodate event-based failures are, therefore, based on a discrete, rather than a continuous probability distribution. A Probability Ratio Sequential Test using the binomial distribution is recommended. In the case of ballot position error rate, the calculation for a specific device (and the processing function that relies on that device) is based on:

HO: Desired error rate = 1 in 10,000,000
H1: Maximum acceptable error rate = 1 in 500,000
a = 0.05
b = 0.05

and the minimum error-free sample size to accept for qualification tests is 1,549,703 votes.

The nature of the problem may be illustrated by the following example,

using the criteria contained in the Guidelines for system error rate. A target for the desired accuracy is established at a very low error rate. A threshold for the worst error rate that can be accepted is then fixed at a somewhat higher error rate. Next, the decision risk is chosen, that is, the risk that the test results may not be a true indicator of either the system's acceptability or unacceptability. The process is as follows:

The desired accuracy of the voting system, whatever its true error rate (which may be far better), is established as no more than one error in every ten million characters (including the null character)

If it can be shown that the system's true error rate does not exceed one in every five hundred thousand votes counted, it will be considered acceptable. This is more than accurate enough to declare the winner correctly in almost every election

A decision risk of 5 percent is chosen, to be 95 percent sure that the test data will not indicate that the system is bad when it is good or good when it is bad

This results in the following decision criteria:

d. If the system makes one error before counting 26,997 consecutive ballot positions correctly, it will be rejected. The vendor is then required to improve the system

e. If the system reads at least 1,549,703 consecutive ballot positions correctly, it will be accepted

f. If the system correctly reads more than 26,997 ballot positions but less than 1,549,703 when the first error occurs, the testing will have to be continued until another 1,576,701 consecutive ballot positions are counted without error (a total of 3,126,404 with one error)

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Wednesday,
April 12, 2006

Part III

Election Assistance Commission

Technical Guidelines Development Committee (TGDC); Initial Report: Voluntary Voting System Guidelines Version I; Notice

ELECTION ASSISTANCE COMMISSION

Technical Guidelines Development Committee (TGDC); Initial Report: Voluntary Voting System Guidelines Version I

AGENCY: United States Election Assistance Commission.

ACTION: Notice; publication of TGDC recommendations for voluntary voting system guidelines.

SUMMARY: The Help America Vote Act of 2002 (HAVA) Section 221(f) directs the Technical Guidelines Development Committee (TGDC) to publish its recommendations to the Executive Director of the U.S. Election Assistance Commission (EAC) at the time EAC adopts voluntary voting system guidelines. In 2004, the EAC formed the TGDC to create an initial set of recommendations for guidelines as directed by HAVA. The Director of the National Institute of Standards and Technology (NIST) chairs the TGDC and NIST staff provides technical support for the TGDC's work. This committee of fifteen experts began their work in July 2004 and submitted their recommendations, which are published here. These recommendations were used by the EAC in producing the EAC's proposed 2005 Voluntary Voting System Guidelines which were published for public comment in June 2005, 70 FR 37378 (June 29, 2005). Following revision of its proposed guidelines to reflect the comments received, the EAC adopted the final 2005 Voluntary Voting System Guidelines on December 13, 2005. This final document is being concurrently published as required by HAVA.

FOR FURTHER INFORMATION CONTACT: Brian Hancock (Election Research Specialist) Washington, DC, (202) 566–3100, Fax: (202) 566–3127.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

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UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899-
OFFICE OF THE DIRECTOR

MAY 0 6 2005

Ms. Carol Paquette
Interim Executive Director
U.S. Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington D.C. 20005

Dear Ms. Paquette:

Public Law 107-252, the Help America Vote Act (HAVA), requires the Technical Guidelines Development Committee (TGDC) to provide an initial set of recommendations for voluntary voting system guidelines to the Executive Director of the U.S. Election Assistance Commission (EAC) no later than nine months after all members of the TGDC have been appointed. The membership of the TGDC was completed on August 9, 2004.

As adopted by the TGDC at its April 2005 plenary session, the enclosed document, "Voluntary Voting System Guidelines Version 1: Initial Report" (VVSG Version 1), serves as the initial set of recommendations mandated by HAVA in Section 221.

I am most gratified to deliver this document to you within the time frame stipulated in HAVA. As chairman of the Committee, I note that the recommendations were adopted unanimously and represent many hours of volunteered expertise by the members of the TGDC with technical assistance from NIST scientists.

I look forward to the review of VVSG Version 1 by the EAC, the Standards and Advisory Boards, and the American public.

Sincerely,

Hratch G. Semerjian
Chairman
Technical Guidelines Development Committee

Enclosure

Voluntary Voting System Guidelines Version I

Initial Report

May 9, 2005

PRODUCT OF THE TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE WITH TECHNICAL ASSISTANCE FROM THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

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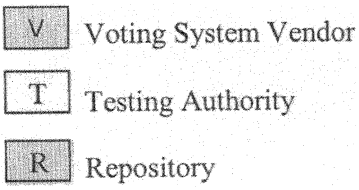
Voluntary Voting System Guidelines—Overview

This section provides an overview of the Voluntary Voting System Guidelines (VVSG), Version 1. The VVSG was created in response to the Help America Vote Act (HAVA) of 2002 and is based on the initial set of recommendations of the Technical Guidelines Development Committee (TGDC) mandated by HAVA. The VVSG Version 1 augments the Voting Systems Standard (VSS) of 2002 (VSS–2002), which was promulgated by the Federal Election Commission (FEC). This overview serves as an explanation of how the VVSG Version 1 differs from the VSS–2002 and provides a basis for further improvements. In addition, it provides a high level overview of the major sections of the two volumes that make up VVSG Version 1.

Document Structure

This document presents the voluntary voting system guidelines as a single document consisting of two volumes: Volume I, the performance provisions of the guidelines and Volume II, the testing specification. Sections of this document augment the VSS–2002, by either replacing VSS–2002 sections or adding new sections. New material is indicated by distinct header information on each page. The header information is in a gray shaded box and includes the words ''NEW MATERIAL''. The footer information also includes the words ''NEW MATERIAL''. Additionally, line numbers have been added to these pages.

In the new sections that contain requirements or informative characteristics, each requirement or characteristic is numbered according to a hierarchical scheme in which higher-level requirements (such as ''provide accessibility for blind voters'') are supported by lower level requirements (''provide an audio-tactile interface''). These sections are: Sections 2.2.7, 6.0.1, 6.0.2, 6.0.3, 6.0.4, and Appendix D. Additionally, each requirement or characteristic indicates to whom it applies (*i.e.*, responsible entity) as well as which stage of the voting process (*i.e.*, pre-voting, voting, post-voting) is affected. There are three responsible entities: voting system vendor (V), testing authority (T), and repository (R). To aid the reader, a colored box with the first letter of the responsible entity, *i.e.*, V, T, or R accompanies the name of the entity, as follows:



The three stages of the voting process are indicated by a presenting a box with all three stages and using a strikeout font to indicate the stages that are not applicable, as follows:

Pre-Voting	~~Voting~~	~~Post-Voting~~

Indicates the pre-voting stage is the only stage that applies.

Pre-Voting	Voting	Post-Voting

Indicates all three stages apply.

Background

The Help America Vote Act (HAVA) established the Technical Guidelines Development Committee to assist the Election Assistance Commission (EAC) with the development of voluntary voting system guidelines. HAVA directs the National Institute of Standards and Technology (NIST) to chair the TGDC and to provide technical support to the TGDC in the development of these guidelines. The TGDC's initial set of recommendations for these guidelines were presented to the Election Assistance Commission in May 2005, in accordance with HAVA's nine-month deadline.

VVSG Version 1 is intended to assist State election officials in preparing for the 2006 election. This document augments the VSS–2002 to address the critical areas of accessibility, usability and computer security. In addition, the VVSG includes an improved glossary to promote common understanding, a conformance clause, and an updated Appendix on error rates.

It is important to note that the VVSG Version 1 is an interim set of guidelines. The EAC is working with both the TGDC and NIST to create a redesigned VVSG (called VVSG Version 2) that will address a large range of issues including rewriting the requirements, if necessary, to make them more precise and testable and address key human factors and computer security issues. These new requirements will affect the basic design of voting systems to such a degree that these types of changes cannot reasonably be made and tested in time for the 2006 election cycle.

Brief History of Voting Systems Standards and Guidelines

In 1975, the National Bureau of Standards (now the National Institute of Standards and Technology) and the Office of the Federal Elections (the Office of Election Administration's predecessor at the General Accounting Office) produced a joint report, *Effective Use of Computing Technology in Vote Tallying.* This report concluded that a basic cause of computer-related election problems was the lack of appropriate technical skills at the state and local level to develop or implement sophisticated Standards against which voting system hardware and software could be tested. A subsequent Congressionally-authorized study produced by the FEC and the National Bureau of Standards detailed the need for a federal agency to develop national performance Standards that could be used as a tool by state and local election officials in the testing, certification, and procurement of computer-based voting systems.

In 1984, Congress appropriated funds for the FEC to develop voluntary national Standards for computer-based voting systems. The FEC formally approved the *Performance and Test Standards for Punchcard, Marksense and Direct Recording Electronic Voting Systems in* January 1990. This document is generally referred to as the *Voting Systems Standards,* or *1990 VSS.*

The national testing effort was developed and overseen by the National

Association of State Election Director's Voting Systems Board, which is composed of election officials and independent technical advisors. NASED's testing program was initiated in 1994 and more than 30 voting systems or components of voting systems have gone through the (NASED's) testing and qualification process. In addition, many systems have subsequently been certified at the state level using the Standards in conjunction with functional and technical requirements developed by state and local policymakers to address the specific needs of their jurisdictions.

As the qualification process matured and qualified systems were used in the field, the Voting Systems Board, in consultation with the testing labs, was able to identify certain testing issues that needed to be resolved. Moreover, rapid advancements in information and personal computer technologies introduced new voting system development and implementation scenarios not contemplated by the 1990 Standards.

In 1997, NASED briefed the FEC on the necessity for continued FEC involvement, citing the importance of keeping the Standards current in its reflection of modern and emerging technologies employed by voting system vendors. Following a Requirements Analysis released in 1999, the Commission authorized the Office of Election Administration to revise the Standards to reflect contemporary needs of the elections community. This resulted in the 2002 Voting Systems Standards.

In 2002, Congress passed HAVA, which created a new process for improving voluntary voting system guidelines. A new federal entity was created, the Election Assistance Commission, to oversee the process. The EAC established the Technical Guidelines Development Committee in accordance with the requirements of section 221 of HAVA pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2. The TGDC's objectives and duties were to act in the public interest to assist the EAC in the development of the voluntary voting system guidelines. The membership, as defined by HAVA, includes:

- The Director of the National Institute of Standards and Technology (NIST) who shall serve as its chair,
- Members of the Standards Board,
- Members of the Board of Advisors,
- Members of the Architectural and Transportation Barrier, and Compliance Board (Access Board),
- A representative of the American National Standards Institute,
- A representative of the IEEE,
- Two representatives of the NASED selected by such Association who are not members of the Standards Board or Board of Advisors, and who are not of the same political party, and
- Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

The TGDC first met in August, 2004 and delivered the Voluntary Voting System Guidelines in May, 2005. This initial set of recommendations augments the VSS–2002 by including security measures for auditability, wireless communications and software distribution and setup, and improvements to the accessibility and usability design sections of the VSS–2002. The TGDC also recommended that the VSS–2002 be replaced with a far-reaching guideline that would address in-depth security, performance-based guidelines for usability testing, and an overhaul of the standards and test methods to meet today's more rigorous needs for electronic voting systems.

Issues Addressed by the VVSG Version 1

The VVSG Version 1 adds or significantly changes eight technical topics of the VSS–2002. In addition, there are three organizational changes in the new sections. All other material remains the same.

Conformance Clause

The VSS–2002 did not include a conformance clause. One has been written and inserted as Section 1.7. The previous material in Section 1.7, the Outline, has been moved to 1.8.

Conformance is defined as the fulfillment by a product, process, or service of requirements as specified in a standard or specification. Conformance testing is the determination of whether an implementation (i.e., product, process, or service) faithfully satisfies the requirements and thus, conforms.

The conformance clause of a standard specification is a high-level description of what is required of implementers and developers. It, in turn, refers to other parts of the standard. The conformance clause may specify minimal requirements for certain functions and minimal requirements for implementation-dependent values. It may also specify the permissibility of extensions, options, and alternative approaches and how they are to be handled.

Human Factors

In the VSS–2002 Volume 1 Section 2.2.7 addressed Accessibility and Section 3.4.9 addressed Human Engineering—Controls and Displays. The VSS–2002 also contained Appendix C on Usability. The VVSG Version 1 replaces all of these items with a new Section 2.2.7 that addresses Human Factors including accessibility, usability, and limited English proficiency. This new sections incorporates the two NASED Technical Guides (Guide #1 and Guide #2). Future versions of the VVSG will contain performance-based requirements.

Security Overview and Appendix D

A new security section was added as Section 6.0. It contains four parts: an Overview and three topic areas. The overview was added to explain the VVSG approach to security. Future versions of the VVSG will require independent dual verification. There are many ways known today to achieve independent dual verification and more ways may be developed. Current methods include dual process systems, witness systems, cryptographic-based systems, optical scan systems, and paper audit trails. A new Appendix D expands on this overview with an in-depth discussion of independent dual verification systems. Independent dual verification is a new area in voting systems and it is expected to evolve significantly in VVSG Version 2. The Security Overview is an informative (non-normative) section of the VVSG Version 1. Requirements for voter verified paper audit trail systems, which are a type of independent dual verification system, are specified in a separate section. Version 2 of the VVSG will have complete requirements for at least three additional methods.

Voter Verified Paper Audit Trails

The VSS–2002 contained no requirements for voter verified paper audit trails. The VVSG Version 1 is providing requirements for voter verified paper audit trails (VVPAT) so that States that choose to implement VVPAT or States that are considering implementation can utilize these requirements to help ensure the effective operation of these systems. The EAC, TGDC, and NIST are taking no position with respect to the implementation of VVPAT systems and are neither requiring nor endorsing voter verified paper audit trails. Methods other than VVPAT can provide ways to achieve independent dual verification. These other methods are described in the Security Overview.

Wireless Technology

The TGDC concluded that the use of wireless technology introduces risk and

should be approached with caution. Therefore, the VVSG Version 1 includes a new section on wireless that augments the general telecommunications requirements in Volume 1, Section 5. in Section 5. The VVSG Version 1 requires that wireless transmissions be encrypted to protect against a variety of security problems.

Software Distribution and Setup Validation

The VSS–2002 contains many requirements to help voting officials validate the software and the setup of voting system software and hardware. Subsequent to the publication of the VSS–2002, the EAC invited all voting software vendors to submit their software to a national software repository maintained by NIST. This section of the VVSG Version 1 builds on the VSS–2002 to include use of this repository and other validation mechanisms.

Glossary

This glossary contains terms from the VSS–2002 as well as the inclusion of additional terms needed to understand voting and related areas such as security, human factors, and testing. Each term includes a definition and its source as well as an association as to the domain for which the term applies. Having a common set of terminology forms the basis for understanding requirements and for discussing improvements. The glossary is also available in a web-based on-line version at *http://www.nist.gov/votingglossary.*

Error Rates

Volume II, Appendix C addresses error rates. This appendix contains revised procedures to test that systems meet the indicated error rates. These apply to errors introduced by the system, defined as a ballot position error rate, and not by a voter's action. Further research on human interface and usability issues is needed to enable the development of Standards for error rates that account for human error.

There were concerns about the VSS–2002 Appendix regarding the numbers listed in the probability ratio sequential test (PRST) of the Mean Time Before Failure (MTBF) that (1) the numbers do not correspond to the numbers for the same table in the 1990 VSS, even though the stated assumptions do not change, and (2) the numbers from neither the 1990 nor the 2002 tables correspond to numbers that would result from standard PRST formulas listed in standard references such as the military handbook MIL–HDBK–781A. To address these concerns, the revised Appendix has replaced the numbers in the table with those that would indicated by the truncated PRST design from MIL–HDBK–781A with the corresponding parameters and made it more clear in the text that a truncated design was chosen. Using standard theoretical formulas leads to somewhat different numbers, but the revised Appendix C uses numbers from the MIL–HDBK–781A because they may be considered more standard and produce a less drastic change. Also, in the 1990 VSS, there was an appendix devoted to the definition and use of ''partial failures.'' This appendix was eliminated from the VSS–2002. The new version eliminated the paragraph and diagram in Appendix C that used partial failures.

The new version also includes statements reminding users to be cognizant of the assumptions involved in tests that use time-based exponential failure times and constant failure rates. Given the concerns that have been stated about appropriate testing times, note that the given table is appropriate only for the stated parameters, and that officials should assess the appropriateness of whatever parameters are used in testing.

Best Practices for Voting Officials

The VSS–2002 contained requirements for voting systems and for testing entities. However, requirements for human factors, wireless communications, VVPAT, software distribution and setup validation depend not only on voting systems providing specific capabilities but on voting officials developing and carrying out appropriate procedures. Consequently, the VVSG Version 1 contains Best Practices for voting officials. The new sections in VVSG Version 1 define each requirement as pertaining to voting systems, vendor repository, or test authorities, or voting officials. The requirements for voting officials are collected in Appendix C of Volume 1. (Appendix C had previously been Usability.)

Voting Process

The VSS–2002 defined three major stages of voting: pre-voting, voting, and post-voting. The stage for each requirement is marked in the new sections. The VVSG Version 2 will have a more detailed voting process model and will allow for finer granularity.

Summary of Content of Volume I

Volume I contains performance standards for electronic components of voting systems. In addition to containing a glossary (Appendix A), applicable references (Appendix B), Best Practices (Appendix C) and Security Overview (Appendix D). Volume I is divided into nine sections:

Section 1—Introduction: This section provides an introduction to the Standards, addressing the following topics:

- Objectives and usage of the Standards,
- Development history for initial Standards,
- Update of the Standards,
- Accessibility for individuals with disabilities,
- Definitions of key terms,
- Application of the Standards and test specifications,
- Conformance clause, and
- Outline of contents.

Section 2—Functional Capabilities: This section contains Standards detailing the functional capabilities required of a voting system. This section sets out precisely what it is that a voting system is required to do. This section also sets forth the minimum actions a voting system must be able to perform to be eligible for qualification. For organizational purposes, functional capabilities are categorized by the phase of election activity in which they are required:

- *Overall Capabilities:* These functional capabilities apply throughout the election process. They include security, accuracy, integrity, system auditability, election management system, vote tabulation, ballot counters, telecommunications, and data retention.
- *Pre-voting Capabilities:* These functional capabilities are used to prepare the voting system for voting. They include ballot preparation, the preparation of election-specific software (including firmware), the production of ballots or ballot pages, the installation of ballots and ballot counting software (including firmware), and system and equipment tests.
- *Voting Capabilities:* These functional capabilities include all operations conducted at the polling place by voters and officials including the generation of status messages.
- *Post-voting Capabilities:* These functional capabilities apply after all votes have been cast. They include closing the polling place; obtaining reports by voting machine, polling place, and precinct; obtaining consolidated reports; and obtaining reports of audit trails.
- *Maintenance, Transportation and Storage Capabilities:* These capabilities are necessary to maintain, transport, and store voting system equipment.

For each functional capability, common standards are specified. In recognition of the diversity of voting

systems, some of the standards have additional requirements that apply only if the system incorporates certain functions (for example, voting systems employing telecommunications to transmit voting data) or configurations (for example, a central count component). Where system-specific standards are appropriate, common standards are followed by standards applicable to specific technologies (i.e., paper-based or DRE) or intended use (i.e., central or precinct count).

Section 3—Hardware Standards: This section describes the performance requirements, physical characteristics, and design, construction, and maintenance characteristics of the hardware and related components of a voting system. This section focuses on a broad range of devices used in the design and manufacture of voting systems, such as:

- For paper ballots: Printers, cards, boxes, transfer boxes, and readers,
- For electronic systems: Ballot displays, ballot recorders, precinct vote control units,
- For voting devices: Punching and marking devices and electronic recording devices,
- Voting booths and enclosures,
- Equipment used to prepare ballots, program elections, consolidate and report votes, and perform other elections management activities,
- Fixed servers and removable electronic data storage media, and
- Printers.

The Standards specify the minimum values for the relevant attributes of hardware, such as:

- Accuracy,
- Reliability,
- Stability under normal environmental operating conditions and when equipment is in storage and transit,
- Power requirements and ability to respond to interruptions of power supply,
- Susceptibility to interference from static electricity and magnetic fields,
- Product marking, and
- Safety.

Section 4—Software Standards: This section describes the design and performance characteristics of the software embodied in voting systems, addressing both system level software and voting system application software. The requirements of this section are intended to ensure that the overall objectives of accuracy, logical correctness, privacy, system integrity, and reliability are achieved. Although this section emphasizes software, the software standards may influence hardware design in some voting systems.

The requirements of this section apply to all software developed for use in voting systems, including:

- Software provided by the voting system vendor and its component suppliers, and
- Software furnished by an external provider where the software is potentially used in any way during voting system operation.

The general standards in this section apply to software used to support the broad range of voting system activities, including pre-voting, voting and post-voting activities. System specific Standards are defined for ballot counting, vote processing, the creation of an unalterable audit trail, and the generation of output reports and files. Voting system software is also subject to the security requirements of Section 6.

Section 5—Telecommunications Standards: This section describes the requirements for the telecommunications components of voting systems. Additionally, it defines the acceptable levels of performance against these characteristics. For the purpose of the Standards, telecommunications is defined as the capability to transmit and receive data electronically regardless of whether the transmission is localized within the polling place or the data is transmitted to a geographically distinct location. The requirements in this section represent functional and performance requirements for the transmission of data that are used to operate the system and report official election results. Where applicable, this section specifies minimum values for critical performance and functional attributes involving telecommunications hardware and software components.

This section addresses telecommunications hardware and software across a broad range of technologies such as dial-up communications technologies, high-speed telecommunications lines (public and private), cabling technologies, communications routers, modems, modem drivers, channel service units (CSU)/data service units (DSU), and dial-up networking applications software.

Additionally, this section applies to voting-related transmissions over public networks, such as those provided by regional telephone companies and long distance carriers. This section also applies to private networks regardless of whether the network is owned and operated by the election jurisdiction. For systems that transmit data over public networks, this section applies to telecommunications components installed and operated at settings supervised by election officials, such as polling places or central offices.

Section 6—Security Standards: This section starts with an overview that provides a description of a new approach to securing voting systems called independent dual verification. The overview introduces the concept of independent dual verification and explains several approaches for achieving it. Appendix D further explores independent dual verification. Independent dual verification is not required in VVSG Version 1, but will be required in Version 2. Following the overview are 3 new sections describing requirements for voter verified paper audit trails, wireless technology and software distribution and setup. The remainder of the section is unchanged from VSS–2002 and describes the security capabilities for a voting system, encompassing the system's hardware, software, communications, and documentation. The requirements of this section recognize that no predefined set of security Standards will address and defeat all conceivable or theoretical threats. However, the Standards articulate requirements to achieve acceptable levels of integrity, reliability, and inviolability. Ultimately, the objectives of the security Standards for voting systems are to:

- Establish and maintain controls that can ensure that accidents, inadvertent mistakes, and errors are minimized,
- Protect the system from intentional manipulation and fraud,
- Protect the system from malicious mischief,
- Identify fraudulent or erroneous changes to the system, and
- Protect secrecy in the voting process.

These Standards are intended to address a broad range of risks to the integrity of a voting system. While it is not possible to identify all potential risks, the Standards identify several types of risk that must be addressed, including:

- Unauthorized changes to system capabilities for defining ballot formats, casting and recording votes, calculating vote totals consistent with defined ballot formats, and reporting vote totals,
- Alteration of voting system audit trails,
- Altering a legitimately cast vote,
- Preventing the recording of a legitimately cast vote,
- Introducing data for a vote not cast by a registered voter,
- Changing calculated vote totals,
- Preventing access to vote data, including individual votes and vote totals, to unauthorized individuals, and

• Preventing access to voter identification data and data for votes cast by the voter such that an individual can determine the content of specific votes cast by the voter.

Section 7—Quality Assurance: In the Standards, quality assurance is a vendor function with associated practices that confirms throughout the system development and maintenance life-cycle that a voting system conforms with the Standards and other requirements of state and local jurisdictions. Quality assurance focuses on building quality into a system and reducing dependence on system tests at the end of the life-cycle to detect deficiencies.

This section describes the responsibilities of the voting system vendor for designing and implementing a quality assurance program to ensure that the design, workmanship, and performance requirements of the Standards are achieved in all delivered systems and components. These responsibilities include:

• Development of procedures for identifying and procuring parts and raw materials of the requisite quality, and for their inspection, acceptance, and control.

• Documentation of hardware and software development processes.

• Identification and enforcement of all requirements for in-process inspection and testing that the manufacturer deems necessary to ensure proper fabrication and assembly of hardware, as well as installation and operation of software or firmware.

• Procedures for maintaining all data and records required to document and verify the quality inspections and tests.

Section 8—Configuration Management: This section contains specific requirements for configuration management of voting systems. For the purposes of the Standards, configuration management is defined as a set of activities and associated practices that assures full knowledge and control of the components of a system, beginning with its initial development, progressing throughout its development and construction, and continuing with its ongoing maintenance and enhancement. This section describes activities in terms of their purpose and outcomes. It does not describe specific procedures or steps to be employed to accomplish them—these are left to the vendor to select.

The requirements of this section address a broad set of record keeping, audit, and reporting activities that include:

• Identifying discrete system components,

• Creating records of formal baselines of all components,

• Creating records of later versions of components,

• Controlling changes made to the system and its components,

• Submitting new versions of the system to Independent Test Authorities (ITA)s,

• Releasing new versions of the system to customers,

• Auditing the system, including its documentation, against configuration management records,

• Controlling interfaces to other systems, and

• Identifying tools used to build and maintain the system.

Vendors are required to submit documentation of these procedures to the ITA as part of the Technical Data Package for system qualification testing. Additionally, as articulated in state or local election laws, regulations, or contractual agreements with vendors, authorized election officials or their representatives reserve the right to inspect vendor facilities and operations to determine conformance with the vendor's reported configuration management procedures.

Section 9—Overview of Qualification Tests: This section provides an overview for the qualification testing of voting systems. Qualification testing is the process by which a voting system is shown to comply with the requirements of the Standards and the requirements of its own design and performance specifications. The testing also evaluates the completeness of the vendor's developmental test program, including the sufficiency of vendor tests conducted to demonstrate compliance with stated system design and performance specifications, and the vendor's documented quality assurance and configuration management practices.

The qualification test process is intended to discover errors that, should they occur in actual election use, could result in failure to complete election operations in a satisfactory manner. This section describes the scope of qualification testing, its applicability to voting system components, documentation that is must be submitted by the vendor, and the flow of the test process. This section also describes differences between the test process for initial qualification testing of a system and the testing for modifications and re-qualification after a qualified system has been modified.

Since 1994, the testing described in this section has been performed by an ITA that is certified by NASED. For the future, HAVA provides for EAC-accredited testing authorities. HAVA tasks the Director of NIST to assist the EAC by recommending laboratories for EAC accreditation. NIST's National Voluntary Laboratory Accreditation Program (NVLAP) is developing a program to evaluate competent laboratories. While laboratories are being evaluated for recommendation by the Director, testing will continue to be done by the ITAs previously certified by NASED. The testing may be conducted by one or more ITAs for a given system, depending on the nature of tests to be conducted and the expertise of the certified ITA. The testing process involves the assessment of, but is not limited to:

• Absolute correctness of all ballot processing software, for which no margin for error exists,

• Operational accuracy in the recording and processing of voting data, as measured by the error rate articulated in Volume I, Section 3,

• Operational failure or the number of unrecoverable failures under conditions simulating the intended storage, operation, transportation, and maintenance environments for voting systems, using an actual time-based period of processing test ballots,

• System performance and function under normal and abnormal conditions, and

• Completeness and accuracy of the system documentation and configuration management records to enable purchasing jurisdictions to effectively install, test, and operate the system.

Summary of Volume II Content

Section 1—Introduction: This section provides an overview of Volume II, addressing the following topics:

• Objectives of Volume II,

• General contents of Volume II,

• Qualification testing focus,

• Qualification testing sequence,

• Evolution of testing, and

• Outline of contents.

Section 2—Technical Data Package: This section contains a description of vendor documentation relating to the voting system that shall be submitted with the system as a precondition for qualification testing. These items are necessary to define the product and its method of operation; to provide the vendor's technical and test data supporting the its claims of the system's functional capabilities and performance levels; and to document instructions and procedures governing system operation and field maintenance. The content of the Technical Data Package (TDP) shall contain a complete description of the following information about the system:

• Overall system design, including subsystems, modules, and interfaces,
• Specific functional capabilities,
• Performance and design specifications,
• Design constraints and compatibility requirements,
• Personnel, equipment, and facilities necessary for system operation, maintenance, and logistical support,
• Vendor practices for assuring system quality during the system's development and subsequent maintenance, and
• Vendor practices for managing the configuration of the system during development and for modifications to the system throughout its life-cycle.

Section 3—Functionality Testing: This section contains a description of the testing to be performed by the ITA to confirm the functional capabilities of a voting system submitted for qualification testing. It describes the scope and basis for functional testing, the general sequence of tests within the overall test process, and provides guidance on testing for accessibility. It also discusses testing of functionality of systems that operate on personal computers.

Section 4—Hardware Testing: This section contains a description of the testing to be performed by the ITAs to confirm the proper functioning of the hardware components of a voting system submitted for qualification testing. This section requires ITAs to design and perform procedures that test the voting system hardware for both operating and non-operating environmental tests. Hardware testing begins with non-operating tests that require the use of an environmental test facility. These are followed by operating tests that are performed partly in an environmental facility and partly in a standard test laboratory or shop environment. The non-operating tests are intended to evaluate the ability of the system hardware to withstand exposure to various environmental conditions incidental to voting system storage, maintenance, and transportation. The procedures are based on test methods contained in Military Standards (MIL–STD) 810D, modified where appropriate, and include such tests as: Bench handling, vibration, low and high temperature, and humidity.

The operating tests involve running the system for an extended period of time under varying temperatures and voltages. This ensures that the hardware meets or exceeds the minimum requirements for reliability, data reading, and processing accuracy contained in Section 3 of Volume I. Although the procedure emphasizes equipment operability and data accuracy, it is not an exhaustive evaluation of all system functions. Moreover, the severity of the test conditions has in most cases been reduced from that specified in the Military Standards to reflect commercial, rather than military, practice.

Section 5—Software Testing: This section contains a description of the testing to be performed by the ITAs to confirm the proper functioning of the software components of a voting system submitted for qualification testing. It describes the scope and basis for software testing, the initial review of documentation to support software testing, and the review of voting system source code.

The software qualification tests encompass a number of interrelated examinations. The examinations include selective review of source code for conformance with the vendor's stated standards, and other system documentation provided by the vendor. The code inspection is complemented by a series of functional tests to verify the proper performance of all system functions controlled by the software.

Section 6—System Level Integration Testing: This section contains a description of the testing conducted by the ITAs to confirm the proper functioning of the fully integrated components of a voting system submitted for qualification testing. It describes the scope and basis for integration testing, testing of internal and external system interfaces, testing of security capabilities, testing of accessibility features, and the configuration audits, including the evaluation of claims made in the system documentation.

System-level qualification tests address the integrated operation of hardware, software and telecommunications capabilities (where applicable) to assess the system's response to a range of both normal and abnormal conditions in an attempt to compromise the system.

Section 7—Examination of Vendor Practices for Configuration Management and Quality Assurance: This section contains a description of examinations conducted by the ITAs to evaluate the extent to which vendors meet the requirements for configuration management and quality assurance. It describes the scope and basis for the examinations and the general sequence of the examinations. It also provides guidance on the substantive focus of the examinations.

In reviewing configuration management practices, the ITAs examine the vendor's:
• Configuration management policy,
• Configuration identification policy,
• Baseline, promotion and demotion procedures,
• Configuration control procedures,
• Release process and procedures, and
• Configuration audit procedures.

In reviewing quality assurance practices, the ITAs examine the vendor's:
• Quality assurance policy,
• Parts and materials tests and examinations,
• Quality conformance plans, procedures and inspection results, and
• Voting system documentation.

Volume I, Section 1

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Introduction

1.1 Objectives and Usage of the Voting System Standards

State and local officials today are confronted with increasingly complex voting system technology and an increased risk of voting system failure. Responding to calls for assistance from the states, the United States Congress authorized the Federal Election Commission (FEC) to develop voluntary national voting systems standards for computer-based systems. The resulting FEC Voting System Standards (''the

Standards'') seek to aid state and local election officials in ensuring that new voting systems are designed to function accurately and reliably, thus ensuring the system's integrity. States are free to adopt the Standards in whole or in part. States may also choose to enact stricter performance requirements for systems used in their jurisdictions.

The Standards specify minimum functional requirements, performance characteristics, documentation requirements, and test evaluation criteria. For the most part, the Standards address what a voting system should reliably do, not how system components should be configured to meet these requirements. It is not the intent of the Standards to impede the design and development of new, innovative equipment by vendors. Furthermore, the Standards balance risk and cost by requiring voting systems to have essential, but not excessive, capabilities.

The Standards are not intended to define appropriate election administration practices. However, the total integrity of the election process can only be ensured if implementation of the Standards is coupled with effective election administration practices.

The Standards are intended for use by multiple audiences to support their respective roles in the development, testing, and acquisition of voting systems:

- Authorities responsible for the analysis and testing of such systems in support of qualification and/or certification of systems for purchase within a designated jurisdiction;
- State and local agencies evaluating voting systems to be procured within their jurisdictions; and
- Designers and manufacturers of voting systems.

1.2 Development History for Initial Standards

Much of the groundwork for the Standards' development was laid by a national study conducted in 1975 by the National Bureau of Standards, now known as the National Institute of Standards and Technology (NIST). This study was requested by the FEC's Office of Election Administrator's predecessor, the Office of Federal Elections of the General Accounting Office. The report, ''*Effective Use of Computing Technology in Vote-Tallying*,'' made a number of recommendations bearing directly on the Standards project. After analyzing computer-related election problems encountered in the past, the report concluded that one of the basic causes for these difficulties was the lack of appropriate technical skill at the state and local level for developing or implementing sophisticated and complex standards against which voting system hardware and software could be tested.

Following the release of this report, Congress mandated that the FEC, with the cooperation and assistance of the National Bureau of Standards, study and report on the feasibility of developing ''voluntary engineering and procedural performance standards for voting systems used in the United States.'' (2 U.S.C. 431 Note) The resulting 1983 study cited a substantial number of technical and managerial problems that affected the integrity of the vote counting process. It also asserted the need for a federal agency to develop national performance standards that could be used as a tool by state and local election officials in the testing, certification, and procurement of computer-based voting systems. In 1984, Congress approved initial funding for the Standards.

The FEC held a series of public hearings in developing the initial Standards. State and local election officials, election system vendors, technical consultants, and others reviewed drafts of the proposed criteria. The FEC considered their many comments and made appropriate revisions. Before final issuance, the FEC publicly announced the availability of the latest draft of the Standards in the **Federal Register** and requested that all interested parties submit final comments. The FEC meticulously reviewed all responses to the notice and incorporated corrections and suitable suggestions. Ultimately, the final product was the result of considerable deliberation, close consultation with election officials, and careful consideration of comments from all interested parties.

In January 1990, the FEC issued the performance standards and testing procedures for punchcard, marksense, and direct recording electronic (DRE) voting systems. The Standards did not cover paper ballot and mechanical lever systems because paper ballots are sufficiently self-explanatory not to require technical standards and mechanical lever systems are no longer manufactured or sold in the United States. The FEC also did not incorporate requirements for mainframe computer hardware because it was reasonable to assume that sufficient engineering and performance criteria already governed the operation of mainframe computers. However, vote tally software installed on mainframes is covered by the Standards.

1.3 Update of the Standards

Today, over two-thirds of the States have adopted the Standards in whole or in part. As a result, the voting systems marketed today are dramatically improved. Election officials are better assured that the voting systems they procure will work accurately and reliably. Voting system failures are declining and now primarily involve pre-Standard equipment, untested equipment configurations, or the mismanagement of tested equipment. Overall, systems integrity and the election processes have improved markedly.

However, advances in voting technology, legislative changes, and the proliferation of electronic voting systems make an update of the Standards necessary. The industry has been marked by widespread integration of personal computer technology and non-mainframe servers into DRE voting systems.

In addition, voting systems need to be responsive to the Americans with Disabilities Act (ADA) of 1990 and guidelines developed to assist in implementing the ADA.

1.4 Accessibility for Individuals With Disabilities

Voters and election officials who use voting systems represent a broad spectrum of the population, and include individuals with disabilities who may have difficulty using traditional voting systems. In developing accessibility provisions for the Standards, the FEC requested assistance from the Access Board, the federal agency in the forefront of promulgating accessibility provisions. The Access Board submitted technical standards designed to meet the diverse needs of voters with a broad range of disabilities. The FEC has adopted the entirety of the Access Board's recommendations and incorporated them into the Standards. These recommendations comprise the bulk of the accessibility provisions found in Section 2.2.7. Implementing these provisions, however, will not entirely eliminate the need to accommodate the needs of some disabled voters by human interface.

The FEC anticipates that during the lifetime of this version of the Standards increased obligations will be placed upon election officials at every jurisdictional level to provide voting equipment tailored to meet the needs of voters with disabilities. To facilitate jurisdictions in meeting accessibility needs, the Standards mandate that every voting system incorporate some accessible voting capabilities. The

Standards also mandate that systems incorporating a DRE component meet specific technological requirements. To do so, it is anticipated that a vendor will have to either configure all of the system's voting stations to meet the accessibility specifications or will have to design a unique station that conforms to the accessibility requirements and is part of the overall voting system configuration.

Under no circumstances should compliance with requirements for accessibility be viewed as mutually exclusive from compliance with any other provision of the Standards. If a voting system contains a machine uniquely designed to meet the accessibility requirements, such a machine will be tested for compliance with the accessibility requirements, as well as for compliance with all of the DRE standards, in order to ensure that an accessible machine does not unintentionally abrogate the mandates of the Standards.

1.5 Definitions

The Standards contain terms describing function, design, documentation, and testing attributes of equipment and computer programs. Unless otherwise specified, the intended sense of technical terms is that which is commonly used by the information technology industry. In some cases terminology is specific to elections or voting systems, and a glossary of those terms is contained in Appendix A. Nontechnical terms not listed in Appendix A shall be interpreted according to their standard dictionary definitions.

Additionally, the following terms are defined below:

- Voting system;
- Paper-based voting system;
- Direct record electronic (DRE) voting system;
- Public network direct record electronic (DRE) voting system;
- Precinct count voting system; and
- Central count voting system.

1.5.1 Voting System

A voting system is a combination of mechanical, electromechanical, or electronic equipment. It includes the software required to program, control, and support the equipment that is used to define ballots; to cast and count votes; to report and/or display election results; and to maintain and produce all audit trail information. A voting system may also include the transmission of results over telecommunication networks.

Additionally, a voting system includes the associated documentation used to operate the system, maintain the system, identify system components and their versions, test the system during its development and maintenance, maintain records of system errors and defects, and determine specific changes made after system qualification. By definition, this includes all documentation required in Section 9.4.

Traditionally, a voting system has been defined by the mechanism the system uses to cast votes and further categorized by the location where the system tabulates ballots. However, the Standards recognize that as the industry develops unique solutions to various challenges and as voting systems become more responsive to the needs of election officials and voters, the rigid dichotomies between voting system types may be blurred. Innovations that use a fluid understanding of system types can greatly improve the voting system industry, but only if controls are in place to monitor and control integrity through the proper evaluation of the system brought for qualification.

As such, vendors that submit a system that integrates components from more than one traditional system type or a system that includes components not addressed in this Standard shall submit the results of all beta tests of the new system. Vendors also shall submit a proposed test plan to the appropriate independent test authority recognized by the National Association of State Election Directors (NASED) to conduct national qualification testing of voting systems. The Standards permit vendors to produce or utilize interoperable components of a voting system that are tested within the full voting system configuration.

1.5.2 Paper-Based Voting System

A Paper-Based Voting System, (referred to in the initial Standards as a Punchcard and Marksense [P&M] Voting System) records votes, counts votes, and produces a tabulation of the vote count from votes cast on paper cards or sheets. A punchcard voting system allows a voter to record votes by means of holes punched in designated voting response locations. A marksense voting system allows a voter to record votes by means of marks made by the voter directly on the ballot, usually in voting response locations. Additionally, a paper based system may record votes using other approaches whereby the voter's selections are indicated by marks made on a paper ballot by an electronic input device, as long as such an input device does not independently record, store, or tabulate the voters selections.

1.5.3 Direct Record Electronic (DRE) Voting System

A Direct Record Electronic (DRE) Voting System records votes by means of a ballot display provided with mechanical or electro-optical components that can be activated by the voter; that processes data by means of a computer program; and that records voting data and ballot images in memory components. It produces a tabulation of the voting data stored in a removable memory component and as printed copy. The system may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from precincts at the central location.

1.5.4 Public Network Direct Record Electronic (DRE) Voting System

A Public Network Direct Record Electronic (DRE) Voting System is an election system that uses electronic ballots and transmits vote data from the polling place to another location over a public network as defined in Section 5.1.2. Vote data may be transmitted as individual ballots as they are cast, periodically as batches of ballots throughout the Election Day, or as one batch at the close of voting. For purposes of the Standards, Public Network DRE Voting Systems are considered a form of DRE Voting System and are subject to the standards applicable to DRE Voting Systems. However, because transmitting vote data over public networks relies on equipment beyond the control of the election authority, the system is subject to additional threats to system integrity and availability. Therefore, additional requirements discussed in Section 5 and 6 apply.

The use of public networks for transmitting vote data must provide the same level of integrity as other forms of voting systems, and must be accomplished in a manner that precludes three risks to the election process: Automated casting of fraudulent votes, automated manipulation of vote counts, and disruption of the voting process such that the system is unavailable to voters during the time period authorized for system use.

1.5.5 Precinct Count Voting System

A Precinct Count Voting System is a voting system that tabulates ballots at the polling place. These systems typically tabulate ballots as they are cast and print the results after the close of polling. For DREs, and for some paper-based systems, these systems provide

electronic storage of the vote count and may transmit results to a central location over public telecommunication networks.

1.5.6 Central Count Voting System

A Central Count Voting System is a voting system that tabulates ballots from multiple precincts at a central location. Voted ballots are typically placed into secure storage at the polling place. Stored ballots are transported or transmitted to a central counting place. The systems produce a printed report of the vote count, and may produce a report stored on electronic media.

1.6 Application of the Standards and Test Specifications

The Standards apply to all system hardware, software, telecommunications, and documentation intended for use to:

- Prepare the voting system for use in an election;
- Produce the appropriate ballot formats;
- Test that the voting system and ballot materials have been properly prepared and are ready for use;
- Record and count votes;
- Consolidate and report results;
- Display results on-site or remotely; and
- Maintain and produce all audit trail information.

In general, the Standards define functional requirements and performance characteristics that can be assessed by a series of defined tests. Standards are mandatory requirements and are designated by use of the term ''shall.''

Some voting systems use one or more readily available commercial off-the-shelf (COTS) devices (such as card readers, printers, or personal computers) or software products (such as operating systems, programming language compilers, or database management systems). COTS devices and software are exempted from certain portions of the qualification testing process as defined herein, as long as such products are not modified for use in a voting system.

Generally, voting systems are subject to the following three testing phases prior to being purchased or leased:

- Qualification tests;
- State certification tests; and
- State and/or local acceptance tests.

1.6.1 Qualification Tests

Qualification tests validate that a voting system meets the requirements of the Standards and performs according to the vendor's specifications for the system. Such tests encompass the examination of software; the inspection and evaluation of system documentation; tests of hardware under conditions simulating the intended storage, operation, transportation, and maintenance environments; operational tests to validate system performance and function under normal and abnormal conditions; and examination of the vendor's system development, testing, quality assurance, and configuration management practices. Qualification tests address individual system components or elements, as well as the integrated system as a whole.

Since 1994, qualification tests for voting systems have been performed by Independent Test Authorities (ITAs) certified by the National Association of State Election Directors (NASED). NASED has certified an ITA for either the full scope of qualification testing or a distinct subset of the total scope of testing. To date, ITAs have been certified only for distinct subsets of testing. Upon the successful completion of testing by an ITA, the ITA issues a Qualification Test Report to the vendor and NASED. The qualification test report remains valid for as long as the voting system remains unchanged.

Upon receipt of test reports that address the full scope of testing, NASED issues a Qualification Number that indicates the system has been tested by certified ITAs for compliance with the Standards and qualifies for the certification process of states that have adopted the Standards. The Qualification Number applies to the system as a whole, and does not apply to individual system components or untested configurations.

After a system has completed qualification testing, further examination of a system is required if modifications are made to hardware, software, or telecommunications, including the installation of software on different hardware. Vendors request review of modifications by the appropriate ITA based on the nature and scope of changes made and the scope of the ITA's role in NASED qualification. The ITA will determine the extent to which the modified system should be resubmitted for qualification testing and the extent of testing to be conducted.

Generally, a voting system remains qualified under the standards against which it was tested, as long as no modifications not approved by an ITA are made to the system. However, if a new threat to a particular voting system is discovered, it is the prerogative of NASED to determine which qualified voting systems are vulnerable, whether those systems need to be retested, and the specific tests to be conducted. In addition, when new standards supersede the standards under which the system was qualified, it is the prerogative of NASED to determine when systems that were qualified under the earlier standards will lose their qualification, unless they are tested to meet current standards.

Among other things, qualification testing complements and evaluates the vendor's developmental testing and beta testing. The ITA is expected to evaluate the completeness of the vendor's developmental test program, including the sufficiency of vendor tests conducted to demonstrate compliance with the Standards as well as the system's performance specifications. The ITA undertakes sample testing of the vendor's test modules and also designs independent system-level tests to supplement and check those designed by the vendor. Although some of the qualification tests are based on those prescribed in the Military Standards, in most cases the test conditions are less stringent, reflecting commercial, rather than military, practice.

1.6.2 Certification Tests

Certification tests are performed by individual states, with or without the assistance of outside consultants, to:

- Confirm that the voting system presented is the same as the one qualified through the Standards;
- Test for the proper implementation of state-specific requirements;
- Establish a baseline for future evaluations or tests of the system, such as acceptance testing or state review after modifications have been made; and
- Define acceptance tests.

Precise certification test scripts are not included in the Standards, as they must be defined by the state, with its laws, election practices, and needs in mind. However, it is recommended that they not duplicate qualification tests, but instead focus on functional tests and qualitative assessment to ensure that the system operates in a manner that is acceptable under state law. If a voting system is modified after state certification, it is recommended that States reevaluate the system to determine if further certification testing is warranted.

Certification tests performed by individual states typically rely on information contained in documentation provided by the vendor for system design, installation, operations, required facilities and supplies, personnel support and other aspects of the voting system. States and jurisdictions may define information and documentation requirements additional to those defined in the

Standards. By design, the Standards, and qualification testing of voting systems for compliance with the Standards, do not address these additional requirements. However, qualification testing addresses all capabilities of a voting system stated by the vendor in the system documentation submitted to an ITA, including additional capabilities that are not required by the Standards.

1.6.3 Acceptance Tests

Acceptance tests are performed at the state or local jurisdiction level upon system delivery by the vendor to:

- Confirm that the system delivered is the specific system qualified by NASED and, when applicable, certified by the state;
- Evaluate the degree to which delivered units conform to both the system characteristics specified in the procurement documentation, and those demonstrated in the qualification and certification tests; and
- Establish a baseline for any future required audits of the system.

Some of the operational tests conducted during qualification may be repeated during acceptance testing.

1.7 Conformance Clause

1.7.1 Scope and Applicability

The Voluntary Voting System Guidelines (VVSG) define requirements for conformance of voting systems. Conformance is defined in terms of requirements that voting system vendors claiming conformance to these Guidelines shall meet. The VVSG also provides the framework, procedures, and requirements that testing authorities responsible for the qualification of voting systems shall follow in order to qualify a voting system for EAC certification. The requirements and procedures in the VVSG may also be used by States to certify voting systems. To ensure that correct voting system software has been distributed without modification, the VVSG includes requirements for a national software repository. Finally, the VVSG provides guidance in the form of best practices to voting officials. These best practices are not mandated and are not subject to testing by testing authorities to qualify voting systems. They are provided as adjuncts to the technical requirements for voting systems in order to ensure the integrity of the voting process and to assist States in properly setting up, deploying, and operating voting systems.

The Voluntary Voting System Guidelines define the minimum requirements for voting systems and the process of testing voting systems. The guidelines are intended for use by:

1. Designers and manufacturers of voting systems,
2. Testing authorities responsible for the analysis and testing of voting systems in support of qualification of systems for purchase within a designated jurisdiction,
3. National software repositories, either maintained by the National Institute of Standard and Technology (NIST) or other EAC designated repository,
4. (Optionally) Voting officials, including election judges, poll workers, ballot designers and officials responsible for the installation, operation, and maintenance of voting machines, and
5. (Optionally) testing authorities responsible for the State certification of voting systems.

Minimum requirements specified in these guidelines include:

- Functional requirements,
- Performance characteristics,
- Documentation requirements,
- Test evaluation criteria, and
- Procedural requirements.

1.7.2 Conformance Framework

This section provides the framework in which conformance is defined. It identifies the entities for which these guidelines apply, the relationship among the various entities and these guidelines, structure of requirements, and the terminology used to indicate conformance.

1.7.2.1 Applicable Entities

The requirements, prohibitions, options, and guidance specified in these guidelines apply to voting systems, voting system vendors, testing authorities, and repositories.

In general, requirements for designers and manufacturers of voting systems in these guidelines apply to all voting systems, unless prefaced with explanatory narrative describing unique applicability. Other terms in these guidelines shall be construed as synonymous with ''all voting systems.'' They are:

- ''all systems,''
- ''systems,''
- ''the system,''
- ''the voting system,'' and
- ''each voting system.''

The term ''voting system vendor'' imposes documentation or testing requirements on voting systems, via the manufacturer or vendor. Other terms in these guidelines shall be construed as synonymous with ''voting system vendor. They are:

- ''vendors,''
- ''the vendor,''
- ''manufacturer or vendor,''
- ''voting system designers,'' and
- ''implementer.''

The terms used to designate requirements and procedural guidelines for testing authorities are indicated by referring to Independent Testing Authority (ITA) and EAC accredited testing authority. Under HAVA, ITAs have been replaced by EAC accredited testing authorities. In these guidelines, EAC accredited testing authority and ITA shall be considered equivalent. In addition, the National Association of State Election Directors (NASED) activities specified in these guidelines shall be performed by the Election Assistance Commission (EAC).

The term ''repository'' will be used to designate requirements levied on the national software repository maintained at NIST or any other EAC designated repository. The repository maintained at NIST is called the National Software Reference Library (NSRL).

Guidance and best practices for voting officials are indicated by the notation ''*Best Practices for Voting Officials*'' preceding the best practice statement.

1.7.2.2 Relationship Among Entities

Although conformance is defined for voting systems, it is the voting system vendor that needs to implement these requirements and provide the necessary documentation with the system. In order to claim conformance to the Voluntary Voting Systems Guidelines, the voting system vendor shall satisfy the minimum requirements specified in the VVSG, including implementation of functionality, prescribed software coding and assurance practices, and preparation of the Technical Data Package (TDP). In order to claim that a voting system is qualified, the voting system vendor shall satisfy the requirements for qualification testing and successfully complete the test campaign with an ITA/testing authority.

An ITA/EAC accredited test authority shall satisfy the requirements for conducting qualification testing. The ITA/EAC accredited test authority may use an operational environment that is derived from the VVSG best practice guidelines for voting officials as part of their testing to ensure that the voting system can be configured and operated in a secure and reliable manner according to the voting system vendor's documentation and as specified by the VVSG. Additionally, the ITA/EAC accredited test authority shall coordinate and deliver the requisite documentation to the EAC and copies of voting system software to the repository. Note that in the VVSG, these

requirements and the relationship between the ITA/EAC accredited test authority and the certification authority is with NASED, not the EAC.

The EAC is assuming the responsibility for certification of voting systems from NASED.

The VVSG provides guidance denoted as ''Best Practices for Voting Officials.'' This guidance may be used to allow jurisdictions to incorporate appropriate procedures to help ensure that their voting systems are reliable, accessible, usable, and secure. Furthermore, this guidance may be used in training and incorporated into written procedures for properly conducting the election and operating voting systems.

Figure 1 provides an illustration of these relationships.

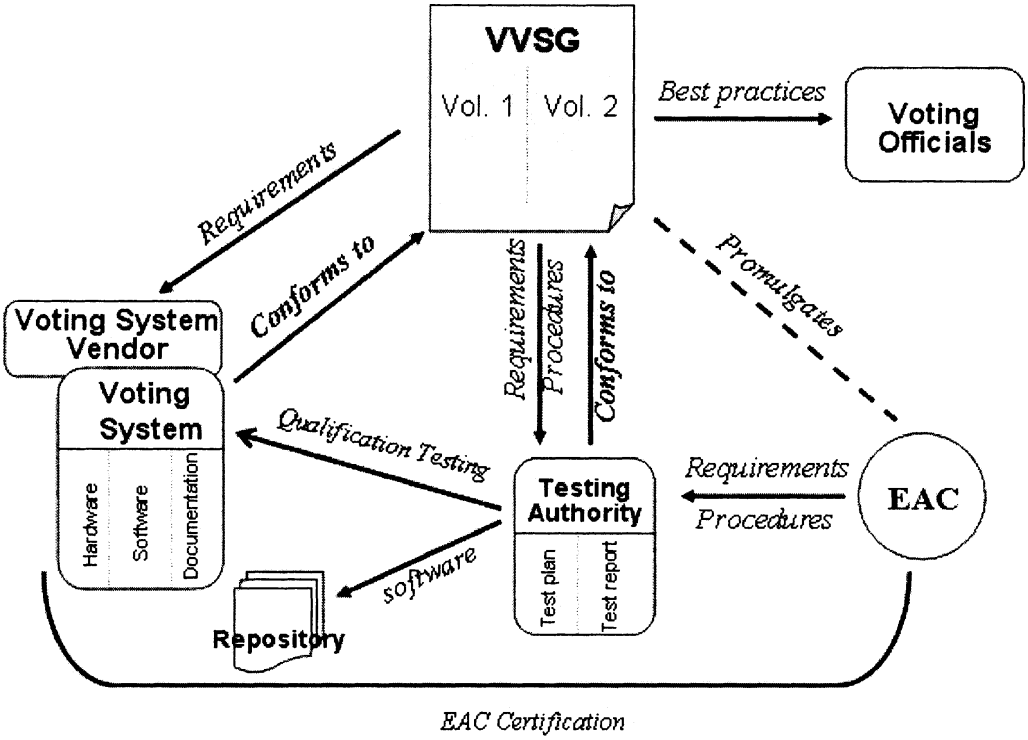

Figure 1 Relationship between entities

1.7.2.3 Structure of Requirements

Sections of this document that augment the VSS–2002, by either replacing VSS–2002 sections or adding new sections, are indicated by line numbers, footer information (i.e., New Material, date, etc.) at the bottom of pages with new material, and hierarchically structured requirements. Each requirement is numbered according to a hierarchical scheme in which higher-level requirements (such as ''provide accessibility for blind voters'') are supported by lower-level requirements (''provide an audio-tactile interface''). Thus, requirements are contained (i.e., nested) within other requirements. A nested requirement or lower-level requirement is a 'child' to its 'parent' or higher-level requirement.

Some of these requirements are directly testable and some are not. The latter tend to be higher-level and are included because (1) they are testable indirectly insofar as their lower-level, children requirements are testable, and (2) they often provide the structure and rationale for the lower-level requirements. Satisfying the lower-level requirement will result in satisfying its higher-level 'parent' requirement.

1.7.2.4 Conformance Designations

A voting system conforms if all the mandatory requirements that apply to the voting system are fulfilled. An implementation statement (see Section 1.7.6) or similar mechanism is used to describe the capabilities, features and optional functions that have been implemented and are subject to conformance and qualification testing. There is no concept of partial conformance, *e.g.*, a voting system is 80% conforming.

1.7.3 Normative Language

The following keywords are used to convey conformance requirements.

- *Shall*—to indicate a mandatory requirement to be followed (implemented) in order to conform. Synonymous with ''is required to.''
- *Is prohibited*—to indicate a mandatory requirement that indicates something that is not permitted (allowed), in order to conform. Synonymous with ''shall not.''
- *Should, Is encouraged*—to indicate an optional recommended action, one that is particularly suitable, without mentioning or excluding others. Synonymous with ''is permitted and recommended.''
- *May*—to indicate an optional, permissible action. Synonymous with ''is permitted.''

Normative text is directly applicable to achieving conformance to this document. Informative parts of this document include examples, extended explanations, and other matter that contain information necessary for proper understanding of the VVSG and conformance to it. Some sections in the VSSG have narrative text prefixed by the keywords: Discussion or Best Practices for Voting Officials. This text is informative and has no bearing on conformance.

1.7.4 Categorizing Requirements

In addition to defining a common set of requirements that apply to all voting systems, the VVSG categorizes some requirements into related groups of functionality to address equipment type, ballot tabulation location, and voting system component (*e.g.*, election management system). Hence, not all requirements apply to all voting systems. Specifically, if a category is not applicable to a voting system, then the requirements in that category are not applicable. For example, requirements categorized as ''DRE Systems'' (as in Volume I, Section 2.4.9) are not applicable to paper-based voting systems and thus are ignored by paper-based systems.

Among the categories defined in the VVSG are two types of voting systems with respect to mechanisms to cast votes—Paper-Based Voting Systems and Direct Record Electronic (DRE) Voting Systems. Additionally, voting systems are further categorized, in these guidelines, by the locations where ballots are tabulated—Precinct Count Voting Systems, which tabulate ballots at the polling place, and Central Count Voting Systems, which tabulate ballots from multiple precincts at a central location. The VVSG defines specific requirements for systems that fall within these four categories as well as various combinations of these categories.

Other categories for which requirements are defined include: election management systems (EMS), methods of independent verification, and telecommunication components.

1.7.5 Extensions

Extensions are additional functions, features, and/or capabilities included in a voting system that are not required by the VVSG. To accommodate the needs of States that may impose additional requirements beyond those listed in these guidelines and to accommodate changes in technology, these guidelines allow extensions. Thus, a voting system may include extensions and still be conformant to the VVSG. The use of extensions shall not contradict nor cause the nonconformance of functionality defined in the VVSG.

1.7.6 Implementation Statement

An implementation statement provides information about a voting system, by documenting the requirements that have been implemented by the voting system. It can also be used to highlight optional features and capabilities supported by the voting system, as well as to document any extensions (*i.e.*, additional functionality beyond what is required in the standard). An implementation statement may take the form of a checklist, to be completed for each voting system for which a claim of conformance to the VVSG or subset of the VVSG is desired.

An implementation statement provides a concise summary and a quick overview of requirements that have been implemented. The implementation statement may also be used to identify the subset of a test suite that would be applicable to the voting system being tested.

If an implementation statement is provided, it shall include identifying information about the voting system, including at a minimum versioning and date information. Additionally, a narrative description of the voting system shall be included in the implementation statement.

1.8 Outline of Contents

The organization of the Standards has been simplified to facilitate its use. *Volume I, Voting System Performance Standards,* is intended for use by the broadest audience, including voting system developers, equipment manufacturers and suppliers, independent test authorities, local agencies that purchase and deploy voting systems, state organizations that certify a system prior to procurement by a local jurisdiction, and public interest organizations that have an interest in voting systems and voting systems standards.

- Section 2 describes the functional capabilities required of voting systems.
- Sections 3 through 6 describe specific performance standards for election system hardware, software, telecommunications and security, respectively.
- Sections 7 and 8 describe practices for quality assurance and configuration management, respectively, to be used by vendors, and required information about vendor practices that will be reviewed in concert with system qualification and certification test processes and system purchase decisions.
- Section 9 provides an overview of the test and measurement process used by test authorities for qualification and re-qualification of voting systems.
- Appendix A provides a glossary of important terms used in Volume I.
- Appendix B lists the publications that were used for guidance in the preparation of the Standards. These publications contain information that is useful in interpreting and complying with the requirements of the Standards.
- Appendix C addresses issues of usability of voting systems, commonly referred to as ''human factors.'' This appendix does not represent mandates that voting systems will be tested against, but rather contain recommendations and best practices on usability issues designed to provide vendors and election officials with guidance on designing and procuring systems that are easy and intuitive to use by voters.

Volume II, Voting System Qualification Testing Standards describes the standards for the technical information submitted by the vendor to support testing; the development of test plans by the ITA for initial system testing and testing of system modifications; the conduct of system qualification tests by the ITA; and the test reports generated by the ITA. This volume complements the content of Volume I and is intended primarily for use by ITAs, state organizations that certify a system, and vendors.

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2.5.4 Broadcasting Results
2.6 Maintenance, Transportation, and Storage

Functional Capabilities

2.1 Scope

This section contains standards detailing the functional capabilities required of a voting system. This section sets out precisely what it is that a voting system is required to do. In addition, this section sets forth the minimum actions a voting system must be able to perform to be eligible for qualification.

For organizational purposes, functional capabilities are categorized by the phase of election activity in which they are required:

♦ *Overall Capabilities:* These functional capabilities apply throughout the election process. They include security, accuracy, integrity, system auditability, election management system, vote tabulation, ballot counters, telecommunications, and data retention.

♦ *Pre-voting Capabilities:* These functional capabilities are used to prepare the voting system for voting. They include ballot preparation, the preparation of election-specific software (including firmware), the production of ballots or ballot pages, the installation of ballots and ballot counting software (including firmware), and system and equipment tests.

♦ *Voting Capabilities:* These functional capabilities include all operations conducted at the polling place by voters and officials including the generation of status messages.

♦ *Post-voting Capabilities:* These functional capabilities apply after all votes have been cast. They include closing the polling place; obtaining reports by voting machine, polling place, and precinct; obtaining consolidated reports; and obtaining reports of audit trails.

♦ *Maintenance, Transportation and Storage Capabilities:* These capabilities are necessary to maintain, transport, and store voting system equipment.

In recognition of the diversity of voting systems, the Standards apply specific requirements to specific technologies. Some of the Standards apply only if the system incorporates certain optional functions (for example, voting systems employing telecommunications to transmit voting data). For each functional capability, common standards are specified. Where necessary, common standards are followed by standards applicable to specific technologies (*i.e.*, paper-based or DRE) or intended use (*i.e.*, central or precinct count).

2.2 Overall System Capabilities

This section defines required functional capabilities that are system-wide in nature and not unique to pre-voting, voting, and post-voting operations. All voting systems shall provide the following functional capabilities:

- Security;
- Accuracy;
- Error recovery;
- Integrity;
- System auditability;
- Election management system;
- Accessibility:
- Vote tabulating;
- Ballot counters; and
- Data Retention.

Voting systems may also include telecommunications components. Technical standards for these capabilities are described in Sections 3 through 6 of the Standards.

2.2.1 Security

System security is achieved through a combination of technical capabilities and sound administrative practices. To ensure security, all systems shall:

a. Provide security access controls that limit or detect access to critical system components to guard against loss of system integrity, availability, confidentiality, and accountability.

b. Provide system functions that are executable only in the intended manner and order, and only under the intended conditions.

c. Use the system's control logic to prevent a system function from executing if any preconditions to the function have not been met.

d. Provide safeguards to protect against tampering during system repair, or interventions in system operations, in response to system failure.

e. Provide security provisions that are compatible with the procedures and administrative tasks involved in equipment preparation, testing, and operation.

f. If access to a system function is to be restricted or controlled, the system shall incorporate a means of implementing this capability.

g. Provide documentation of mandatory administrative procedures for effective system security.

2.2.2 Accuracy

Memory hardware, such as semiconductor devices and magnetic storage media, must be accurate. The design of equipment in all voting systems shall provide for the highest possible levels of protection against mechanical, thermal, and electromagnetic stresses that impact system accuracy. Section 3 provides additional information on susceptibility requirements.

2.2.2.1 Common Standards

To ensure vote accuracy, all systems shall:

a. Record the election contests, candidates, and issues exactly as defined by election officials;

b. Record the appropriate options for casting and recording votes;

c. Record each vote precisely as indicated by the voter and be able to produce an accurate report of all votes cast;

d. Include control logic and data processing methods incorporating parity and check-sums (or equivalent error detection and correction methods) to demonstrate that the system has been designed for accuracy; and

e. Provide software that monitors the overall quality of data read-write and transfer quality status, checking the number and types of errors that occur in any of the relevant operations on data and how they were corrected.

2.2.2.2 DRE System Standards

As an additional means of ensuring accuracy in DRE systems, voting devices shall record and retain redundant copies of the original ballot image. A ballot image is an electronic record of all votes cast by the voter, including undervotes.

2.2.3 Error Recovery

To recover from a non-catastrophic failure of a device, or from any error or malfunction that is within the operator's ability to correct, the system shall provide the following capabilities:

a. Restoration of the device to the operating condition existing immediately prior to the error or failure, without loss or corruption of voting data previously stored in the device;

b. Resumption of normal operation following the correction of a failure in a memory component, or in a data processing component, including the central processing unit; and

c. Recovery from any other external condition that causes equipment to become inoperable, provided that catastrophic electrical or mechanical damage due to external phenomena has not occurred.

2.2.4 Integrity

Integrity measures ensure the physical stability and function of the vote recording and counting processes.

2.2.4.1 Common Standards

To ensure system integrity, all systems shall:

a. Protect, by a means compatible with these Standards, against a single point of failure that would prevent further voting at the polling place;

b. Protect against the interruption of electronic power;

c. Protect against generated or induced electromagnetic radiation;

d. Protect against ambient temperature and humidity fluctuations;

e. Protect against the failure of any data input or storage device;

f. Protect against any attempt at improper data entry or retrieval;

g. Record and report the date and time of normal and abnormal events;

h. Maintain a permanent record of all original audit data that cannot be modified or overridden but may be augmented by designated authorized officials in order to adjust for errors or omissions (*e.g.* during the canvassing process.)

i. Detect and record every event, including the occurrence of an error condition that the system cannot overcome, and time-dependent or programmed events that occur without the intervention of the voter or a polling place operator; and

j. Include built-in measurement, self-test, and diagnostic software and hardware for detecting and reporting the system's status and degree of operability.

2.2.4.2 DRE Systems Standards

In addition to the common standards, DRE systems shall:

a. Maintain a record of each ballot cast using a process and storage location that differs from the main vote detection, interpretation, processing, and reporting path; and

b. Provide a capability to retrieve ballot images in a form readable by humans.

2.2.5 System Audit

This section describes the context and purpose of voting system audits and sets forth specific functional requirements. Additional technical audit requirements are set forth in Section 4.

2.2.5.1 System Audit Purpose and Context

Election audit trails provide the supporting documentation for verifying the correctness of reported election results. They present a concrete, indestructible archival record of all system activity related to the vote tally, and are essential for public confidence in the accuracy of the tally, for recounts, and for evidence in the event of criminal or civil litigation.

The following audit trail requirements are based on the premise that system-generated creation and maintenance of audit records reduces the chance of error associated with manually generated audit records. Because most audit capability is automatic, the system operator has less information to track and record, and is less likely to make mistakes or omissions.

The sections that follow present operational requirements critical to acceptable performance and reconstruction of an election. Requirements for the content of audit records are described in Section 4 of the Standards.

The requirements for all system types, both precinct and central count, are described in generic language. Because the actual implementation of specific characteristics may vary from system to system, it is the responsibility of the vendor to describe each system's characteristics in sufficient detail that ITAs and system users can evaluate the adequacy of the system's audit trail. This description shall be incorporated in the System Operating Manual, which is part of the Technical Data Package (TDP).

Documentation of items such as paper ballots delivered and collected, administrative procedures for system security, and maintenance performed on voting equipment are also part of the election audit trail, but are not covered in these technical standards. Future volumes of the Standards will address these and other system operations practices. In the interim, useful guidance is provided by the *Innovations in Election Administration #10, Ballot Security and Accountability,* available from the FEC's Office of Election Administration.

2.2.5.2 Operational Requirements

Audit records shall be prepared for all phases of elections operations performed using devices controlled by the jurisdiction or its contractors. These records rely upon automated audit data acquisition and machine-generated reports, with manual input of some information. These records shall address the ballot preparation and election definition phase, system readiness tests, and voting and ballot-counting operations. The software shall activate the logging and reporting of audit data as described in the following sections.

2.2.5.2.1 Time, Sequence, and Preservation of Audit Records

The timing and sequence of audit record entries is as important as the data contained in the record. All voting systems shall meet the following requirements for time, sequence and preservation of audit records:

a. Except where noted, systems shall provide the capability to create and maintain a real-time audit record. This capability records and provides the operator or precinct official with continuous updates on machine status. This information allows effective operator identification of an error condition requiring intervention, and contributes to the reconstruction of election-related events necessary for recounts or litigation.

b. All systems shall include a real-time clock as part of the system's hardware. The system shall maintain an absolute record of the time and date or a record relative to some event whose time and data are known and recorded.

c. All audit record entries shall include the time-and-date stamp.

d. The audit record shall be active whenever the system is in an operating mode. This record shall be available at all times, though it need not be continually visible.

e. The generation of audit record entries shall not be terminated or altered by program control, or by the intervention of any person. The physical security and integrity of the record shall be maintained at all times.

f. Once the system has been activated for any function, the system shall preserve the contents of the audit record during any interruption of power to the system until processing and data reporting have been completed.

g. The system shall be capable of printing a copy of the audit record. A separate printer is not required for the audit record, and the record may be produced on the standard system printer if all the following conditions are met:

(1) The generation of audit trail records does not interfere with the production of output reports;

(2) The entries can be identified so as to facilitate their recognition, segregation, and retention; and

(3) The audit record entries are kept physically secure.

2.2.5.2.2 Error Messages

All voting systems shall meet the following requirements for error messages:

a. The system shall generate, store, and report to the user all error messages as they occur;

b. All error messages requiring intervention by an operator or precinct official shall be displayed or printed unambiguously in easily understood language text, or by means of other suitable visual indicators;

c. When the system uses numerical error codes for trained technician maintenance or repair, the text corresponding to the code shall be self-contained, or affixed inside the unit device. This is intended to reduce inappropriate reactions to error conditions, and to allow for ready and effective problem correction;

d. All error messages for which correction impacts vote recording or vote processing shall be written in a manner that is understandable to an election official who possesses training on system use and operation, but does not possess technical training on system servicing and repair;

e. The message cue for all systems shall clearly state the action to be performed in the event that voter or operator response is required;

f. System design shall ensure that erroneous responses will not lead to irreversible error; and

g. Nested error conditions shall be corrected in a controlled sequence such that system status shall be restored to the initial state existing before the first error occurred.

2.2.5.2.3 Status Messages

The Standards provide latitude in software design so that vendors can consider various user processing and reporting needs. The jurisdiction may require some status and information messages to be displayed and reported in real-time. Messages that do not require operator intervention may be stored in memory to be recovered after ballot processing has been completed.

The system shall display and report critical status messages using unambiguous indicators or English language text. The system need not display non-critical status messages at the time of occurrence. Systems may display non-critical status messages (i.e., those that do not require operator intervention) by means of numerical codes for subsequent interpretation and reporting as unambiguous text.

Systems shall provide a capability for the status messages to become part of the real-time audit record. The system shall provide a capability for a jurisdiction to designate critical status messages.

2.2.5.3 COTS General Purpose Computer System Requirements

Further requirements must be applied to COTS operating systems to ensure completeness and integrity of audit data for election software. These operating systems are capable of executing multiple application programs simultaneously. These systems include both servers and workstations (or ''PCs''), including the many varieties of UNIX and Linux, and those offered by Microsoft and Apple. Election software running on these COTS systems is vulnerable to unintended effects from other user sessions, applications, and utilities, executing on the same platform at the same time as the election software.

''Simultaneous processes'' of concern include unauthorized network connections, unplanned user logins, and unintended execution or termination of operating system processes. An unauthorized network connection or unplanned user login can host unintended processes and user actions, such as the termination of operating system audit, the termination of election software processes, or the deletion of election software audit and logging data. The execution of an operating system process could be a full system scan at a time when that process would adversely affect the election software processes. Operating system processes improperly terminated could be system audit or malicious code detection.

To counter these vulnerabilities, three operating system protections are required on all such systems on which election software is hosted. First, authentication shall be configured on the local terminal (display screen and keyboard) and on all external connection devices (''network cards'' and ''ports''). This ensures that only authorized and identified users affect the system while election software is running.

Second, operating system audit shall be enabled for all session openings and closings, for all connection openings and closings, for all process executions and terminations, and for the alteration or deletion of any memory or file object. This ensures the accuracy and completeness of election data stored on the system. It also ensures the existence of an audit record of any person or process altering or deleting system data or election data.

Third, the system shall be configured to execute only intended and necessary processes during the execution of election software. The system shall also be configured to halt election software processes upon the termination of any critical system process (such as system audit) during the execution of election software.

2.2.6 Election Management System

The Election Management System (EMS) is used to prepare ballots and programs for use in casting and counting votes, and to consolidate, report, and display election results. An EMS shall generate and maintain a database, or one or more interactive databases, that enables election officials or their designees to perform the following functions:

a. Define political subdivision boundaries and multiple election districts as indicated in the system documentation;

b. Identify contests, candidates, and issues

c. Define ballot formats and appropriate voting options;

d. Generate ballots and election-specific programs for vote recording and vote counting equipment;

e. Install ballots and election-specific programs;

f. Test that ballots and programs have been properly prepared and installed;

g. Accumulate vote totals at multiple reporting levels as indicated in the system documentation;

h. Generate the post-voting reports required by Section 2.5; and

i. Process and produce audit reports of the data indicated in Section 4.5.

2.2.7 Human Factors

The importance of human factors in the design of voting systems has become increasingly apparent. It is not sufficient that the internal operation of these systems be correct; in addition, voters and poll workers must be able to use them effectively. There are some special difficulties in the design of usable and accessible voting systems:

- The voting task itself can be fairly complex; the voter may have to navigate an electronic ballot, choose multiple candidates in a single race or decide on abstrusely worded referenda.
- Voting is performed infrequently, so learning and familiarity are lower than for more frequent tasks, such as use of an ATM.
- Jurisdictions may change voting equipment, thus obviating whatever familiarity the voter might have acquired.
- Once the voting session has been completed by the voter, there is never a chance for later correction.
- Voting must be accessible to all eligible citizens, whatever their age, physical abilities, language skills, or experience with technology.

The challenge, then, is to provide a voting system and voting environment that all voters can use comfortably, efficiently, and with justified

confidence that they have cast their votes correctly. The requirements within this section are intended to serve that goal.

Although there are many detailed requirements, three broad principles motivate this section on human factors:

1. All Eligible and Potentially Eligible Voters Shall Have Access to the Voting Process Without Discrimination.

The voting process shall allow eligible voters of whatever age, condition, or background to be able to go through the entire voting process with the same degree of independence, privacy, and confidence, insofar as technology will allow. Note that the voting process includes access to the polling place, instructions on how to vote, initiating the voting session, choosing candidates, getting help as needed, review of the ballot, VVPAT, if applicable, and final submission of the ballot.

2. Each Cast Ballot Shall Capture the Intent of the Voter Who Cast That Ballot.

Voters have the right to have the ballot presented to them in a manner that is clear and usable. Voters should encounter no difficulty or confusion in recording their choices.

3. The Voting Process Shall Preserve the Secrecy of the Ballot.

The voting process shall preclude anyone else from determining the content of a voter's ballot, with or without the voter's cooperation. If such a determination is made against the wishes of the voter, then his or her privacy has been violated. The process must also preclude the voter from disclosing the content of the ballot to anyone else.

All the requirements within Section 2.2.7 have the purpose of improving the quality of interaction between voters and voting systems.

- Requirements that are likely to be relevant only to those with some disability are listed under Section 2.2.7.1, although they may also assist those not usually described as having a disability, e.g. voters with poor eyesight or somewhat limited dexterity.
- Requirements that are likely to be relevant only to those with limited English proficiency are listed in Section 2.2.7.2.
- Finally, requirements for general usability make up Section 2.2.7.3 and those for privacy, Section 2.2.7.4.

Certain abbreviations and terms are used extensively throughout Section 2.2.7:

- CIF: Common Industry Format: Refers to the format described in ANSI/INCITS 354–2001 ''Common Industry Format (CIF) for Usability Test Reports.''
- Acc-VS: Accessible Voting Station—the voting station equipped for individuals with disabilities referred to in HAVA 301(a)(3)(B).
- ATI: Audio-Tactile Interface—a voter interface designed so as not to require visual reading of a ballot. Audio is used to convey information to the voter and sensitive tactile controls allow the voter to convey information to the voting system.
- ALVS: Alternative Language Voting Station—a voting station designed to be usable by voters who have limited English proficiency.

This section also uses common terms as defined in the updated Glossary. Note in particular, the distinctions among ''voting system,'' ''voting station,'' and ''voting process.''

1. The Voting Process Shall Be Accessible to Voters With Disabilities. As a Minimum, Every Polling Place Shall Have at Least One Voting Station Equipped for Individuals With Disabilities, as Provided in HAVA 301 (a)(3)(B). A Station So Equipped Is Referred to Herein as an Accessible Voting Station (Acc-VS)

HAVA Section 301(a)(3) reads in part:

ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual 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;

(B) satisfy the requirement of 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;

The requirements within Section 2.2.7.1 are intended to address this mandate. Ideally every voter would be able to vote independently and privately. As a practical matter, there may be a small number of voters whose disabilities are so severe that they will need personal assistance. Nonetheless, the requirements of this section are meant to make the voting system directly accessible to as many voters as possible.

Note that this section does not replace requirements of other sections, but adds to them. In particular, the requirements of Section 2.2.7.3 on usability apply either to all voting stations or, in some cases, to all DRE voting stations; many of these requirements support accessibility as well as general usability.

Certain accessibility features that are likely to be useful to a wide range of voters are required on all voting stations, not just the Acc-VS. Finally, note that the Acc-VS is not necessarily a full-fledged DRE; for instance, an implementation may provide an ATI that generates an optiscan ballot.

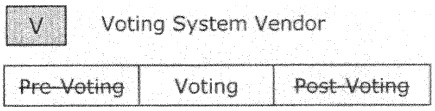
The outline for Section 2.2.7.1 is:

2.2.7.1 Accessibility
2.2.7.1.1 Voters with Disabilities—General
2.2.7.1.2 Vision
2.2.7.1.2.1 Partial Vision
2.2.7.1.2.2 Blind
2.2.7.1.3 Dexterity
2.2.7.1.4 Mobility
2.2.7.1.5 Hearing
2.2.7.1.6 Speech
2.2.7.1.7 Cognitive

1. The Voting Process Shall Incorporate Features That Are Applicable to Several Types of Disability

Discussion: These features span the disability categories within requirement #2.2.7.1 (e.g. vision, dexterity).

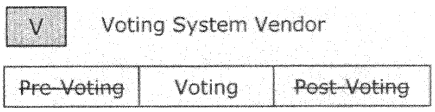
1.1 When the Provision of Accessibility Involves an Alternative Format for Ballot Presentation, Then All the Other Information Presented to Voters in the Case of Non-Disabled English-Literate Voters (Including Instructions, Warnings, Messages, and Ballot Choices) Shall Also Be Presented in That Alternative Format



Discussion: This is a general principle to be followed for any alternative format presentation. Two particular cases, (a) audio formats and (b) non-English formats, are the subject of specific requirements in later sections.

[Best Practice for Voting Officials] When the provision of accessibility involves an alternative format for ballot presentation, then all the other information presented to voters in the case of non-disabled English-literate voters (including instructions, warnings, messages, and ballot choices) is also presented in that alternative format.

1.2 An Acc-VS Shall Provide Direct Accessibility Such That Voters' Personal Assistive Devices Are Not Required for Voting



Discussion: Voters are not to be obliged to supply any special equipment in order to vote. This requirement does not preclude the Acc-VS from providing interfaces to assistive technology.

1.3 When the Primary Means of Voter Identification or Authentication Uses Biometric Measures That Require a Voter To Possess Particular Biological Characteristics, the Voting Process Shall Provide a Secondary Means That Does Not Depend on Those Characteristics

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, if fingerprints were used for identification, there would have to be another mechanism for voters without usable fingerprints.

[Best Practice for Voting Officials] When the primary means of voter identification or authentication uses biometric measures that require a voter to possess particular biological characteristics, the voting process provides a secondary means that does not depend on those characteristics.

[Best Practice for Voting Officials] Polling places are subject to the appropriate guidelines of the Americans with Disabilities Act (ADA) of 1990 and of the Architectural Barriers Act (ABA) of 1968. This requirement does not stem from HAVA, but rather is a reminder of other legal obligations. For more details, see *http://www.access-board.gov/ada-aba.htm* and *http://www.usdoj.gov/crt/ada/votingck.htm*.

2. The Voting Process Shall Be Accessible to Voters With Visual Disabilities

Discussion: Note that all aspects of the voting process are to be accessible, not just the voting station.

2.1 The Acc-VS Shall Be Accessible to Voters With Partial Vision

2.1.1 The Vendor Should Conduct Summative Usability Tests on the Acc-VS Using Partially Sighted Subjects and Report the Test Results to the Appropriate Testing Authority According to the Common Industry Format (CIF)

V Voting System Vendor

Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: This requirement is meant to encourage Acc-VS designers to conduct some realistic usability tests on the final product. For now, it is purely a documentation recommendation. Future versions of the VVSG will include requirements for usability testing to be conducted by the testing authority, with specific performance benchmarks.

2.1.2 The Acc-VS and Any Voting Station With an Electronic Image Display Shall Be Capable of Showing All Information in at Least Two Font Sizes, (a) 3.0–4.0 mm and (b) 6.3–9.0 mm, Under Control of the Voter or Poll Worker

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: While larger font sizes may assist most voters with poor vision, certain disabilities such as tunnel vision are best addressed by smaller font sizes. It is anticipated that future versions of the VVSG will require font size to be under the independent control of the voter.

2.1.3 All Voting Stations Using Paper Ballots Should Make Provisions for Voters With Poor Reading Vision

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Possible solutions include: (a) providing paper ballots in at least two font sizes, 3.0–4.0 mm and 6.3–9.0 mm and (b) providing a magnifying device.

2.1.4 An Acc-VS and Any Voting Station With a Black-and-White-Only Electronic Image Display Shall Be Capable of Showing All Information in High Contrast Either by Default or Under the Control of the Voter or Poll Worker. High Contrast Is a Figure-to-Ground Ambient Contrast Ratio for Text and Informational Graphics of at Least 6:1

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: It is anticipated that future versions of the VVSG will require contrast to be under the independent control of the voter.

2.1.5 An Acc-Vs With a Color Electronic Image Display Shall Allow the Voter or Poll Worker To Adjust the Color or the Figure-to-Ground Ambient Contrast Ratio

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: See NASED Technical Guide #1 for examples of how a voting station may meet this requirement by offering a limited number of discrete choices. In particular, it is not required that the station offer a continuous range of color or contrast values.

2.1.6 On All Voting Stations, the Default Color Coding Shall Maximize Correct Perception by Voters and Operators With Color Blindness

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

[Best Practice for Voting Officials] On all voting stations, the default color coding maximizes correct perception by voters and operators with color blindness.

2.1.7 On All Voting Stations, Color Coding Shall Not Be Used as the Sole Means of Conveying Information, Indicating an Action, Prompting a Response, or Distinguishing a Visual Element

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This implies that although color can be used for emphasis, some other non-color mode must also be used to convey the information, such as a shape or text style. For example, red can be enclosed in an octagon shape.

2.1.8 Buttons and Controls on All Voting Stations Should Be Distinguishable by Both Shape and Color

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The redundant cues have been found to be helpful to those with partial vision.

2.1.9 Any Voting Station Using an Electronic Image Display Should Also Provide Synchronized Audio Output To Convey the Same Information as That on the Screen

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Synchronized presentation of information in both visual and aural modes is a recommendation in this version of the VVSG, but it is anticipated that this will become a requirement in future versions.

2.2 The Acc-VS Shall Be Accessible to Voters Who Are Blind

Discussion: Of course, many of the features under this requirement are also useful for voters with partial vision (see requirement # 2.2.7.1.2.1) and for voters who cannot read English for other reasons (see requirement # 2.2.7.2).

2.2.1 The Vendor Should Conduct Summative Usability Tests on the Acc-Vs Using Subjects Who Are Blind and Report the Test Results to the Appropriate Testing Authority According to the Common Industry Format (CIF)

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: This requirement is meant to encourage Acc-VS designers to conduct some realistic usability tests on the final product. For now, it is purely a documentation recommendation. Future versions of the VVSG will include requirements for usability testing to be conducted by the testing authority, with specific performance benchmarks.

2.2.2 The Acc-VS Shall Provide an Audio-Tactile Interface (ATI) That Supports the Full Functionality of a Normal Ballot Interface, as Specified in Section 2.4

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Note the necessity of both audio output and tactilely discernible controls for voter input. Full functionality includes at least:

- Instructions and feedback on initial activation of the ballot (such as insertion of a smart card), if this is normally performed by the voter on comparable voting stations,
- Instructions and feedback to the voter on how to operate the Acc-VS, including settings and options (e.g. volume control, repetition),
- Instructions and feedback for navigation of the ballot,
- Instructions and feedback for voter selections in races and referenda, including write-in candidates,
- Instructions and feedback on confirming and changing selections, and
- Instructions and feedback on final submission of ballot.

2.2.2.1 The ATI of the Acc-VS Shall Provide the Same Capabilities To Vote and Cast a Ballot as Are Provided by the Other Voting Stations or by the Visual Interface of the Acc-VS. Therefore, Functional Features That Exceed the Requirements of Section 2.4 Must Be Provided on a Non-Discriminatory Basis

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, if a ''normal'' ballot supports voting a straight party ticket and then changing the choice in a single race, so must the ATI. This requirement is a special case of the more general requirement # 2.2.7.1.1.1.

2.2.2.2 The ATI Shall Allow the Voter To Have Any Information Provided by the System Repeated

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.2.3 The ATI Shall Allow the Voter To Pause and Resume the Audio Presentation

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.2.4 The ATI Shall Allow the Voter To Skip to the Next Contest or Return to Previous Contests

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This is analogous to the ability of sighted voters to move on to the next race once they have made a selection or to abstain from voting on a contest.

2.2.2.5 The ATI Should Allow the Voter To Skip Over the Reading of a Referendum so as To Be Able To Vote on It Immediately

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This is analogous to the ability of sighted voters to skip over the wording of a referendum on which they have already made a decision prior to the voting session (e.g. ''Vote yes on proposition #123''). It is anticipated that this recommendation will become a requirement in future versions of the VVSG.

2.2.3 All Voting Stations That Provide Audio Presentation of the Ballot Shall Conform to the Following Sub-Requirements

Discussion: These requirements apply to all audio output, not just to the ATI of an Acc-VS.

2.2.3.1 The Ati Shall Provide Its Audio Signal Through an Industry Standard Connector for Private Listening Using a 3.5Mm Stereo Headphone Jack To Allow Voters To Use Their Own Audio Assistive Devices

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.3.2 When a Voting Station Utilizes a Telephone Style Handset/Headset To Provide Audio Information, It Shall Provide a Wireless T-Coil Coupling for Assistive Hearing Devices so as To Provide Access to That Information for Voters With Partial Hearing. That Coupling Shall Achieve at Least a Category T4 Rating as Defined by American National Standard for Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids, ANSI C63.19

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.3.3 No Voting Station Shall Cause Electromagnetic Interference With Assistive Hearing Devices That Would Substantially Degrade the Performance of Those Devices. The Station, Considered as a Wireless Device (WD) Shall Achieve at Least a Category T4 Rating as Defined by American National Standard for Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids, ANSI C63.19

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: ''Hearing devices'' includes hearing aids and cochlear implants.

2.2.3.4 A Sanitized Headphone or Handset Should Be Made Available to Each Voter

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement can be achieved in various ways, including the use of ''throwaway'' headphones, or of sanitary coverings.

[Best Practice for Voting Officials] A sanitized headphone or handset is made available to each voter.

2.2.3.5 The Voting Station Shall Set the Initial Volume for Each Voter Between 40 and 50 dB SPL

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: A voter does not ''inherit'' the volume as set by the previous user of the voting station.

2.2.3.6 The Voting Station Shall Provide a Volume Control With an Adjustable Amplification From a Minimum of 20dB SPL Up to a Maximum of 105 dB SPL, in Increments No Greater Than 20dB

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.3.7 The Audio System Shall Be Able To Reproduce Frequencies Over the Audible Speech Range Of 315 Hz To 10KHz

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.3.8 The Audio System Should Provide Information Via Recorded Human Speech, Rather Than Synthesized Speech

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Most users prefer real speech over synthesized speech.

2.2.3.9 The Audio System Should Allow Voters To Control, Within Reasonable Limits, the Rate of Speech

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Many blind voters are accustomed to interacting with accelerated speech.

2.2.4 If the Normal Procedure Is To Have Voters Initialize the Activation of the Ballot, the Acc-Vs Shall Provide Features That Enable Voters Who Are Blind To Perform This Activation

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, smart cards might provide tactile cues so as to allow correct insertion.

2.2.5 If the Normal Procedure Is for Voters To Submit Their Own Ballots, Then the Voting Process Should Provide Features That Enable Voters Who Are Blind To Perform This Submission

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, if voters normally feed their own optiscan ballots into a reader, blind voters should also be able to do so.

[Best Practice for Voting Officials] If the normal procedure is for voters to submit their own ballots, then the voting process provides features that enable voters who are blind to perform this submission.

2.2.6 If the Normal Procedure Includes VVPAT, the Acc-VS Should Provide Features That Enable Voters Who Are Blind To Perform This Verification

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, the Acc-VS might provide an automated reader for the paper record that converts the contents of the paper into audio output. It is anticipated that this recommendation will become a requirement in future versions of the VVSG.

2.2.7 All Mechanically Operated Controls or Keys on an Acc-VS Shall Be Tactilely Discernible Without Activating Those Controls or Keys

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

2.2.8 On an Acc-VS, the Status of All Locking or Toggle Controls or Keys (Such as the ''Shift'' Key) Shall Be Visually Discernible, and Discernible Either Through Touch or Sound

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

3. The Voting Process Shall Be Accessible to Voters Who Lack Fine Motor Control or the Use of Their Hands

3.1 The Vendor Should Conduct Summative Usability Tests on the Acc-VS With Subjects Lacking Fine Motor Control and Report the Test Results to the Appropriate Testing Authority According to the Common Industry Format (CIF)

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: This requirement is meant to encourage Acc-VS designers to conduct some realistic usability tests on the final product. For now, it is purely a documentation recommendation. Future versions of the VVSG will include requirements for usability testing to be conducted by the testing authority with specific performance benchmarks.

3.2 All Keys and Controls on the Acc-VS Shall Be Operable With One Hand and Shall Not Require Tight Grasping, Pinching, or Twisting of the Wrist. The Force Required To Activate Controls and Keys Shall Be No Greater 5 lbs. (22.2 N)

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Controls are to be operable without excessive force.

3.3 The Acc-VS Controls Shall Not Require Direct Bodily Contact or for the Body To Be Part of Any Electrical Circuit

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement ensures that controls are operable by individuals using prosthetic devices.

3.4 The Acc-VS Should Provide a Mechanism To Enable Non-Manual Input That Is Functionally Equivalent to Tactile Input

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This recommendation ensures that the Acc-VS is operable by individuals who do not have the use of their hands. All the functionality of the Acc-VS (e.g. straight party voting, write-in candidates) that is available through the other forms of input, such as tactile, must also be available through the input mechanism if it is provided by the Acc-VS.

4. The Voting Process Shall Be Accessible to Voters Who Use Mobility Aids, Including Wheelchairs

4.1 The Acc-VS Shall Provide a Clear Floor Space of 30 Inches (760 mm) Minimum by 48 Inches (1220 mm) Minimum for a Stationary Mobility Aid. The Clear Floor Space Shall Be Level With No Slope Exceeding 1:48 and Positioned for a Forward Approach or a Parallel Approach

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

[Best Practice for Voting Officials] The Acc-VS provides a clear floor space of 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum for a stationary mobility aid. The clear floor space is level with no slope exceeding 1:48 and positioned for a forward approach or a parallel approach.

4.2 All Controls, Keys, Audio Jacks and Any Other Part of the Acc-VS Necessary for the Voter To Operate the Voting System Shall Be Within Reach as Specified Under the Following Sub-Requirements

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

Discussion: All dimensions are given in inches. To convert to millimeters, multiply by 25.4 and then round to the nearest multiple of 5. Note that these sub-requirements have meaningful application mainly to controls in a fixed location. A hand-held tethered control panel is another acceptable way of providing reachable controls. All the sub-requirements inherit the ''responsible entity'' and ''process'' properties.

[Best Practice for Voting Officials] All controls, keys, audio jacks and any other part of the Acc-VS necessary for the voter to operate the voting system are within the reach regions as specified in the VVSG Volume I, Section 2.2.7.1.4.3.

4.2.1 If the Acc-VS Has a Forward Approach With No Forward Reach Obstruction Then the High Reach Shall Be 48 Inches Maximum and the Low Reach Shall Be 15 Inches Minimum. See Figure 2.2.7.1–1

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

4.2.2 If the Acc-VS Has a Forward Approach With a Forward Reach Obstruction, the Following Sub-Requirements Apply. See Figure 2.2.7.1–2

4.2.2.1 The Forward Obstruction Shall Be No Greater Than 25 Inches in Depth, Its Top No Higher Than 34 Inches and Its Bottom Surface No Lower Than 27 Inches

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

4.2.2.2 If the Obstruction Is No More Than 20 Inches in Depth, Then the Maximum High Reach Shall Be 48 Inches, Otherwise It Shall Be 44 Inches

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

4.2.2.3 Space Under the Obstruction Between the Finish Floor or Ground and 9 Inches (230 mm) Above the Finish Floor or Ground Shall Be Considered Toe Clearance and Shall Comply With the Following Sub-Requirements

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

A. Toe clearance shall extend 25 inches (635 mm) maximum under the obstruction.

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

B. The minimum toe clearance under the obstruction shall be either 17 inches (430 mm) or the depth required to reach over the obstruction to operate the Acc-VS, whichever is greater.

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

C. Toe clearance shall be 30 inches (760 mm) wide minimum.

Voting System Vendor

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

4.2.2.4 Space Under the Obstruction Between 9 inches (230 mm) and 27 Inches (685 mm) Above the Finish Floor or Ground Shall Be Considered Knee Clearance and Shall Comply With the Following Sub-Requirements

A. Knee clearance shall extend 25 inches (635 mm) maximum under the obstruction at 9 inches (230 mm) above the finish floor or ground.

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

B. The minimum knee clearance at 9 inches (230 mm) above the finish floor or ground shall be either 11 inches (280 mm) or 6 inches less than the toe clearance, whichever is greater.

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

C. Between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground, the knee clearance shall be permitted to reduce at a rate of 1 inch (25 mm) in depth for each 6 inches (150 mm) in height.

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

Discussion: It follows that the minimum knee clearance at 27 inches above the finish floor or ground shall be 3 inches less than the minimum knee clearance at 9 inches above the floor.

D. Knee clearance shall be 30 inches (760 mm) wide minimum.

V Voting System Vendor

Pre-Voting	Voting	~~Post-Voting~~

4.2.3 If the Acc-VS Has a Parallel Approach With No Side Reach Obstruction Then the Maximum High Reach Shall be 48 Inches and the Minimum Low Reach Shall be 15 Inches. See Figure 2.2.7.1–3

V	Voting System Vendor	
Pre-Voting	Voting	~~Post-Voting~~

4.2.4 If the Acc-VS Has a Parallel Approach With a Side Reach Obstruction, the Following Sub-Requirements Apply. See Figure 2.2.7.1–4

4.2.4.1 The Side Obstruction Shall Be No Greater Than 24 Inches in Depth and Its Top No Higher Than 34 Inches

V	Voting System Vendor	
Pre-Voting	Voting	~~Post-Voting~~

4.2.4.2 If the Obstruction Is No More Than 10 inches in Depth, Then the Maximum High Reach Shall Be 48 Inches, Otherwise It Shall Be 46 Inches

V	Voting System Vendor	
Pre-Voting	Voting	~~Post-Voting~~

Discussion: Since this is a parallel approach, no clearance under the obstruction is required.

4.2.5 All Labels, Displays, Controls, Keys, Audio Jacks, and Any Other Part of the Acc-VS Necessary for the Voter To Operate the Voting System Shall Be Easily Legible and Visible to a Voter in a Wheelchair With Normal Eyesight (No Worse Than 20/40, Corrected) Who Is in an Appropriate Position and Orientation with Respect to the Acc-VS

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: There are a number of factors that could make relevant parts of the Acc-VS difficult to see: small lettering, controls and labels tilted at an awkward angle from the voter's viewpoint, glare from overhead lighting, etc.

5. The Voting Process Shall Be Accessible to Voters With Hearing Disabilities

5.1 The Acc-VS Shall Incorporate the Features Listed Under Requirement # 2.2.7.1.2.2.3 (Audio Presentation) To Provide Accessibility to Voters With Hearing Disabilities

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Note especially the requirements for volume initialization and control.

[Best Practice for Voting Officials] The Acc-VS incorporates the features listed in the VVSG Volume I, Section 2.2.7.1.2.2.3 (audio presentation) to provide accessibility to voters with hearing disabilities.

5.2 If a Voting Station Provides Sound Cues as a Method To Alert the Voter, the Tone Shall Be Accompanied by a Visual Cue

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For instance, the station might beep if the voter attempts to overvote. If so, there would have to be an equivalent visual cue, such as the appearance of an icon, or a blinking element.

6. The Voting Process Shall Be Accessible to Voters With Speech Disabilities

6.1 No Voting Station Shall Require Voter Speech for its Operation

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This does not preclude a voting station from offering speech input as an option, but speech must not be the only means of input.

7. The Voting Process Should Be Accessible to Voters With Cognitive Disabilities

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: At present there are no design features specifically aimed at helping those with cognitive disabilities. Section 2.2.7.1.2.1.9, the synchronization of audio with the screen in a DRE, is helpful for some cognitive disabilities such as dyslexia. Section 2.2.7.3.3 also contains some relevant guidelines.

[Best Practice for Voting Officials] The voting process is made accessible to voters with cognitive disabilities.

Figures for Accessibility

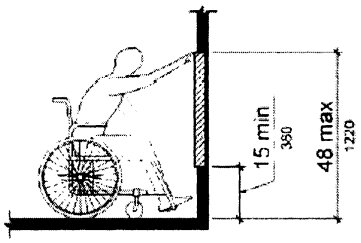


Figure 2.2.7.1-1
Unobstructed forward reach

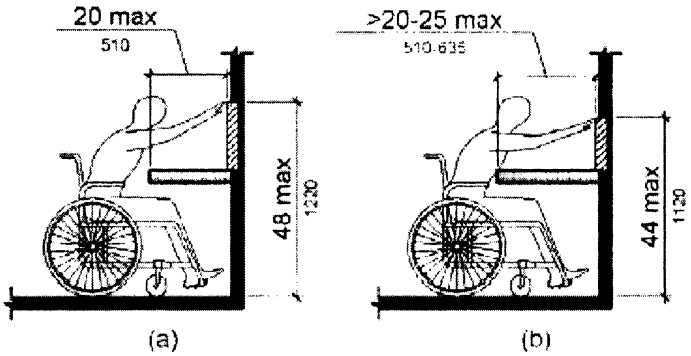


Figure 2.2.7.1-2
Obstructed forward reach
(a) for an obstruction depth of up to 20 inches (508 mm)
(b) for an obstruction depth of up to 25 inches (635 mm)

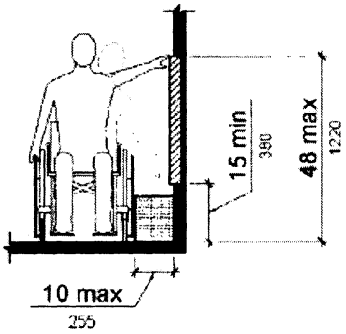


Figure 2.2.7.1-3
Unobstructed side reach with an allowable obstruction less than 10 inches (254 mm) deep.

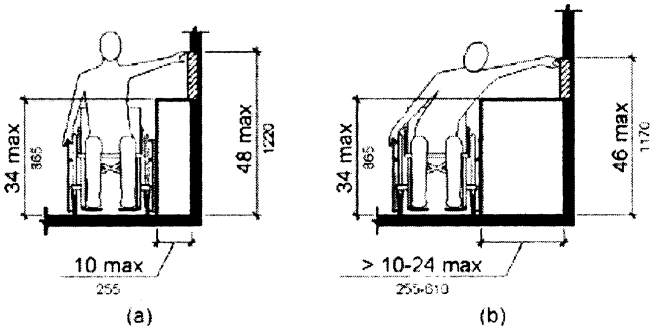


Figure 2.2.7.1-4
Obstructed side reach
(a) for an obstruction depth of up to 10 inches (254 mm)
(b) for an obstruction depth of up to 24 inches (610 mm)

2. The Voting Process Shall Be Accessible to Voters Who Are Not Fully Literate in English. This Requirement May Be Satisfied by Providing Voting Stations in a Polling Place That Accommodate Those Without a Full Command of English. See HAVA 301 (a)(4) and 241 (b)(5). Such a Facility is Referred to Herein as an Alternative Language Voting Station (ALVS)

HAVA Section 301 (a)(4) reads:

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).

The requirements within Section 2.2.7.2 are intended to address this mandate. Ideally every voter would be able to vote independently and privately, regardless of language. As a practical matter, alternative language access is mandated under the Voting Rights Act of 1975, subject to certain thresholds, e.g. if the language group exceeds 5% of the voting age citizens.

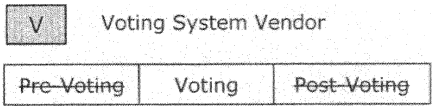
Note that the provision of an audio interface for people with visual disabilities as described in Section 2.2.7.1 may also assist voters who speak English, but are unable to read it.

The outline for section 2.2.7.2 is:

2.2.7.2. Alternative Languages
2.2.7.2.1 Complete Information

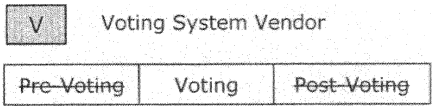
2.2.7.2.2 Spelling of Names
2.2.7.2.3 Literate Voters
2.2.7.2.4 Illiterate Voters

1. All the Information Presented in the Normal Case of English-literate Voters (Including Instructions, Warnings, Messages, and Ballot Choices) Shall Also Be Presented by the ALVS, Whether the Language Is Written or Spoken



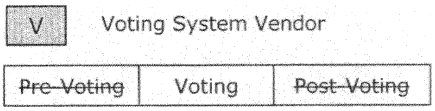
Discussion: This is in keeping with general requirement # 2.2.7.1.1.1.

2. Regardless of the Language, Candidate Names Shall Be Displayed or Pronounced in English on All Ballots. For Written Languages That Do Not Use Roman Characters (e.g. Chinese, Japanese, Korean, Arabic), the Ballot Shall Include Transliteration of Candidate Names Into the Relevant Language

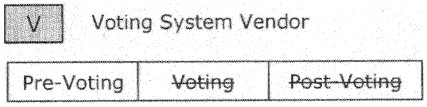


[Best Practice for Voting Officials] Regardless of the language, candidate names are displayed or pronounced in English on all ballots. For written languages that do not use Roman characters (e.g., Chinese, Japanese, Korean, Arabic), the ballot includes transliteration of candidate names into the relevant language.

3. For Literate Voters, the ALVS Shall Provide Printed or Displayed Instructions, Messages, and Ballots in Their Preferred Language, Consistent With State and Federal Law

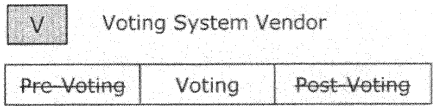


3.1 The Vendor Should Conduct Summative Usability Tests on the ALVS With Literate Subjects Who Neither Speak Nor Read English and Report the Test Results According to the Common Industry Format (CIF)



Discussion: This requirement is meant to encourage Acc-VS designers to conduct some realistic usability tests on the final product. For now, it is purely a documentation recommendation. Future versions of the VVSG will include requirements for usability testing to be conducted by the testing authority, with specific performance benchmarks.

4. For Illiterate Voters, the ALVS Shall Provide Spoken Instructions and Ballots in the Preferred Language of the Voter, Consistent With State and Federal Law. The Requirements and Sub-Requirements of # 2.2.7.1.2.2.2 (Acc-VS/ATI) Shall Apply to This Mode of Interaction



Discussion: Note that some languages have no widely accepted written form.

3. The Voting Process Shall Provide a High Level of Usability to the Voters. Accordingly, Voters Shall Be Able to Negotiate the Process Effectively, Efficiently, and Comfortably

Discussion: The first Voting System Standards codified in HAVA relate to the interaction between the voter and the voting system. HAVA Section 301 begins:

SEC. 301. VOTING SYSTEMS STANDARDS.

a. 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 the ballot is cast and counted;

ii. 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 any error); and

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.

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—

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

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).

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.''

The requirements of this section supplement these basic HAVA mandates and also HAVA's support for improved usability (see Section 243 and Section 221(e)(2)(D)).

Voting and Usability

Usability is defined generally as a measure of the effectiveness, efficiency, and satisfaction achieved by a specified set of users with a given product in the performance of specified tasks. In the context of voting, the primary users are the voters (but also poll workers), the product is the voting system, and the task is the correct representation of one's choices in the election. Additional requirements for task performance are independence and privacy: the voter should normally be able to complete the voting task without assistance from others (although the voting system itself may offer help), and the voter's choices should be private (see Section 2.2.7.4). Aside from its intrinsic undesirability, lack of independence or privacy may adversely affect effectiveness (e.g. by possibly inhibiting the voter's free choice) and efficiency (e.g. by slowing down the process).

Among the ''bottom-line'' metrics for usability are:

- low error rate for marking the ballot (the voter's intention is correctly conveyed to and represented within the voting system),
- efficient operation (time required to vote is not excessive), and
- satisfaction (voter experience is safe, comfortable, free of stress, and instills confidence).

These criteria define the core of good voting system usability. The purpose of the detailed requirements listed below is to help voting systems meet the core criteria.

Methodology for Requirements

It is the intention of the TGDC that in forthcoming versions of the VVSG, usability will be addressed by high-level performance-based requirements. That is, the requirements will directly address metrics for effectiveness (e.g. correct capture of voters' intentions), efficiency (e.g. time taken to vote), and satisfaction. Until the supporting research is completed, however, the contents of this subsection are limited to a somewhat basic set of widely accepted design requirements and lower-level performance requirements. The reasons for this approach are:

- These are to serve as interim requirements, pending the issuance of high-level performance requirements.
- The actual benefit of numerous detailed design guidelines is difficult to prove or measure.
- The technical complexity and costs of a large set of detailed requirements may not be justified.
- Guidelines that are difficult to test because of insufficient specificity have been omitted.

This is not to say that an extensive set of design guidelines is without value. But we wish to distinguish between good advice to be considered by developers and strict requirements that will be enforced by a regime of formal testing. For more detail on the issue of design vs. performance standards, see Sections 2.3 and 6.1 et al. of NIST Special Publication 500–256: Improving the Usability and Accessibility of Voting Systems and Products (*http://vote.nist.gov/ Final%20Human%20Factors%20 Report%20% 205–04.pdf*).

General Issues for the Usability Requirements

As mentioned in Section 2.2.7.1, many of the guidelines in this section enhance accessibility as well as general usability.

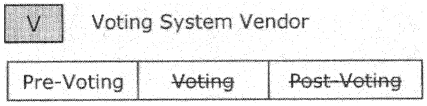
The scope of usability includes the entire voting process, although the emphasis herein is on the interface between the voter and the voting station.

The requirements in this sub-section generally assume a visual-tactile interface, but also see requirements in Sections 2.2.7.1 and Section 2.2.7.2 for alternative formats, including audio.

The outline for Section 2.2.7.3 is:

2.2.7.3 Usability
2.2.7.3.1 Usability Testing by Vendor
2.2.7.3.2 Functional Capabilities
2.2.7.3.3 Cognitive Issues
2.2.7.3.4 Perceptual Issues
2.2.7.3.5 Interaction Issues

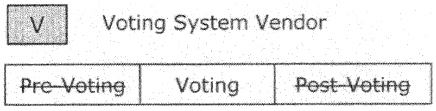
1. The Vendor Should Conduct Summative Usability Tests on the Voting System Using Subjects Representative of the General Population and Report the Test Results to the Appropriate Testing Authority According to the Common Industry Format (CIF)



Discussion: This requirement is meant to encourage Acc-VS designers to conduct some realistic usability tests on the final product. For now, it is purely a documentation recommendation. Future versions of the VVSG will include requirements for usability testing to be conducted by the testing authority, with specific performance benchmarks.

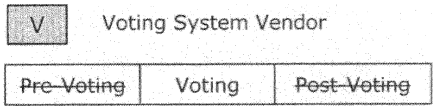
2. The Voting Process Shall Provide Certain Functional Capabilities To Support Voter Usability

2.1 As Mandated by HAVA 301(a)(1)(A), the Voting System Shall Support a Process That Allows the Voter To Review His or Her Completed Ballot Before Final Submission in Order To Verify That it Correctly Represents the Intended Vote and To Correct the Ballot if Mistakes Are Detected



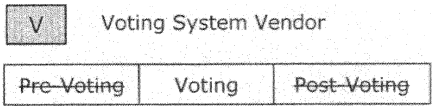
Discussion: Note that this review and correction may be achieved by procedural means (e.g. in the case of paper ballots), as well as technical (see HAVA 301(a)(1)(B)). This requirement is a brief paraphrase of the HAVA language but of course the statutory language is determinative.

2.2 As Mandated by HAVA 301(a)(1)(A), the Voting System Shall Support a Process That Notifies the Voter if He or She Has Attempted To Vote for More Candidates Than the Maximum Permitted in a Given Race and That Provides the Voter With the Opportunity To Correct the Ballot Before Final Submission



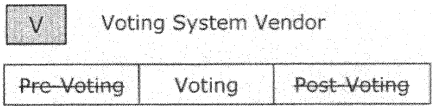
Discussion: Note that this notification and correction may be achieved by procedural means (e.g. in the case of paper ballots), as well as technical (see HAVA 301(a)(1)(B)). This requirement is a brief paraphrase of the HAVA language but of course the statutory language is determinative.

2.3 DRE Voting Stations Shall Allow the Voter To Change a Vote Within a Race Before Advancing to the Next Race



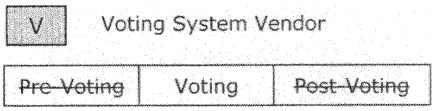
Discussion: The point here is that voters using a DRE should not have to wait for the final ballot review in order to change a vote.

2.4 The Voting System Shall Support a Process That Notifies the Voter if He or She Has Attempted To Vote for Fewer Candidates Than the Maximum Permitted in a Given Race and That Provides the Voter With the Opportunity To Change the Ballot Before Final Submission. The Process Shall Also Notify the Voter That Such an ''Undervote'' Is Permitted and Shall Accept a Ballot if the Voter so Chooses



Discussion: Note that this notification and correction may be achieved by procedural means (e.g. in the case of paper ballots), as well as technical (see HAVA 301(a)(1)(B)).

2.5 DRE Voting Stations Should Provide Navigation Controls That Allow the Voter To Advance to the Next Race or Go Back to the Previous Race Before Completing a Vote on the Race or Races Currently Being Presented (Whether Visually or Aurally)



Discussion: For example, the voter should not be forced to proceed sequentially through all the races and/or candidates before going back to check the status of a previous race.

3. The Voting Process Shall Be Designed To Minimize Cognitive Difficulties for the Voter

3.1 Consistent With Election Law, the Voting System Should Support a Process That Does Not Introduce Any Bias for or Against Any of the Choices To Be Made by the Voter. In Both Visual and Aural Formats, Candidates and Choices Shall Be Presented in an Equivalent Manner

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Certain differences in presentation are unavoidable, such as the order in which candidates are listed, and write-in candidates are inherently more difficult to vote for. But comparable characteristics such as font size or voice volume and speed must be the same for all choices.

3.2 The Voting System or Related Materials Shall Provide Clear Instructions and Assistance so as To Allow Voters To Successfully Execute and Cast Their Ballots Independently

Discussion: Voters should not routinely need to ask for human assistance.

3.2.1 Voting Stations or Related Materials Shall Provide a Means for the Voter To Get Help at Any Time During the Voting Session

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The voter should always be able to get help at the station if confused. DRE voting stations may provide this with a distinctive ''help'' button. Any type of voting station may provide written instructions that are available and separate from the ballot. Note special requirements for the Acc-VS in requirement # 2.2.7.1.2.2.2 (Acc-VS/ATI).

3.2.2 The Voting Station Shall Provide Instructions for All Its Valid Operations

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: If an operation is available to the voter, it must be documented. Examples include how to change a vote, how to navigate among races, how to cast a party-line vote, and how to cast a write-in vote.

3.3 The Voting System Shall Provide the Capability To Design a Ballot for Maximum Clarity and Comprehension

3.3.1 The Voting Station Should Not Visually Present a Single Race Spread Over Two Pages or Two Columns

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Such a visual separation poses the risk that the voter will perceive the race as two races. Of course, if a race has a very large number of candidates, it may be infeasible to observe this guideline.

[Best Practice for Voting Officials] The voting station does not visually present a single race spread over two pages or two columns.

3.3.2 The Ballot Shall Clearly Indicate the Maximum Number of Candidates for Which One Can Vote Within a Single Race

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

[Best Practice for Voting Officials] The ballot clearly indicates the maximum number of candidates for which one can vote within a single race.

3.3.3 There Shall Be a Consistent Relationship Between the Name of a Candidate and the Mechanism Used to Vote for That Candidate

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, if the response field where voters indicate their selections is located to the left of a candidate's name, then each response field shall be located to the left of the associated candidate's names.

[Best Practice for Voting Officials] The ballot presents the relationship between the name of a candidate and the mechanism used to vote for that candidate in a consistent manner.

3.4 Warnings and Alerts Issued by the Voting Station Should Clearly State the Nature of the Problem and the Set of Responses Available to the Voter. The Warning Should Clearly State Whether the Voter Has Performed or Attempted an Invalid Operation or Whether the Voting Equipment Itself Has Failed in Some Way

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: In case of an equipment failure, the only action available to the voter might be to get assistance from a poll worker.

3.5 The Use of Color by the Voting Station Should Agree With Common Conventions: (a) Green, Blue or White Is Used for General Information or as a Normal Status Indicator; (b) Amber or Yellow Is Used to Indicate Warnings or a Marginal Status; (c) Red Is Used to Indicate Error Conditions or a Problem Requiring Immediate Attention

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

4. The Voting Process Shall Be Designed to Minimize Perceptual Difficulties for the Voter

4.1 No Display Screen of a Voting Station Shall Flicker With a Frequency Between 2 Hz and 55 Hz

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Aside from usability concerns, this requirement protects voters with epilepsy.

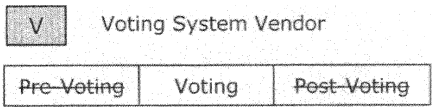
4.2 Any Aspect of the Voting Station That is Adjustable by the Voter or Poll Worker, Including Font Size, Color, Contrast, and Audio Volume, Shall Automatically Reset to a Standard Default Value Upon Completion of That Voter's Session

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

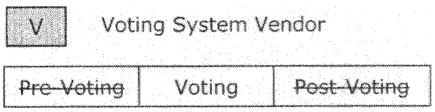
Discussion: This implies that the voting station presents the same initial appearance to every voter (excluding, of course, substantive differences in the ballot content due to residence or party of the voter).

4.3 If Any Aspect of a Voting Station is Adjustable by the Voter, There Should Be a Mechanism to Reset All Such Aspects to Their Default Values

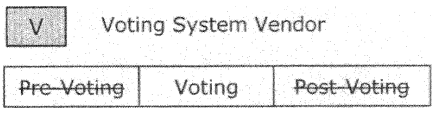


Discussion: The purpose is to allow a voter who has adjusted the station into an undesirable state to reset all the aspects so as to get a fresh start.

4.4 The Minimum Font Size for All Text Intended for the Voter During the Voting Session Shall Be 3.0mm (Measured as the Height of a Capital Letter)

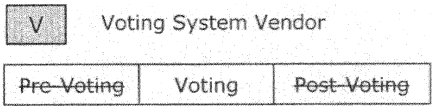


4.5 All Text Intended for the Voter During the Voting Session Should Be Presented in a Sans Serif Font



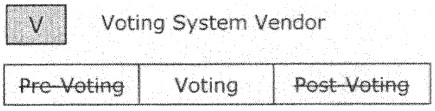
Discussion: Experimentation has shown that users prefer such a font and the legibility of serif and sans serif fonts is equivalent.

4.6 The Minimum Figure-to-Ground Ambient Contrast Ratio for All Text and Informational Graphics (Including Icons) Intended for the Voter Shall Be 3:1



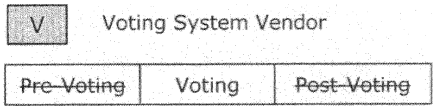
5. The Voting Process Shall Be Designed to Minimize Interaction Difficulties for the Voter

5.1 Voting Stations With Electronic Image Displays Shall Not Require Page Scrolling by the Voter

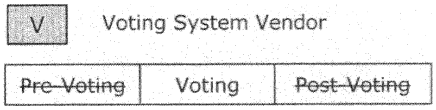


Discussion: This is not an intuitive operation for those unfamiliar with the use of computers. Even those experienced with computers often do not notice a scroll bar and miss information below the page. DREs may require voters to move to the next or previous ''page.''

5.2 The Voting Station Shall Provide Unambiguous Feedback Regarding the Voter's Selection, Such as Displaying a Checkmark Beside the Selected Option or Conspicuously Changing Its Appearance

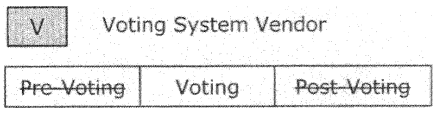


5.3 If the Voting Station Requires a Response by a Voter Within a Specific Period of Time, It Shall Issue an Alert at Least 20 Seconds Before This Time Period Has Expired and Provide a Means by Which the Voter May Receive Additional Time

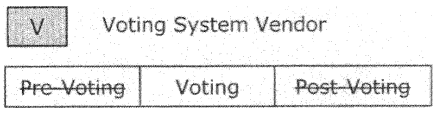


5.4 Input Mechanisms Shall Be Designed so as to Minimize Accidental Activation (Also, See Requirement # 2.2.7.1.2.2.7 on Tactile Discernability)

5.4.1 On Touch Screens, the Sensitive Touch Areas Shall Have a Minimum Height of 0.5 Inches and Minimum Width of 0.7 Inches. The Vertical Distance Between the Centers of Adjacent Areas Shall Be at Least 0.6 Inches, and the Horizontal Distance at Least 0.8 Inches



5.4.2 No Key or Control on a Voting Station Shall Have a Repeat Feature Enabled



Discussion: This is to preclude accidental activation.

4. The Voting Process Shall Preclude Anyone Else From Determining the Content of a Voter's Ballot, With or Without the Voter's Cooperation

Discussion: Voter privacy is strongly supported by HAVA—see Sections 221(e)(2)(C) and 301(a)(1). In this subsection, we address only privacy concerns in relation to human factors issues, but not with respect to the processing of cast ballots.

Although elections in American history have sometimes been public (and certain ''town-hall'' questions are still voted openly), the use of the secret ballot for political office is now universal.

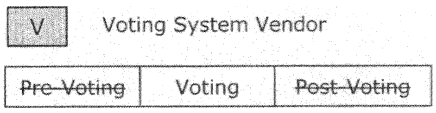
Privacy in this context, including the property of the voter being unable to disclose his or her vote, ensures that the voter can make choices based solely on his or her own preferences without intimidation or inhibition. Among other practices, this forbids the issuance of a receipt to the voter that would provide proof to another how he or she voted.

The outline for Section 2.2.7.4 is:

2.2.7.4 Privacy
2.2.7.4.1 Privacy at the polling place
2.2.7.4.2 No preservation of alternative formats
2.2.7.4.3 Absentee Balloting

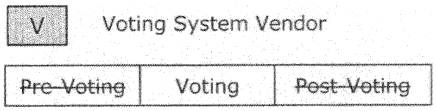
1. The Voting Station and Polling Place Shall Be Configured so as to Prevent Others From Learning the Contents of a Voter's Ballot

1.1 The Ballot and Any Input Controls Shall Be Visible Only to the Voter During the Voting Session and Ballot Submission



[Best Practice for Voting Officials] The ballot and any input controls are visible only to the voter during the voting session and ballot submission. Poll workers need to take into account such factors as visual barriers, windows, permitted waiting areas for other voters, and procedures for ballot submission when not performed at the voting station, e.g. submission of optiscan ballots to a central reader.

1.2 The Audio Interface Shall Be Audible Only to the Voter



Discussion: Voters who are hard of hearing but need to use an audio interface may also need to increase the volume of the audio. Such situations require headphones with low sound leakage.

[Best Practice for Voting Officials] The audio interface is audible only to the voter.

1.3 As Mandated By HAVA 301(a)(1)(C), the Voting System Shall Notify the Voter of an Attempted Overvote in a Way That Preserves the Privacy of the Voter and the Confidentiality of the Ballot

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement is a brief paraphrase of the HAVA language but of course the statutory language is determinative.

[Best Practice for Voting Officials] As mandated by HAVA 301(a)(1)(C), the voting system notifies the voter of an attempted overvote in a way that preserves the privacy of the voter and the confidentiality of the ballot.

2. Voter Anonymity Shall Be Maintained for Alternative Format Ballot Presentation

2.1 No Information Shall Be Kept Within a Non-Paper-Based Cast Vote Record That Identifies Any Accessibility Feature(s) Used by a Voter

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Large-print paper ballots unavoidably preserve such information.

2.1.1 No Information Shall Be Kept Within a Non-Paper-Based Cast Vote Record That Identifies Any Alternative Language Feature(s) Used by a Voter

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Non-English paper ballots unavoidably preserve such information.

[Best Practice for Voting Officials] Appropriate procedures are needed to ensure that absentee balloting enable the voter to preserve privacy. There is no practical means to prevent a voter from revealing an absentee paper ballot to others. But the procedures should ensure that if a voter chooses to maintain privacy, it is not violated at a later stage, in particular when the ballot is received by voting officials.

2.2.8 Vote Tabulating Program

Each voting system shall have a vote tabulation program that will meet specific functional requirements.

2.2.8.1 Functions

The vote tabulating program software resident in each voting device, vote count server, or other devices shall include all software modules required to:

a. Monitor system status and generate machine-level audit reports;

b. Accommodate device control functions performed by polling place officials and maintenance personnel;

c. Register and accumulate votes; and

d. Accommodate variations in ballot counting logic.

2.2.8.2 Voting Variations

There are significant variations among the election laws of the 50 states with respect to permissible ballot contents, voting options, and the associated ballot counting logic. The TDP accompanying the system shall specifically identify which of the following items can and cannot be supported by the system, as well as how the system can implement the items supported:

a. Closed primaries;

b. Open primaries;

c. Partisan offices;

d. Non-partisan offices;

e. Write-in voting;

f. Primary presidential delegation nominations;

g. Ballot rotation;

h. Straight party voting;

i. Cross-party endorsement;

j. Split precincts;

k. Vote for N of M;

l. Recall issues, with options;

m. Cumulative voting;

n. Ranked order voting; and

o. Provisional or challenged ballots.

2.2.9 Ballot Counter

For all voting systems, each device that tabulates ballots shall provide a counter that:

a. Can be set to zero before any ballots are submitted for tally;

b. Records the number of ballots cast during a particular test cycle or election;

c. Increases the count only by the input of a ballot;

d. Prevents or disables the resetting of the counter by any person other than authorized persons at authorized points; and

e. Is visible to designated election officials.

2.2.10 Telecommunications

For all voting systems that use telecommunications for the transmission of data during pre-voting, voting or post-voting activities, capabilities shall be provided that ensure data are transmitted with no alteration or unauthorized disclosure during transmission. Such transmissions shall not violate the privacy, secrecy, and integrity demands of the Standards. Section 5 of the Standards describes telecommunications standards that apply to, at a minimum, the following types of data transmissions:

- *Voter Authentication:* Coded information that confirms the identity of a voter for security purposes for a system that transmit votes individually over a public network;
- *Ballot Definition:* Information that describes to a voting machine the content and appearance of the ballots to be used in an election;
- *Vote Transmission to Central Site:* For systems that transmit votes individually over a public network, the transmission of a single vote to the county (or contractor) for consolidation with other county vote data;
- *Vote Count:* Information representing the tabulation of votes at any one of several levels: polling place, precinct, or central count; and
- *List of Voters:* A listing of the individual voters who have cast ballots in a specific election.

2.2.9 Data Retention

United States Code Title 42, Sections 1974 through 1974e, states that election administrators shall preserve for 22 months ''all records and paper that came into (their) possession relating to an application, registration, payment of poll tax, or other act requisite to voting.'' This retention requirement applies to systems that will be used at anytime for voting of candidates for Federal offices (*e.g.*, Member of Congress, United States Senator, and/or Presidential Elector). Therefore, all systems shall provide for maintaining the integrity of voting and audit data during an election and for a period of at least 22 months thereafter.

Because the purpose of this law is to assist the Federal government in discharging its law enforcement responsibilities in connection with civil rights and elections crimes, its scope must be interpreted in keeping with that objective. The appropriate state or local authority must preserve all records that may be relevant to the detection and prosecution of federal civil rights or election crimes for the 22-month federal retention period, if the records were generated in connection with an election that was held in whole or in part to select federal candidates. It is important to note that Section 1974 does not require that election officials generate any specific type or classification of election record. However, if a record is generated, Section 1974 comes into force and the appropriate authority must retain the records for 22 months.

For 22-month document retention, the general rule is that all printed copy

records produced by the election database and ballot processing systems shall be so labeled and archived. Regardless of system type, all audit trail information spelled out in subsection 4.5 of the Standards shall be retained in its original format, whether that be real-time logs generated by the system, or manual logs maintained by election personnel. The election audit trail includes not only in-process logs of election-night (and subsequent processing of absentee or provisional ballots), but also time logs of baseline ballot definition formats, and system readiness and testing results.

In many voting systems, the source of election-specific data (and ballot formats) is a database or file. In precinct count systems, this data is used to program each machine, establish ballot layout, and generate tallying files. It is not necessary to retain this information on electronic media if there is an official, authenticatable printed copy of all final database information. However, it is recommended that the state or local jurisdiction also retain electronic records of the aggregate data for each device so that reconstruction of an election is possible without data re-entry. The same requirement and recommendation applies to vote results generated by each precinct device or system.

2.3 Pre-Voting Functions

This section defines capabilities required to support functions performed prior to the opening of polls. All voting systems shall provide capabilities to support:

- Ballot preparation;
- Election programming;
- Ballot and program installation and control;
- Readiness testing;
- Verification at the polling place; and
- Verification at the central counting place.

The standards also include requirements to ensure compatible interfaces with the ballot definition process and the reporting of election results.

2.3.1 Ballot Preparation

Ballot preparation is the process of using election databases to define the specific contests, questions, and related instructions to be contained in ballots and to produce all permissible ballot layouts. Ballot preparation requirements include:

- General capabilities for ballot preparation;
- Ballot formatting; and
- Ballot production.

2.3.1.1 General Capabilities

All systems shall provide the general capabilities for ballot preparation.

2.3.1.1.1 Common Standards

All systems shall be capable of:

a. Enabling the automatic formatting of ballots in accordance with the requirements for offices, candidates, and measures qualified to be placed on the ballot for each political subdivision and election district;

b. Collecting and maintaining the following data:

(1) Offices and their associated labels and instructions;

(2) Candidate names and their associated labels; and

(3) Issues or measures and their associated text;

c. Supporting the maximum number of potentially active voting positions as indicated in the system documentation;

d. For a primary election, generating ballots that segregate the choices in partisan races by party affiliation;

e. Generating ballots that contain identifying codes or marks uniquely associated with each format; and

f. Ensuring that vote response fields, selection buttons, or switches properly align with the specific candidate names and/or issues printed on the ballot display, ballot card or sheet, or separate ballot pages.

2.3.1.1.2 Paper-Based System Standards

In addition to the common standards, paper-based systems shall meet the following standards applicable to the technology used:

a. Enable voters to make selections by punching a hole or by making a mark in areas designated for this purpose upon each ballot card or sheet;

b. For punchcard systems, ensure that the vote response fields can be properly aligned with punching devices used to record votes; and

c. For marksense systems, ensure that the timing marks align properly with the vote response fields.

2.3.1.2 Ballot Formatting

Ballot formatting is the process by which election officials or their designees use election databases and vendor system software to define the specific contests and related instructions contained on the ballot and present them in a layout permitted by state law. All systems shall provide a capability for:

a. Creation of newly defined elections;

b. Rapid and error-free definition of elections and their associated ballot layouts;

c. Uniform allocation of space and fonts used for each office, candidate, and contest such that the voter perceives no active voting position to be preferred to any other;

d. Simultaneous display of the maximum number of choices for a single contest as indicated by the vendor in the system documentation;

e. Retention of previously defined formats for an election;

f. Prevention of unauthorized modification of any ballot formats; and

g. Modification by authorized persons of a previously defined ballot format for use in a subsequent election.

2.3.1.3 Ballot Production

Ballot production is the process of converting ballot formats to a media ready for use in the physical ballot production or electronic presentation.

2.3.1.3.1 Common Standards

The voting system shall provide a means of printing or otherwise generating a ballot display that can be installed in all system voting devices for which it is intended. All systems shall provide a capability to ensure:

a. The electronic display or printed document on which the user views the ballot is capable of rendering an image of the ballot in any of the languages required by The Voting Rights Act of 1965, as amended;

b. The electronic display or printed document on which the user views the ballot does not show any advertising or commercial logos of any kind, whether public service, commercial, or political, unless specifically provided for in State law. Electronic displays shall not provide connection to such material through hyperlink; and

c. The ballot conforms to vendor specifications for type of paper stock, weight, size, shape, size and location of punch or mark field used to record votes, folding, bleed through, and ink for printing if paper ballot documents or paper displays are part of the system.

2.3.1.3.2 Paper-Based System Standards

In addition to the common standards, vendor documentation for marksense systems shall include specifications for ballot materials to ensure that vote selections are read from only a single ballot at a time, without detection of marks from multiple ballots concurrently (*e.g.*, reading of bleed-through from other ballots).

2.3.2 Election Programming

Election programming is the process by which election officials or their designees use election databases and vendor system software to logically define the voter choices associated with

the contents of the ballots. All systems shall provide for the:

a. Logical definition of the ballot, including the definition of the number of allowable choices for each office and contest;

b. Logical definition of political and administrative subdivisions, where the list of candidates or contests varies between polling places;

c. Exclusion of any contest on the ballot in which the voter is prohibited from casting a ballot because of place of residence, or other such administrative or geographical criteria;

d. Ability to select from a range of voting options to conform to the laws of the jurisdiction in which the system will be used; and

e. Generation of all required master and distributed copies of the voting program, in conformance with the definition of the ballots for each voting device and polling place, and for each tabulating device.

2.3.3 Ballot and Program Installation and Control

All systems shall provide a means of installing ballots and programs on each piece of polling place or central count equipment in accordance with the ballot requirements of the election and the requirements of the jurisdiction in which the equipment will be used.

All systems shall include the following at the time of ballot and program installation:

a. A detailed work plan or other documentation providing a schedule and steps for the software and ballot installation, which includes a table outlining the key dates, events and deliverables;

b. A capability for automatically verifying that the software has been properly selected and installed in the equipment or in a programmable memory devices and for indicating errors; and

c. A capability for automatically validating that software correctly matches the ballot formats that it is intended to process, for detecting errors, and for immediately notifying an election official of detected errors.

2.3.4 Readiness Testing

Election personnel conduct equipment and system readiness tests prior to the start of an election to ensure that the voting system functions properly, to confirm that system equipment has been properly integrated, and to obtain equipment status reports.

2.3.4.1 Common Standards

All systems shall provide the capabilities to:

a. Verify that voting machines or vote recording and data processing equipment, precinct count equipment, and central count equipment are properly prepared for an election, and collect data that verifies equipment readiness;

b. Obtain status and data reports from each set of equipment;

c. Verify the correct installation and interface of all system equipment;

d. Verify that hardware and software function correctly;

e. Generate consolidated data reports at the polling place and higher jurisdictional levels; and

f. Segregating test data from actual voting data, either procedurally or by hardware/software features.

Resident test software, external devices, and special purpose test software connected to or installed in voting devices to simulate operator and voter functions may be used for these tests provided that the following standards are met:

a. These elements shall be capable of being tested separately, and shall be proven to be reliable verification tools prior to their use; and

b. These elements shall be incapable of altering or introducing any residual effect on the intended operation of the voting device during any succeeding test and operational phase.

2.3.4.2 Paper-Based Systems

Paper-based systems shall:

a. Support conversion testing that uses all potential ballot positions as active positions; and

b. Support conversion testing of ballots with active position density for systems without pre-designated ballot positions.

2.3.5 Verification at the Polling Place

Election officials perform verification at the polling place to ensure that all voting systems and equipment function properly before and during an election. All systems shall provide a formal record of the following, in any media, upon verification of the authenticity of the command source:

a. The election's identification data;

b. The identification of all equipment units;

c. The identification of the polling place;

d. The identification of all ballot formats;

e. The contents of each active candidate register by office and of each active measure register at all storage locations (showing that they contain only zeros);

f. A list of all ballot fields that can be used to invoke special voting options; and

g. Other information needed to confirm the readiness of the equipment, and to accommodate administrative reporting requirements.

To prepare voting devices to accept voted ballots, all voting systems shall provide the capability to test each device prior to opening to verify that each is operating correctly. At a minimum, the tests shall include:

a. Confirmation that there are no hardware or software failures; and

b. Confirm that the device is ready to be activated for accepting votes.

If a precinct count system includes equipment for the consolidation of polling place data at one or more central counting places, it shall have means to verify the correct extraction of voting data from transportable memory devices, or to verify the transmission of secure data over secure communication links.

2.3.6 Verification at the Central Location

Election officials perform verification at the central location to ensure that vote counting and vote consolidation equipment and software function properly before and after an election. Upon verification of the authenticity of the command source, any system used in a central count environment shall provide a printed record of the following :

a. The election's identification data;

b. The contents of each active candidate register by office and of each active measure register at all storage locations (showing that they contain all zeros); and

c. Other information needed to ensure the readiness of the equipment and to accommodate administrative reporting requirements.

2.4 Voting Functions

All systems shall support:

- Opening the polls; and
- Casting a ballot.

Additionally, all DRE systems shall support:

- Activating the ballot.
- Augmenting the election counter; and
- Augmenting the life-cycle counter.

2.4.1 Opening the Polls

The capabilities required for opening the polls are specific to individual voting system technologies. At a minimum, the systems shall provide the functional capabilities indicated below.

2.4.1.1 Opening the Polling Place (Precinct Count Systems)

To allow voting devices to be activated for voting, the system shall provide:

a. An internal test or diagnostic capability to verify that all of the polling place tests specified in Section 2.3.5 have been successfully completed; and

b. Automatic disabling any device that has not been tested until it has been tested.

2.4.1.2 Paper-Based System Standards

The standards for opening the polling place for paper-based systems consist of common standards and additional standards that apply to precinct count paper-based systems.

2.4.1.2.1 All Paper-Based Systems

To facilitate opening the polls, all paper-based systems shall include:

a. A means of verifying that ballot punching or marking devices are properly prepared and ready to use;

b. A voting booth or similar facility, in which the voter may punch or mark the ballot in privacy; and

c. Secure receptacles for holding voted ballots.

2.4.1.2.2 Precinct Count Paper-Based Systems

In addition to the above requirements, all paper-based precinct count equipment shall include a means of:

a. Activating the ballot counting device;

b. Verifying that the device has been correctly activated and is functioning properly; and

c. Identifying device failure and corrective action needed.

2.4.1.3 DRE System Standards

To facilitate opening the polls, all DRE systems shall include:

a. A security seal, a password, or a data code recognition capability to prevent the inadvertent or unauthorized actuation of the poll-opening function;

b. A means of enforcing the execution of steps in the proper sequence if more than one step is required;

c. A means of verifying the system has been activated correctly; and

d. A means of identifying system failure and any corrective action needed.

2.4.2 Activating the Ballot (DRE Systems)

To activate the ballot, all DRE systems shall:

a. Enable election officials to control the content of the ballot presented to the voter, whether presented in printed form or electronic display, such that each voter is permitted to record votes only in contests in which that voter is authorized to vote;

b. Allow each eligible voter to cast a ballot;

c. Prevent a voter from voting on a ballot to which he or she is not entitled; and

d. Prevent a voter from casting more than one ballot in the same election.

e. Activate the casting of a ballot in a general election;

f. Enable the selection of the ballot that is appropriate to the party affiliation declared by the voter in a primary election;

g. Activate all portions of the ballot upon which the voter is entitled to vote; and

h. Disable all portions of the ballot upon which the voter is not entitled to vote.

2.4.3 Casting a Ballot

Some required capabilities for casting a ballot are common to all systems. Others are specific to individual voting technologies or intended use. Systems must provide additional functional capabilities that enable accessibility to disabled voters as defined in Section 2.2.7 of the Standards.

2.4.3.1 Common Standards

To facilitate casting a ballot, all systems shall:

a. Provide text that is at least 3 millimeters high and provide the capability to adjust or magnify the text to an apparent size of 6.3 millimeters;

b. Protect the secrecy of the vote such that the system cannot reveal any information about how a particular voter voted, except as otherwise required by individual State law;

c. Record the selection and non-selection of individual vote choices for each contest and ballot measure;

d. Record the voter's selection of candidates whose names do not appear on the ballot, if permitted under State law, and record as many write-in votes as the number of candidates the voter is allowed to select;

e. In the event of a failure of the main power supply external to the voting system, provide the capability for any voter who is voting at the time to complete casting a ballot, allow for the graceful shutdown of the voting system without loss or degradation of the voting and audit data, and allow voters to resume voting once the voting system has reverted to back-up power; and

f. Provide the capability for voters to continue casting ballots in the event of a failure of a telecommunications connection within the polling place or between the polling place and any other location.

2.4.3.2 Paper-Based Systems Standards

The standards for casting a ballot for paper-based systems consist of common standards and additional standards that apply to precinct count paper-based systems.

2.4.3.2.1 All Paper-Based Systems

All paper-based systems shall:

a. Allow the voter to easily identify the voting field that is associated with each candidate or ballot measure response;

b. Allow the voter to punch or mark the ballot to register a vote;

c. Allow either the voter or the appropriate election official to place the voted ballot into the ballot counting device (for precinct count systems) or into a secure receptacle (for central count systems); and

d. Protect the secrecy of the vote throughout the process.

2.4.3.2.2 Precinct Count Paper-Based Systems

In addition to the above requirements, all paper-based precinct count systems shall:

a. Provide feedback to the voter that identifies specific contests or ballot issues for which an overvote or undervote is detected;

b. Allow the voter, at the voter's choice, to vote a new ballot or submit the ballot 'as is' without correction; and

c. Allow an authorized election official to turn off the capabilities defined in 'a' and 'b' above.

2.4.3.3 DRE Systems Standards

In addition to the above common requirements, DRE systems shall:

a. Prohibit the voter from accessing or viewing any information on the display screen that has not been authorized by election officials and preprogrammed into the voting system (*i.e.*, no potential for display of external information or linking to other information sources);

b. Enable the voter to easily identify the selection button or switch, or the active area of the ballot display that is associated with each candidate or ballot measure response;

c. Allow the voter to select his or her preferences on the ballot in any legal number and combination;

d. Indicate that a selection has been made or canceled;

e. Indicate to the voter when no selection, or an insufficient number of selections, has been made in a contest;

f. Prevent the voter from overvoting;

g. Notify the voter when the selection of candidates and measures is completed;

h. Allow the voter, before the ballot is cast, to review his or her choices and, if the voter desires, to delete or change his or her choices before the ballot is cast;

i. For electronic image displays, prompt the voter to confirm the voter's choices before casting his or her ballot, signifying to the voter that casting the ballot is irrevocable and directing the voter to confirm the voter's intention to cast the ballot;

j. Notify the voter after the vote has been stored successfully that the ballot has been cast;

k. Notify the voter that the ballot has not been cast successfully if it is not stored successfully, including storage of the ballot image, and provide clear instruction as to the steps the voter should take to cast his or her ballot should this event occur;

l. Provide sufficient computational performance to provide responses back to each voter entry in no more than three seconds;

m. Ensure that the votes stored accurately represent the actual votes cast;

n. Prevent modification of the voter's vote after the ballot is cast;

o. Provide a capability to retrieve ballot images in a form readable by humans (in accordance with the requirements of Section 2.2.2.2 and 2.2.4.2);

p. Increment the proper ballot position registers or counters;

q. Protect the secrecy of the vote throughout the voting process;

r. Prohibit access to voted ballots until after the close of polls;

s. Provide the ability for election officials to submit test ballots for use in verifying the end-to-end integrity of the system; and

t. Isolate test ballots such that they are accounted for accurately in vote counts and are not reflect in official vote counts for specific candidates or measures.

2.5 Post-Voting Functions

All systems shall provide capabilities to accumulate and report results for the jurisdiction and to generate audit trails. In addition, precinct count systems must provide a means to close the polling place including generating appropriate reports. If the system provides the capability to broadcast results, additional standards apply.

2.5.1 Closing the Polling Place (Precinct Count)

These standards for closing the polling place are specific to precinct count systems. The system shall provide the means for:

a. Preventing the further casting of ballots once the polling place has closed;

b. Providing an internal test that verifies that the prescribed closing procedure has been followed, and that the device status is normal;

c. Incorporating a visible indication of system status;

d. Producing a diagnostic test record that verifies the sequence of events, and indicates that the extraction of voting data has been activated; and

e. Precluding the unauthorized reopening of the polls once the poll closing has been completed for that election.

2.5.2 Consolidating Vote Data

All systems shall provide a means to consolidate vote data from all polling places, and optionally from other sources such as absentee ballots, provisional ballots, and voted ballots requiring human review (*e.g.*, write-in votes).

2.5.3 Producing Reports

All systems shall be able to create reports summarizing the data on multiple levels.

2.5.3.1 Common Standards

All systems shall provide capabilities to:

a. Support geographic reporting, which requires the reporting of all results for each contest at the precinct level and additional jurisdictional levels;

b. Produce a printed report of the number of ballots counted by each tabulator;

c. Produce a printed report for each tabulator of the results of each contest that includes the votes cast for each selection, the count of undervotes, and the count of overvotes;

d. Produce a consolidated printed report of the results for each contest of all votes cast (including the count of ballots from other sources supported by the system as specified by the vendor) that includes the votes cast for each selection, the count of undervotes, and the count of overvotes;

e. Be capable of producing a consolidated printed report of the combination of overvotes for any contest that is selected by an authorized official (*e.g.*; the number of overvotes in a given contest combining candidate A and candidate B, combining candidate A and candidate C, etc.);

f. Produce all system audit information required in Section 4.5 in the form of printed reports, or in electronic memory for printing centrally; and

g. Prevent data from being altered or destroyed by report generation, or by the transmission of results over telecommunications lines.

2.5.3.2 Precinct Count Systems

In addition to the common reporting requirements, all precinct count voting systems shall:

a. Prevent the printing of reports and the unauthorized extraction of data prior to the official close of the polling place;

b. Provide a means to extract information from a transportable programmable memory device or data storage medium for vote consolidation;

c. Consolidate the data contained in each unit into a single report for the polling place when more than one voting machine or precinct tabulator is used; and

d. Prevent data in transportable memory from being altered or destroyed by report generation, or by the transmission of results over telecommunications lines.

2.5.4 Broadcasting Results

Some voting systems offer the capability to make unofficial results available to external organizations such as the news media, political party officials, and others. Although this capability is not required, systems that make unofficial results available shall:

a. Provide only aggregated results, and not data from individual ballots;

b. Provide no access path from unofficial electronic reports or files to the storage devices for official data; and

c. Clearly indicate on each report or file that the results it contains are unofficial.

2.6 Maintenance, Transportation, and Storage

All systems shall be designed and manufactured to facilitate preventive and corrective maintenance, conforming to the hardware standards described in Section 3.

All vote casting and tally equipment designated for storage between elections shall:

a. Function without degradation in capabilities after transit to and from the place of use, as demonstrated by meeting the performance standards described in Section 3; and

b. Function without degradation in capabilities after storage between elections, as demonstrated by meeting the performance standards described in Section 3.

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3 Hardware Standards

3.1 Scope

This section contains the requirements for the machines and manufactured devices that are part of a voting system. It specifies minimum values for certain performance characteristics; physical characteristics; and design, construction, and maintenance characteristics for the hardware and selected related components of all voting systems, such as:

- Ballot printers;
- Ballot cards and sheets;
- Ballot displays;
- Voting devices, including punching and marking devices and DRE recording devices;
- Voting booths and enclosures;
- Ballot boxes and ballot transfer boxes;
- Ballot readers;
- Computers used to prepare ballots, program elections, consolidate and report votes, and perform other elections management activities;
- Electronic ballot recorders;
- Electronic precinct vote control units;
- Removable electronic data storage media;
- Servers; and
- Printers.

This section applies to the combination of software and hardware to accomplish specific performance and system control requirements. Standards that are specific to software alone are provided in Section 4 of the Standards.

3.1.1 Hardware Sources

The requirements of this section apply generally to all hardware used in voting systems, including:

a. Hardware provided by the voting system vendor and its suppliers;

b. Hardware furnished by an external provider (for example, providers of commercial off-the-shelf (COTS) machines and devices) where the hardware may be used in any way during voting system operation; and

c. Hardware provided by the voting jurisdiction.

3.1.2 Organization of this Section

The standards presented in this section are organized as follows:

- Performance Requirements: These requirements address the combined operational capabilities of the voting system's hardware and software across a broad range of parameters;
- Physical Requirements: These requirements address the size, weight and transportability of the voting system; and
- Design, Construction, and Maintenance Requirements: These requirements address the reliability and durability of materials, product marking, quality of system workmanship, safety, and other attributes to ensure smooth system operation in the voting environment.

3.2 Performance Requirements

The performance requirements address a broad range of parameters, encompassing:

a. Accuracy requirements, where requirements are specified for distinct processing functions of paper-based and DRE systems;

b. Environmental requirements, where no distinction is made between requirements for paper-based and DRE systems, but requirements for precinct and central count are described;

c. Vote data management requirements, where no differentiation is made between requirements for paper-based and DRE systems;

d. Vote recording requirements, where separate and distinct requirements are delineated for paper-based and DRE systems;

e. Conversion requirements, which apply only to paper-based systems;

f. Processing requirements, where separate and distinct requirements are delineated for paper-based and DRE systems; and

g. Reporting requirements, where no distinction is made between requirements for paper-based and DRE systems, but where differences between precinct and central count systems are readily apparent based on differences of their reporting.

The performance requirements include such attributes as ballot reading and handling requirements; system accuracy; memory stability; and the ability to withstand specified environmental conditions. These characteristics also encompass system-wide requirements for shelter, electrical supply, and compatibility with data networks.

Performance requirements for voting systems represent the combined operational capability of both system hardware and software. Accuracy, as measured by data error rate, and operational failure are treated as distinct attributes in performance testing. All systems shall meet the performance requirements under operating

conditions and after storage under non-operating conditions.

3.2.1 Accuracy Requirements

Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected. For a voting system, accuracy is defined as the ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data. This rate is set at a sufficiently stringent level such that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. Paper-based and DRE systems have different processing steps. Some differences also exist between precinct count and central count systems. Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

a. For all paper-based systems:

(1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests;

(2) Conversion of selections detected on paper ballots into digital data;

b. For all DRE systems:

(1) Recording the voter selections of candidates and contests into voting data storage; and

(2) Independently from voting data storage, recording voter selections of candidates and contests into ballot image storage.

c. For precinct-count systems (paper-based and DRE):

Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data; and

d. For central-count systems (paper-based and DRE):

Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.

For testing purposes, the acceptable error rate is defined using two parameters: The desired error rate to be achieved, and the maximum error rate that should be accepted by the test process.

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

3.2.2 Environmental Requirements

The environmental requirements for voting systems include shelter, space, furnishings and fixtures, supplied energy, environmental control , and external telecommunications services. Environmental conditions applicable to the design and operation of voting systems consist of the following categories:

- Natural environment, including temperature, humidity, and atmospheric pressure;
- Induced environment, including proper and improper operation and handling of the system and its components during the election processes;
- Transportation and storage; and
- Electromagnetic signal environment, including exposure to and generation of radio frequency energy.

All voting systems shall be designed to withstand the environmental conditions contained in the appropriate test procedures of the Standards. These procedures will be applied to all devices for casting, scanning and counting ballots, except those that constitute COTS devices that have not been modified in any manner to support their use as part of a voting system and that have a documented record of performance under conditions defined in the Standards.

The TDP supplied by the vendor shall include a statement of all requirements and restrictions regarding environmental protection, electrical service, recommended auxiliary power, telecommunications service, and any other facility or resource required for the proper installation and operation of the system.

3.2.2.1 Shelter Requirements

All precinct count systems shall be designed for storage and operation in any enclosed facility ordinarily used as a warehouse or polling place, with prominent instructions as to any special storage requirements.

3.2.2.2 Space Requirements

There is no restriction on space allowed for the installation of voting systems, except that the arrangement of these systems shall not impede performance of their duties by polling place officials, the orderly flow of voters through the polling place, or the ability for the voter to vote in private.

3.2.2.3 Furnishings and Fixtures

Any furnishings or fixtures provided as a part of voting systems, and any components provided by the vendor that are not a part of the system but that are used to support its storage, transportation, or operation, shall comply with the design and safety requirements of Subsection 3.4.8.

3.2.2.4 Electrical Supply

Components of voting systems that require an electrical supply shall meet the following standards:

a. Precinct count systems shall operate with the electrical supply ordinarily found in polling places (120vac/60hz/1);

b. Central count systems shall operate with the electrical supply ordinarily found in central tabulation facilities or computer room facilities (120vac/60hz/1, 208vac/60hz/3, or 240vac/60hz/2); and

c. All systems shall also be capable of operating for a period of at least 2 hours on backup power, such that no voting data is lost or corrupted, nor normal operations interrupted. When backup power is exhausted the system shall retain the contents of all memories intact.

The backup power capability is not required to provide lighting of the voting area.

3.2.2.5 Electrical Power Disturbance

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data:

a. Surges of 30% dip @10 ms;

b. Surges of 60% dip @100 ms & 1 sec;

c. Surges of >95% interrupt @5 sec;

d. Surges of ±15% line variations of nominal line voltage; and

e. Electric power increases of 7.5% and reductions of 12.5% of nominal specified power supply for a period of up to four hours at each power level.

3.2.2.6 Electrical Fast Transient

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, electrical fast transients of:

a. 2 kV AC & DC external power lines;

b. ±1 kV all external wires >3m no control; and

c. ±2 kV all external wires control.

3.2.2.7 Lightning Surge

Vote scanning and counting equipment for paper-based systems, and

all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, surges of:

a. ±2 kV AC line to line;
b. ±2 kV AC line to earth;
c. ±.5 kV DC line to line >10m;
d. ±.5 kV DC line to earth >10m; and
e. ±1 kV I/O sig/control >30m.

3.2.2.8 Electrostatic Disruption

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand ±15 kV air discharge and ±8 kV contact discharge without damage or loss of data. The equipment may reset or have momentary interruption so long as normal operation is resumed without human intervention or loss of data. Loss of data means votes that have been completed and confirmed to the voter.

3.2.2.9 Electromagnetic Radiation

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall comply with the Rules and Regulations of the Federal Communications Commission, Part 15, Class B requirements for both radiated and conducted emissions.

3.2.2.10 Electromagnetic Susceptibility

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand an electromagnetic field of 10 V/m modulated by a 1 kHz 80% AM modulation over the frequency range of 80 MHz to 1000 MHz, without disruption of normal operation or loss of data.

3.2.2.11 Conducted RF Immunity

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, conducted RF energy of:

a. 10V AC & DC power; and
b. 10V, 20 sig/control >3m.

3.2.2.12 Magnetic Fields Immunity

Vote scanning and counting equipment for paper-based systems, and all DRE equipment, shall be able to withstand, without disruption of normal operation or loss of data, AC magnetic fields of 30 A/m at 60 Hz.

3.2.2.13 Environmental Control—Operating Environment

Equipment used for election management activities or vote counting (including both precinct and central count systems) shall be capable of operation in temperatures ranging from 50 to 95 degrees Fahrenheit.

3.2.2.14 Environmental Control—Transit and Storage

Equipment used for vote casting, or for counting votes in a precinct count system, shall meet specific minimum performance standards that simulate exposure to physical shock and vibration associated with handling and transportation by surface and air common carriers, and to temperature conditions associated with delivery and storage in an uncontrolled warehouse environment.

a. High and low storage temperatures ranging from −4 to +140 degrees Fahrenheit, equivalent to MIL–STD–810D, Methods 501.2 and 502.2, Procedure I-Storage;
b. Bench handling equivalent to the procedure of MIL–STD–810D, Method 516.3, Procedure VI;
c. Vibration equivalent to the procedure of MIL–STD–810D, Method 514.3, Category 1—Basic Transportation, Common Carrier; and
d. Uncontrolled humidity equivalent to the procedure of MIL–STD–810D, Method 507.2, Procedure I—Natural Hot—Humid.

3.2.2.15 Data Network Requirements

Voting systems may use a local or remote data network. If such a network is used, then all components of the network shall comply with the telecommunications requirements described in Section 5 of the Standards and the Security requirements described in Section 6.

3.2.3 Election Management System (EMS) Requirements

The EMS requirements address electronic hardware and software used to conduct the pre-voting functions defined in Section 2 with regard to ballot preparation, election programming, ballot and program installation, readiness testing, verification at the polling place, and verification at the central location.

3.2.3.1 Recording Requirements

Voting systems shall accurately record all election management data entered by the user, including election officials or their designees. For recording accuracy, all systems shall:

a. Record every entry made by the user;
b. Add permissible voter selections correctly to the memory components of the device;
c. Verify the correctness of detection of the user selections and the addition of the selections correctly to memory;
d. Add various forms of data entered directly by the election official or designee, such as text, line art, logos, and images;
e. Verify the correctness of detection of data entered directly by the user and the addition of the selections correctly to memory;
f. Preserve the integrity of election management data stored in memory against corruption by stray electromagnetic emissions, and internally generated spurious electrical signals; and
g. Log corrected data errors by the system.

3.2.3.2 Memory Stability

Electronic system memory devices, used to retain election management data, shall have demonstrated error-free data retention for a period of 22 months.

3.2.4 Vote Recording Requirements

The vote recording requirements address the enclosure, equipment, and supplies used by voters to vote.

3.2.4.1 Common Standards

All systems shall provide voting booths or enclosures for poll site use. Such booths or enclosures may be integral to the voting system or supplied as components of the voting system, and shall:

a. Be integral to, or makes provision for, the installation of, the voting device;
b. Ensure by its structure stability against movement or overturning during entry, occupancy, and exit by the voter;
c. Provide privacy for the voter, and be designed in such a way as to prevent observation of the ballot by any person other than the voter; and
d. Be capable of meeting the accessibility requirements of Section 2.2.7.1.

3.2.4.2 Paper-Based Recording Standards

The paper-based recording requirements govern:

- Ballot cards or sheets, and pages or assemblies of pages containing ballot field identification data;
- Punching devices;
- Marking devices;
- Frames or fixtures to hold the ballot while it is being punched;
- Compartments or booths where voters record selections; and
- Secure containers for the collection of voted ballots.

3.2.4.2.1 Paper Ballot Standards

Paper ballots used by paper-based voting systems shall meet the following standards:

a. Punches or marks that identify the unique ballot format, in accordance with Section 2.3.1.1.1.c., shall be

outside the area in which votes are recorded, so as to minimize the likelihood that these punches or marks will be mistaken for vote responses and the likelihood that recorded votes will obliterate these punches or marks;

b. If printed or punched alignment marks are used to locate the vote response fields on the ballot, these marks shall be outside the area in which votes are recorded, so as to minimize the likelihood that these marks will be mistaken for vote responses and the likelihood that recorded votes will obliterate these marks; and

c. The TDP shall specify the required paper stock, size, shape, opacity, color, watermarks, field layout, orientation, size and style of printing, size and location of punch or mark fields used for vote response fields and to identify unique ballot formats, placement of alignment marks, ink for printing, and folding and bleed-through limitations for preparation of ballots that are compatible with the system.

3.2.4.2.2 Punching Devices

Punching devices used by voting systems shall:

a. Be suitable for the type of ballot card specified;

b. Facilitate the clear and accurate recording of each vote intended by the voter;

c. Be designed to avoid excessive damage to vote recorder components; and

d. Incorporate features to ensure that the chad (debris) is completely removed, without damage to other parts of the ballot card.

3.2.4.2.3 Marking Devices

The TDP shall specify marking devices (such as pens or pencils) that, if used to make the prescribed form of mark, produce readable marked ballots such that the system meets the performance requirements for accuracy specified previously. These specifications shall identify:

a. Specific characteristics of marking devices that affect readability of marked ballots;

b. Performance capabilities with regard to each characteristic; and

c. For marking devices manufactured by multiple external sources, a listing of sources and model numbers that are compatible with the system.

3.2.4.2.4 Frames or Fixtures for Punchcard Ballots

The frame or fixture for punchcards shall:

a. Hold the ballot card securely in its proper location and orientation for voting;

b. When contests are not printed directly on the ballot card or sheet, incorporate an assembly of ballot label pages that identify the offices and issues corresponding to the proper ballot format for the polling place where it is used and that are aligned with the voting fields assigned to them; and

c. Incorporate a template to preclude perforation of the card except in the specified voting fields; a mask to allow punches only in fields designated by the format of the ballot; and a backing plate for the capture and removal of chad. This requirement may be satisfied by equipment of a different design as long it achieves the same result as the Standards with regard to:

(1) Positioning the card;

(2) Association of ballot label information with corresponding punch fields;

(3) Enabling of only those voting fields that correspond to the format of the ballot; and

(4) Punching the fields and the positive removal of chad.

3.2.4.2.5 Frames or Fixtures for Printed Ballots

A frame or fixture for printed ballot cards is optional. However, if such a device is provided, it shall:

a. Be of any size and shape consistent with its intended use;

b. Position the card properly;

c. Hold the ballot card securely in its proper location and orientation for voting; and

d. Comply with the requirements for design and construction contained in Section 3.4.

3.2.4.2.6 Ballot Boxes and Ballot Transfer Boxes

Ballot boxes and ballot transfer boxes, which serve as secure containers for the storage and transportation of voted ballots, shall:

a. Be of any size, shape, and weight commensurate with their intended use;

b. Incorporate locks or seals, the specifications of which are described in the system documentation;

c. Provide specific points where ballots are inserted, with all other points on the box constructed in a manner that prevents ballot insertion; and

d. For precinct count systems, contain separate compartments for the segregation of unread ballots, ballots containing write-in votes, or any irregularities that may require special handling or processing. In lieu of compartments, the conversion processing may mark such ballots with an identifying spot or stripe to facilitate manual segregation.

3.2.4.3 DRE Systems Recording Requirements

The DRE systems recording requirements address the detection and recording of votes, including the logic and data processing functions required to determine the validity of voter selections, to accept and record valid selections, and to reject invalid selections. The requirements also address the physical environment in which ballots are cast.

3.2.4.3.1 Activity Indicator

DRE systems shall include an audible or visible activity indicator providing the status of each voting device. This indicator shall:

a. Indicate whether the device has been activated for voting; and

b. Indicate whether the device is in use.

3.2.4.3.2 DRE System Vote Recording

To ensure vote recording accuracy and integrity while protecting the anonymity of the voter, all DRE systems shall:

a. Contain all mechanical, electromechanical, and electronic components; software; and controls required to detect and record the activation of selections made by the voter in the process of voting and casting a ballot;

b. Incorporate redundant memories to detect and allow correction of errors caused by the failure of any of the individual memories;

c. Provide at least two processes that record the voter's selections that:

(1) To the extent possible, are isolated from each other;

(2) Designate one process and associated storage location as the main vote detection, interpretation, processing and reporting path; and

(3) Use a different process to store ballot images, for which the method of recording may include any appropriate encoding or data compression procedure consistent with the regeneration of an unequivocal record of the ballot as cast by the voter.

d. Provide a capability to retrieve ballot images in a form readable by humans; and

e. Ensure that all processing and storage protects the anonymity of the voter.

3.2.4.3.3 Recording Accuracy

DRE systems shall meet the following requirements for recording accurately each vote and ballot cast:

a. Detect every selection made by the voter;

b. Correctly add permissible selections to the memory components of the device;

c. Verify the correctness of the detection of the voter selections and the addition of the selections to memory;

d. Achieve an error rate not to exceed the requirement indicated in Section 3.2.1;

e. Preserve the integrity of voting data and ballot images (for DRE machines) stored in memory for the official vote count and audit trail purposes against corruption by stray electromagnetic emissions, and internally generated spurious electrical signals; and

f. Maintain a log of corrected data.

3.2.4.3.4 Recording Reliability

Recording reliability refers to the ability of the DRE system to record votes accurately at its maximum rated processing volume for a specified period of time. The DRE system shall record votes reliably in accordance with the requirements of Section 3.4.3.

3.2.5 Paper-Based Conversion Requirements

The paper-based conversion requirements address the ability of the system to read the ballot card and to translate its pattern of punches or marks into electronic signals for later processing. These capabilities may be built into the voting system in an integrated fashion, or may be provided by one or more components that are not unique to the system, such as a general-purpose data processing card reader or read head suitably interfaced to the system. These requirements address two major functions: ballot handling and ballot reading.

3.2.5.1 Ballot Handling

Ballot handling consists of a ballot card's acceptance, movement through the read station, and transfer into a collection station or receptacle.

3.2.5.1.1 Capacity (Central Count)

The capacity to convert the punches or marks on individual ballots into signals is uniquely important to central count systems. The capacity for a central count system shall be documented by the vendor. This documentation shall include the capacity for individual components that impact the overall capacity.

3.2.5.1.2 Exception Handling (Central Count)

This requirement refers to the handling of ballots for a central count system when they are unreadable or when some condition is detected requiring that the cards be segregated from normally processed ballots for human review. In response to an unreadable ballot or a write-in vote all central count paper-based systems shall:

a. Outstack the ballot, or

b. Stop the ballot reader and display a message prompting the election official or designee to remove the ballot, or

c. Mark the ballot with an identifying mark to facilitate its later identification.

Additionally, the system shall provide a capability that can be activated by an authorized election official to identify ballots containing overvotes, blank ballots, and ballots containing undervotes in a designated race. If enabled, these capabilities shall perform one of the above actions in response to the indicated condition.

3.2.5.1.3 Exception Handling (Precinct Count)

This requirement refers to the handling of ballots for a precinct count system when they are unreadable or when some condition is detected requiring that the cards be segregated from normally processed ballots for human review. All paper based precinct count systems shall:

a. In response to an unreadable or blank ballot, return the ballot and provide a message prompting the voter to examine the ballot;

b. In response to a ballot with a write-in vote, segregate the ballot or mark the ballot with an identifying mark to facilitate its later identification;

c. In response to a ballot with an overvote the system shall:

(1) Provide a capability to identify an overvoted ballot;

(2) Return the ballot;

(3) Provide an indication prompting the voter to examine the ballot;

(4) Allow the voter to submit the ballot with the overvote; and

(5) Provide a means for an authorized election official to deactivate this capability entirely and by contest; and

d. In response to a ballot with an undervote the system shall:

(1) Provide a capability to identify an undervoted ballot;

(2) Return the ballot;

(3) Provide an indication prompting the voter to examine the ballot;

(4) Allow the voter to submit the ballot with the undervote; and

(5) Provide a means for an authorized election official to deactivate this capability.

3.2.5.1.4 Multiple Feed Prevention

Multiple feed refers to the situation arising when a ballot reader attempts to read more than one ballot at a time. The requirements govern the ability of a ballot reader to prevent multiple feed or to detect and provide an alarm indicating multiple feed.

a. If multiple feed is detected, the card reader shall halt in a manner that permits the operator to remove the unread cards causing the error, and reinsert them in the card input hopper.

b. The frequency of multiple feeds with ballots intended for use with the system shall not exceed 1 in 10,000.

3.2.5.2 Ballot Reading Accuracy

This paper-based system requirement governs the conversion of the physical ballot into electronic data. Reading accuracy for ballot conversion refers to the ability to:

- Recognize vote punches or marks, or the absence thereof, for each possible selection on the ballot;
- Discriminate between valid punches or marks and extraneous perforations, smudges, and folds; and
- Convert the vote punches or marks, or the absence thereof, for each possible selection on the ballot into digital signals.

To ensure accuracy, paper-based systems shall:

a. Detect punches or marks that conform to vendor specifications with an error rate not exceeding the requirement indicated in Section 3.2.1;

b. Ignore, and not record, extraneous perforations, smudges, and folds; and

c. Reject ballots that meet all vendor specifications at a rate not to exceed 2 percent.

3.2.6 Processing Requirements

Processing requirements apply to the hardware and software required to accumulate voting data for all candidates and measures within voting machines and polling places, and to consolidate the voting data at a central level or multiple levels. These requirements also address the generation and maintenance of audit records, the detection and disabling of improper use or operation of the system, and the monitoring of overall system status. Separate and distinct requirements for paper-based and DRE voting systems are presented below.

3.2.6.1 Paper-Based System Processing Requirements

The paper-based processing requirements address all mechanical devices, electromechanical devices, electronic devices, and software required to perform the logical and numerical functions of interpreting the electronic image of the voted ballot, and assigning votes to the proper memory registers.

3.2.6.1.1 Processing Accuracy

Processing accuracy refers to the ability of the system to receive electronic signals produced by punches for punchcard systems and vote marks and timing information for marksense systems; perform logical and numerical operations upon these data; and reproduce the contents of memory when required, without error. Specific requirements are detailed below:

a. Processing accuracy shall be measured by vote selection error rate, the ratio of uncorrected vote selection errors to the total number of ballot positions that could be recorded across all ballots when the system is operated at its nominal or design rate of processing;

b. The vote selection error rate shall include data that denotes ballot style or precinct as well as data denoting a vote in a specific contest or ballot proposition;

c. The vote selection error rate shall include all errors from any source; and

d. The vote selection error rate shall not exceed the requirement indicated in Section 3.2.1.

3.2.6.1.2 Memory Stability

Paper-based system memory devices, used to retain control programs and data, shall have demonstrated error-free data retention for a period of 22 months, under the environmental conditions for operation and non-operation (*i.e.* storage).

3.2.6.2 DRE System Processing Requirements

The DRE system processing requirements address all mechanical devices, electromechanical devices, electronic devices, and software required to process voting data after the polling places are closed.

3.2.6.2.1 Processing Speed

DRE voting systems shall meet the following requirements for processing speed:

a. Operate at a speed sufficient to respond to any operator and voter input without perceptible delay (no more than three seconds); and

b. If the consolidation of polling place data is done locally, perform this consolidation in a time not to exceed five minutes for each device in the polling place.

3.2.6.2.2 Processing Accuracy

Processing accuracy is defined as the ability of the system to process voting data stored in DRE voting devices, or in removable memory modules installed in such devices. Processing includes all operations to consolidate voting data after the polling places have been closed. DRE voting systems shall:

a. Produce reports that are completely consistent, with no discrepancy among reports of voting device data produced at any level; and

b. Produce consolidated reports containing absentee, provisional, or other voting data that are similarly error-free. Any discrepancy, regardless of source, is resolvable to a procedural error, to the failure of a non-memory device, or to an external cause.

3.2.6.2.3 Memory Stability

DRE system memory devices used to retain control programs and data shall have demonstrated error-free data retention for a period of 22 months. Error-free retention may be achieved by the use of redundant memory elements, provided that the capability for conflict resolution or correction among elements is included.

3.2.7 Reporting Requirements

The reporting requirements govern all mechanical, electromechanical, and electronic devices required for voting systems to print audit record entries and results of the tabulation. These requirements also address data storage media for transportation of data to other sites.

3.2.7.1 Removable Storage Media

In voting systems that use storage media that can be removed from the system and transported to another location for readout and report generation, these media shall use devices with demonstrated error-free retention for a period of 22 months under the environmental conditions for operation and non-operation contained in Section 3.2.2. Examples of removable storage media include: programmable read-only memory (PROM), random access memory (RAM) with battery backup, magnetic media, or optical media.

3.2.7.2 Printers

All printers used to produce reports of the vote count shall be capable of producing:

a. Alphanumeric headers;

b. Election, office and issue labels; and

c. Alphanumeric entries generated as part of the audit record.

3.2.8 Vote Data Management Requirements

The vote data management requirements for all systems address capabilities that manage, process, and report voting data after the data has been consolidated at the polling place or other intermediate levels. These capabilities allow the system to:

a. Consolidate voting data from polling place data memory or transfer devices;

b. Report polling place summaries; and

c. Process absentee ballots, data entered manually, and administrative ballot definition data.

The requirements address all hardware and software required to generate output reports in the various formats required by the using jurisdiction.

3.2.8.1 Data File Management

All voting systems shall provide the capability to:

a. Integrate voting data files with ballot definition files;

b. Verify file compatibility; and

c. Edit and update files as required.

3.2.8.2 Data Report Generation

All voting systems shall include report generators for producing output reports at the device, polling place, and summary level, with provisions for administrative and judicial subdivisions as required by the using jurisdiction.

3.3 Physical Characteristics

This section covers physical characteristics of all voting systems and components that affect their general utility and suitability for election operations.

3.3.1 Size

There is no numerical limitation on the size of any voting system equipment, but the size of each device should be compatible with its intended use and the location at which the equipment is to be used.

3.3.2 Weight

There is no numerical limitation on the weight of any voting system equipment, but the weight of each device should be compatible with its intended use and the location at which the equipment is to be used.

3.3.3 Transport and Storage of Precinct Systems

All precinct systems shall:

a. Provide a means to safely and easily handle, transport, and install polling place equipment, such as wheels or a handle or handles; and

b. Be capable of using, or be provided with, a protective enclosure rendering the equipment capable of withstanding:

(1) Impact, shock and vibration loads accompanying surface and air transportation; and

(2) Stacking loads accompanying storage.

3.4 Design, Construction, and Maintenance Characteristics

This section covers voting system materials, construction workmanship, and specific design characteristics important to the successful operation and efficient maintenance of the system.

3.4.1 Materials, Processes, and Parts

The approach to system design is unrestricted, and may incorporate any form or variant of technology capable of meeting the voting systems requirements and standards.

Precinct count systems shall be designed in accordance with best commercial practice for microcomputers, process controllers, and their peripheral components. Central count voting systems and equipment used in a central tabulating environment shall be designed in accordance with best commercial and industrial practice.

All voting systems shall:

a. Be designed and constructed so that the frequency of equipment malfunctions and maintenance requirements are reduced to the lowest level consistent with cost constraints;

b. Include, as part of the accompanying TDP, an approved parts list; and

c. Exclude parts or components not included in the approved parts list.

3.4.2 Durability

All voting systems shall be designed to withstand normal use without deterioration and without excessive maintenance cost for a period of ten years.

3.4.3 Reliability

The reliability of voting system devices shall be measured as mean time between Failure (MTBF) for the system submitted for testing. MBTF is defined as the value of the ratio of operating time to the number of failures which have occurred in the specified time interval. A typical system operations scenario consist of approximately 45 hours of equipment operation, consisting of 30 hours of equipment set-up and readiness testing and 15 hours of elections operations. For the purpose of demonstrating compliance with this requirement, a failure is defined as any event which results in either the:

a. Loss of one or more functions; or

b. Degradation of performance such that the device is unable to perform its intended function for longer than 10 seconds.

The MTBF demonstrated during qualification testing shall be at least 163 hours.

3.4.4 Maintainability

Maintainability represents the ease with which maintenance actions can be performed based on the design characteristics of equipment and software and the processes the vendor and election officials have in place for preventing failures and for reacting to failures. Maintainability includes the ability of equipment and software to self-diagnose problems and make non-technical election workers aware of a problem. Maintainability addresses all scheduled and unscheduled events, which are performed to:

- Determine the operational status of the system or a component;
- Adjust, align, tune, or service components;
- Repair or replace a component having a specified operating life or replacement interval;
- Repair or replace a component that exhibits an undesirable predetermined physical condition or performance degradation;
- Repair or replace a component that has failed; and
- Verify the restoration of a component, or the system, to operational status.

Maintainability shall be determined based on the presence of specific physical attributes that aid system maintenance activities, and the ease with which system maintenance tasks can be performed by the ITA. Although a more quantitative basis for assessing maintainability, such as the mean to repair the system is desirable, the qualification of a system is conducted before it is approved for sale and thus before a broader base of maintenance experience can be obtained.

3.4.4.1 Physical Attributes

The following physical attributes will be examined to assess reliability:

a. Presence of labels and the identification of test points;

b. Provision of built-in test and diagnostic circuitry or physical indicators of condition;

c. Presence of labels and alarms related to failures; and

d. Presence of features that allow non-technicians to perform routine maintenance tasks (such as update of the system database).

3.4.4.2 Additional Attributes

The following additional attributes will be considered to assess system maintainability.

a. Ease of detecting that equipment has failed by a non-technician;

b. Ease of diagnosing problems by a trained technician;

c. Low false alarm rates (i.e., indications of problems that do not exist);

d. Ease of access to components for replacement;

e. Ease with which adjustment and alignment can be performed;

f. Ease with which database updates can be performed by a non-technician; and

g. Adjust, align, tune, or service components.

3.4.5 Availability

The availability of a voting system is defined as the probability that the equipment (and supporting software) needed to perform designated voting functions will respond to operational commands and accomplish the function. The voting system shall meet the availability standard for each of the following voting functions:

a. For all paper-based systems:

(1) Recording voter selections (such as by ballot marking or punch); and

(2) Scanning the punches or marks on paper ballots and converting them into digital data;

b. For all DRE systems, recording and storing the voter's ballot selections.

c. For precinct-count systems (paper-based and DRE), consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data; and

d. For central-count systems (paper-based and DRE), consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.

System availability is measured as the ratio of the time during which the system is operational a (up time) to the total time period of operation (up time plus down time). Inherent availability (Ai) is a the fraction of time a system is functional, based upon Mean Time Between Failure (MTBF) and Mean Time to Repair (MTTR), that is:

$$Ai = (MTBF)/(MTBF + MTTR)$$

Mean Time to Repair (MTTR) is the average time required to perform a corrective maintenance task during periods of system operation. Corrective maintenance task time is active repair time, plus the time attributable to other factors that could lead to logistic or administrative delays, such as travel notification of qualified maintenance personnel and travel time for such personnel to arrive at the appropriate site.

Corrective maintenance may consist of substitution of the complete device or one of its components, as in the case of precinct count and some central count systems, or it may consist of on-site repair.

The voting system shall achieve at least ninety nine percent availability during normal operation for the functions indicated above. This standard encompasses for each function the combination of all devices and components that support the function, including their MTTR and MTBF attribute.

Vendors shall specify the typical system configuration that is to be used to assess availability, and any assumptions made with regard to any parameters that impact the MTTR. These factors shall include at a minimum:

a. Recommended number and locations of spare devices or components to be kept on hand for repair purposes during periods of system operation;

b. Recommended number and locations of qualified maintenance personnel who need to be available to support repair calls during system operation; and

c. Organizational affiliation (i.e., jurisdiction, vendor) of qualified maintenance personnel.

3.4.6 Product Marking

All voting systems shall:

a. Identify all devices by means of a permanently affixed nameplate or label containing the name of the manufacturer or vendor, the name of the device, its part or model number, its revision letter, its serial number, and if applicable, its power requirements;

b. Display on each device a separate data plate containing a schedule for and list of operations required to service or to perform preventive maintenance; and

c. Display advisory caution and warning instructions to ensure safe operation of the equipment and to avoid exposure to hazardous electrical voltages and moving parts at all locations where operation or exposure may occur.

3.4.7 Workmanship

To help ensure proper workmanship, all manufacturers of voting systems shall:

a. Adopt and adhere to practices and procedures to ensure that their products are free from damage or defect that could make them unsatisfactory for their intended purpose; and

b. Ensure that components provided by external suppliers are free from damage or defect that could make them unsatisfactory for their intended purpose.

3.4.8 Safety

All voting systems shall meet the following requirements for safety:

a. All voting systems and their components shall be designed so as to eliminate hazards to personnel, or to the equipment itself;

b. Defects in design and construction that can result in personal injury or equipment damage must be detected and corrected before voting systems and components are placed into service; and

c. Equipment design for personnel safety shall be equal to or better than the appropriate requirements of the Occupational Safety and Health Act (OSHA), as identified in Title 29, part 1910, of the Code of Federal Regulations.

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4 Software Standards

4.1 Scope

This section describes essential design and performance characteristics of the software used in voting systems, addressing both system-level software, such as operating systems, and voting system application software, including firmware. The requirements of this section are intended to ensure that voting system software is reliable, robust, testable, and maintainable. The standards in this section also support system accuracy, logical correctness, privacy, security and integrity.

The general requirements of this section apply to software used to support the entire range of voting system activities described in Section 2. More specific requirements are defined for ballot counting, vote processing, creating an audit trail, and generating output reports and files. Although this section emphasizes software, the standards described also influence hardware design considerations.

This section recognizes that there is no best way to design software. Many programming languages are available for which modern programming practices are applicable, such as the use of rigorous program and data structures, data typing, and naming conventions. Other programming languages exist for which such practices are not easily applied.

The Standards are intended to guide the design of software written in any of the programming languages commonly used for mainframe, mini-computer, and microprocessor systems. They are not intended to preclude the use of other languages or environments, such as those that exhibit ''declarative'' structure, ''object-oriented'' languages, ''functional'' programming languages, or any other combination of language and implementation that provides appropriate levels of performance, testability, reliability, and security. The vendor makes specific software selections. However, the use of widely recognized and proven software design methods will facilitate the analysis and testing of voting system software in the qualification process.

4.1.1 Software Sources

The requirements of this section apply generally to all software used in voting systems, including:

- Software provided by the voting system vendor and its component suppliers;
- Software furnished by an external provider (for example, providers of COTS operating systems and web browsers) where the software may be used in any way during voting system operation; and
- Software developed by the voting jurisdiction.

Compliance with the requirements of the software standards is assessed by several formal tests, including code examination. Unmodified software is not subject to code examination; however, source code generated by a package and embedded in software modules for compilation or interpretation shall be provided in human readable form to the ITA. The ITA may inspect source code units to determine testing requirements or to verify that the code is unmodified and that the default configuration options have not been changed.

Configuration of software, both operating systems and applications, is critical to proper system functioning. Correct test design and sufficient test execution must account for the intended and proper configuration of all system components. Therefore, the vendors shall submit to the ITA, in the TDP, a

record of all user selections made during software installation. The vendor shall also submit a record of all configuration changes made to the software following its installation. The ITA shall confirm the propriety and correctness of these user selections and configuration changes.

4.1.2 Location and Control of Software and Hardware on Which it Operates

The requirements of this section apply to all software used in any manner to support any voting-related activities, regardless of the ownership of the software or the ownership and location of the hardware on which the software is installed or operates. These requirements apply to:

- Software that operates on voting devices and vote counting devices installed at polling places under the control of the voting jurisdiction;
- Software that operates on ballot printers, vote counting devices, and other hardware typically installed at central or precinct locations (including contractor facilities); and
- Election management software.

However, some requirements apply only in specific situations indicated in this section. In addition to the requirements of this section, all software used in any manner to support any voting-related activities shall meet the requirements for security described in Section 6 of the Standards.

4.1.3 Exclusions

Some voting systems use equipment, such as personal computers, that may be used for other purposes and have resident on the equipment general purpose software such as operating systems, programming language compilers, database management systems, and Web browsers. Such software is governed by the Standards unless:

- The software provides no support of voting system capabilities;
- The software is removable, disconnectable, or switchable such that it cannot function while voting system functions are enabled; and
- Procedures are provided that confirm that the software has been removed, disconnected, or switched.

4.2 Software Design and Coding Standards

The software used by voting systems is selected by the vendor and not prescribed by the Standards. This section provides standards for voting system software with regard to:

- Selection of programming languages;
- Software integrity;
- Software modularity and programming;
- Control constructs;
- Naming conventions;
- Coding conventions; and
- Comment conventions.

4.2.1 Selection of Programming Languages

Software associated with the logical and numerical operations of vote data shall use a high-level programming language, such as: Pascal, Visual Basic, Java, C and C++. The requirement for the use of high-level language for logical operations does not preclude the use of assembly language for hardware-related segments, such as device controllers and handler programs. Also, operating system software may be designed in assembly language.

4.2.2 Software Integrity

Self-modifying, dynamically loaded, or interpreted code is prohibited, except under the security provisions outlined in section 6.4.e. This prohibition is to ensure that the software tested and approved during the qualification process remains unchanged and retains its integrity. External modification of code during execution shall be prohibited. Where the development environment (programming language and development tools) includes the following features, the software shall provide controls to prevent accidental or deliberate attempts to replace executable code:

- Unbounded arrays or strings (includes buffers used to move data);
- Pointer variables; and
- Dynamic memory allocation and management.

4.2.3 Software Modularity and Programming

Voting system application software, including COTS software, shall be designed in a modular fashion. However, COTS software is not required to be inspected for compliance with this requirement. For the purpose of this requirement [1], ''modules'' may be compiled or interpreted independently. Modules may also be nested. The modularity rules described here apply to the component sub modules of a library. The principle concept is that the module contains all the elements to compile or interpret successfully and has limited access to data in other modules. The design concept is simple replacement with another module whose interfaces match the original module. A module is designed in accordance with the following rules:

a. Each module shall have a specific function that can be tested and verified independently of the remainder of the code. In practice, some additional modules (such as library modules) may be needed to compile the module under test, but the modular construction allows the supporting modules to be replaced by special test versions that support test objectives;

b. Each module shall be uniquely and mnemonically named, using names that differ by more than a single character. In addition to the unique name, the modules shall include a set of header comments identifying the module's purpose, design, conditions, and version history, followed by the operational code. Headers are optional for modules of fewer than ten executable lines where the subject module is embedded in a larger module that has a header containing the header information. Library modules shall also have a header comment describing the purpose of the library and version information;

c. All required resources, such as data accessed by the module, should either be contained within the module or explicitly identified as input or output to the module. Within the constraints of the programming language, such resources shall be placed at the lowest level where shared access is needed. If that shared access level is across multiple modules, the definitions should be defined in a single file (called header files in some languages, such as C) where any changes can be applied once and the change automatically applies to all modules upon compilation or activation;

d. A module is small enough to be easy to follow and understand. Program logic visible on a single page is easy to follow and correct. Volume II, Section 5 provides testing guidelines for the ITA to identify large modules subject to review under this requirement;

e. Each module shall have a single entry point, and a single exit point, for normal process flow. For library modules or languages such as the object-oriented languages, the entry point is to the individual contained module or method invoked. The single exit point is the point where control is returned. At that point, the data that is expected as output must be appropriately set. The exception for the exit point is where a problem is so severe that execution cannot be resumed. In this case, the design must explicitly protect all recorded votes and audit log information and must implement formal exception handlers provided by the language; and

[1] Some software languages and development environments use a different definition of module but this principle still applies.

f. Process flow within the modules shall be restricted to combinations of the control structures defined in Volume II, Section 5. These structures support the modular concept, especially the single entry/exit rule above. They apply to any language feature where program control passes from one activity to the next, such as control scripts, object methods, or sets of executable statements, even though the language itself is not procedural.

4.2.4 Control Constructs

Voting system software shall use the control constructs identified in Volume II, Section 5:

a. Acceptable constructs are Sequence, If-Then-Else, Do-While, Do-Until, Case, and the General loop (including the special case for loop);

b. If the programming language used does not provide these control constructs, the vendor shall provide them (that is, comparable control structure logic). The constructs shall be used consistently throughout the code. No other constructs shall be used to control program logic and execution;

c. While some programming languages do not create programs as linear processes, stepping from an initial condition, through changes, to a conclusion, the program components nonetheless contain procedures (such as ''methods'' in object-oriented languages). Even in these programming languages, the procedures must execute through these control constructs (or their equivalents, as defined and provided by the vendor); and

d. Operator intervention or logic that evaluates received or stored data shall not re-direct program control within a program routine. Program control may be re-directed within a routine by calling subroutines, procedures, and functions, and by interrupt service routines and exception handlers (due to abnormal error conditions). Do-While (False) constructs and intentional exceptions (used as GoTos) are prohibited.

4.2.5 Naming Conventions

Voting system software shall use the following naming conventions:

a. Object, function, procedure, and variable names shall be chosen so as to enhance the readability and intelligibility of the program. Insofar as possible, names shall be selected so that their parts of speech represent their use, such as nouns to represent objects, verbs to represent functions, etc.;

b. Names used in code and in documentation shall be consistent;

c. Names shall be unique within an application. Names shall differ by more than a single character. All single-character names are forbidden except those for variables used as loop indexes. In large systems where subsystems tend to be developed independently, duplicate names may be used where the scope of the name is unique within the application. Names should always be unique where modules are shared; and

d. Language keywords shall not be used as names of objects, functions, procedures, variables, or in any manner not consistent with the design of the language.

4.2.6 Coding Conventions

Voting system software shall adhere to basic coding conventions. The coding conventions used shall meet one of the following conditions:

a. The vendors shall identify the published, reviewed, and industry-accepted coding conventions used and the ITAs shall test for compliance; or

b. The ITAs shall evaluate the code using the coding convention requirements specified in Volume II, Section 5.

These standards reference conventions that protect the integrity and security of the code, which may be language-specific, and language-independent conventions that significantly contribute to readability and maintainability. Specific style conventions that support economical testing are not binding unless adopted by the vendor.

4.2.7 Comment Conventions

Voting system software shall use the following comment conventions:

a. All modules shall contain headers. For small modules of 10 lines or less, the header may be limited to identification of unit and revision information. Other header information should be included in the small unit headers if not clear from the actual lines of code. Header comments shall provide the following information:

(1) The purpose of the unit and how it works;

(2) Other units called and the calling sequence;

(3) A description of input parameters and outputs;

(4) File references by name and method of access (read, write, modify, append, etc.);

(5) Global variables used; and

(6) Date of creation and a revision record;

b. Descriptive comments shall be provided to identify objects and data types. All variables shall have comments at the point of declaration clearly explaining their use. Where multiple variables that share the same meaning are required, the variables may share the same comment;

c. In-line comments shall be provided to facilitate interpretation of functional operations, tests, and branching;

d. Assembly code shall contain descriptive and informative comments, such that its executable lines can be clearly understood; and

e. All comments shall be formatted in a uniform manner that makes it easy to distinguish them from executable code.

4.3 Data and Document Retention

All systems shall:

a. Maintain the integrity of voting and audit data during an election, and for at least 22 months thereafter, a time sufficient in which to resolve most contested elections and support other activities related to the reconstruction and investigation of a contested election; and

b. Protect against the failure of any data input or storage device at a location controlled by the jurisdiction or its contractors, and against any attempt at improper data entry or retrieval.

4.4 Audit Record Data

Audit trails are essential to ensure the integrity of a voting system. Operational requirements for audit trails are described in Section 2.2.5.2 of the Standards. Audit record data are generated by these procedures. The audit record data in the following subsections are essential to the complete recording of election operations and reporting of the vote tally. This list of audit records may not reflect the design constructs of some systems. Therefore, vendors shall supplement it with information relevant to the operation of their specific systems.

4.4.1 Pre-Election Audit Records

During election definition and ballot preparation, the system shall audit the preparation of the baseline ballot formats and modifications to them, a description of these modifications, and corresponding dates. The log shall include:

a. The allowable number of selections for an office or issue;

b. The combinations of voting patterns permitted or required by the jurisdiction;

c. The inclusion or exclusion of offices or issues as the result of multiple districting within the polling place;

d. Any other characteristics that may be peculiar to the jurisdiction, the election, or the polling place's location;

e. Manual data maintained by election personnel;

f. Samples of all final ballot formats; and

g. Ballot preparation edit listings.

4.4.2 System Readiness Audit Records

The following minimum requirements apply to system readiness audit records:

a. Prior to the start of ballot counting, a system process shall verify hardware and software status and generate a readiness audit record. This record shall include the identification of the software release, the identification of the election to be processed, and the results of software and hardware diagnostic tests;

b. In the case of systems used at the polling place, the record shall include the polling place's identification;

c. The ballot interpretation logic shall test and record the correct installation of ballot formats on voting devices;

d. The software shall check and record the status of all data paths and memory locations to be used in vote recording to protect against contamination of voting data;

e. Upon the conclusion of the tests, the software shall provide evidence in the audit record that the test data have been expunged;

f. If required and provided, the ballot reader and arithmetic-logic unit shall be evaluated for accuracy, and the system shall record the results. It shall allow the processing, or simulated processing, of sufficient test ballots to provide a statistical estimate of processing accuracy; and

g. For systems that use a public network, provide a report of test ballots that includes:

(1) Number of ballots sent;

(2) When each ballot was sent;

(3) Machine from which each ballot was sent; and

(4) Specific votes or selections contained in the ballot.

4.4.3 In-Process Audit Records

In-process audit records document system operations during diagnostic routines and the casting and tallying of ballots. At a minimum, the in-process audit records shall contain:

a. Machine generated error and exception messages to demonstrate successful recovery. Examples include, but are not necessarily limited to:

(1) The source and disposition of system interrupts resulting in entry into exception handling routines;

(2) All messages generated by exception handlers;

(3) The identification code and number of occurrences for each hardware and software error or failure;

(4) Notification of system login or access errors, file access errors, and physical violations of security as they occur, and a summary record of these events after processing;

(5) Other exception events such as power failures, failure of critical hardware components, data transmission errors, or other type of operating anomaly;

b. Critical system status messages other than informational messages displayed by the system during the course of normal operations. These items include, but are not limited to:

(1) Diagnostic and status messages upon startup;

(2) The ''zero totals'' check conducted before opening the polling place or counting a precinct centrally;

(3) For paper-based systems, the initiation or termination of card reader and communications equipment operation; and

(4) For DRE machines at controlled voting locations, the event (and time, if available) of activating and casting each ballot (i.e., each voter's transaction as an event). This data can be compared with the public counter for reconciliation purposes;

c. Non-critical status messages that are generated by the machine's data quality monitor or by software and hardware condition monitors; and

d. System generated log of all normal process activity and system events that require operator intervention, so that each operator access can be monitored and access sequence can be constructed.

4.4.4 Vote Tally Data

In addition to the audit requirements described above, other election-related data is essential for reporting results to interested parties, the press, and the voting public, and is vital to verifying an accurate count.

Voting systems shall meet these reporting requirements by providing software capable of obtaining data concerning various aspects of vote counting and producing reports of them on a printer. At a minimum, vote tally data shall include:

a. Number of ballots cast, using each ballot configuration, by tabulator, by precinct, and by political subdivision;

b. Candidate and measure vote totals for each contest, by tabulator;

c. The number of ballots read within each precinct and for additional jurisdictional levels, by configuration, including separate totals for each party in primary elections;

d. Separate accumulation of overvotes and undervotes for each contest, by tabulator, precinct and for additional jurisdictional levels (no overvotes would be indicated for DRE voting devices); and

e. For paper-based systems only, the total number of ballots both processed and unprocessable; and if there are multiple card ballots, the total number of cards read.

For systems that produce an electronic file containing vote tally data, the contents of the file shall include the same minimum data cited above for printed vote tally reports.

4.5 Vote Secrecy (DRE Systems)

All DRE systems shall ensure vote secrecy by:

a. Immediately after the voter chooses to cast his or her ballot, record the voter's selections in the memory to be used for vote counting and audit data (including ballot images), and erase the selections from the display, memory, and all other storage, including all forms of temporary storage; and

b. Immediately after the voter chooses to cancel his or her ballot, erase the selections from the display and all other storage, including buffers and other temporary storage.

Volume I, Section 5

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5 Telecommunications

5.1 Scope

This section contains the performance, design, and maintenance characteristics of the telecommunications components of voting systems and the acceptable levels of performance against these characteristics. For the purpose of the Standards, telecommunications is defined as the capability to transmit and receive data electronically using hardware and software components over distances both within and external to a polling place.

The requirements in this section represent acceptable levels of combined telecommunications hardware and software function and performance for the transmission of data that is used to operate the system and report election results. Where applicable, this section specifies minimum values for critical performance and functional attributes involving telecommunications hardware and software components.

This section does not apply to other means of moving data, such as the physical transport of data recorded on paper-based media, or the transport of physical devices, such as memory cards, that store data in electronic form.

Voting systems may include network hardware and software to transfer data among systems. Major network components are local area networks (LANs), wide area networks (WANs), workstations (desktop computers), servers, data, and applications. Workstations include voting stations, precinct tabulation systems, and voting supervisory terminals. Servers include systems that provide registration forms and ballots and accumulate and process voter registrations and cast ballots.

Desirable network characteristics include simplicity, flexibility (especially in routing, to maintain good response times) and maintainability (including availability, provided primarily through redundancy of resources and connections, particularly of connections to public infrastructure).

A wide area network (WAN) public telecommunications component consists of the hardware and software to transport information, over shared, public (i.e., commercial or governmental) circuitry, or among private systems. For voting systems, the telecommunications boundaries are defined as the transport circuitry, on one side of which exists the public telecommunications infrastructure, outside the control of voting system supervisors. On the other side of the transport circuitry are the local area network (LAN) resources, workstations, servers, data and applications controlled by voting system supervisors.

Local area network (LAN) components consist of the hardware and software infrastructure used to transport information between users in a local environment, typically a building or group of buildings. Typically a LAN connects workstations, perhaps with a local server.

An application may be a single program or a group of programs that work together to provide a function to an end user, who may be a voter or an election administrator. Voter programs may include voter registration, balloting, and status checking. Administrator programs may include ballot preparation, registration for preparation, registration approval, ballot vetting, ballot processing, and election processing.

This Section is intended to compliment the network security requirements found in Volume I Section 6, which include requirements for voter and administrator access, availability of network service, data confidentiality, and data integrity. Most importantly, security services will restrict access to local election system components from public resources, and these services will also restrict access to voting system data while it is in transit across public resources. (This is corollary to voting supervisors controlling local election systems and not assuming control over public resources.)

5.1.1 Types of Components

This section addresses telecommunications hardware and software across a broad range of technologies including, but not limited to:

—Dial-up communications technologies:
- Standard landline;
- Wireless;
- Microwave;
- Very Small Aperture Terminal (VSAT);
- Integrated Services Digital Network (ISDN); and
- Digital Subscriber Line (DSL);

—High-speed telecommunications lines (public and private):
- FT–1, T–1, T–3;
- Frame Relay; and
- Private line;

—Cabling technologies:
- Universal Twisted Pair (UTP) cable (CAT 5 or higher);
- Ethernet hub/switch; and
- Wireless connections (Radio Frequency (RF) and Infrared);

—Communications routers;

—Modems, whether internal and external to personal computers, computer servers, and other voting system components (whether installed at the polling place or central count location);

—Modem drivers, dial-up networking software;

—Channel service units (CSU)/Data service units (DSU) (whether installed at the polling place or central count location); and

—Dial-up networking applications software.

5.1.2 Telecommunications Operations and Providers

This section applies to voting-related transmissions over public networks, such as those provided by regional telephone companies and long distance carriers. This section also applies to private networks regardless of whether the network is owned and operated by the election jurisdiction.

For systems that transmit official data over public networks, this Section applies to telecommunications components installed and operated at settings supervised by election officials, such as polling places or central offices. These standards apply to:

- Components acquired by the jurisdiction for the purpose of voting, including components installed at the poll site or a central office (including central site facilities operated by vendors or contractors); and
- Components acquired by others (such as school systems, libraries, military installations and other public organizations) that are used at settings supervised by election officials, including minimum configuration components required by the vendor but that the vendor permits to be acquired from third party sources not under the vendor's control (e.g., router or modem card manufacturer or supplier)

5.1.3 Data Transmissions

These requirements apply to the use of telecommunications to transmit data for the preparation of the system for an election, the execution of an election, and the preservation of the system data and audit trails during and following an election. While this section does not assume a specific model of voting system operations and does not assume a specific model for the use of telecommunications to support such operations, it does address the following types of data, where applicable:

- *Voter Authentication:* Coded information that confirms the identity of a voter for security purposes for a system that transmits votes individually over a public network;
- *Ballot Definition:* Information that describes to a voting machine the content and appearance of the ballots to be used in an election;
- *Vote Transmission:* For systems that transmit votes individually over a public network, the transmission of a single vote within a network at a polling place and to the county (or contractor) for consolidation with other county vote data;
- *Vote Count:* Information representing the tabulation of votes at any level within the control of the jurisdiction, such as the polling place, precinct, or central count; and
- *List of Voters:* A listing of the individual voters who have cast ballots in a specific election.

Additional data transmissions used to operate a voting system in the conduct of an election, but not explicitly listed above, are also subject to the standards of this section.

For systems that transmit data using public networks, this section applies to telecommunications hardware and software for transmissions within and

among all combinations of senders and receivers indicated below:

- Polling places;
- Precinct count facilities; and
- Central count facilities (whether operated by the jurisdiction or a contractor).

5.2 Design, Construction, and Maintenance Requirements

Design, construction, and maintenance requirements for telecommunications represent the operational capability of both system hardware and software. These capabilities shall be considered basic to all data transmissions.

5.2.1 Accuracy

The telecommunications components of all voting systems shall meet the accuracy requirements of Section 3.2.1.

5.2.2 Durability

The telecommunications components of all voting systems shall meet the durability requirements of Section 3.4.2.

5.2.3 Reliability

The telecommunications components of all voting systems shall meet the reliability requirements of Section 3.4.3.

5.2.4 Maintainability

The telecommunications components of all voting systems shall meet the maintainability requirements of Section 3.4.4.

5.2.5 Availability

The telecommunications components of all voting systems shall meet the availability requirements of Section 3.4.5.

5.2.6 Integrity

For WANs using public telecommunications, boundary definition and implementation shall meet the following requirements.

a. Outside service providers and subscribers of such providers shall not be given direct access or control of any resource inside the boundary;

b. Voting system administrators shall not require any type of control of resources outside this boundary. Typically, an end point of a telecommunications circuit will be a subscriber termination on a Digital Service Unit/Customer Service Unit (DSU/CSU) (though the precise technology may vary, being such things as cable modems or routers). Regardless of the technology used, the boundary point must ensure that everything on one side is locally configured and controlled while everything on the other side is controlled by an outside service provider; and

c. The system shall be designed and configured such that it is not vulnerable to a single point of failure in the connection to the public network causing total loss of voting capabilities at any polling place.

5.2.7 Confirmation

Confirmation occurs when the system notifies the user of the successful or unsuccessful completion of the data transmission, where successful completion is defined as accurate receipt of the transmitted data. To provide confirmation, the telecommunications components of a voting system shall:

d. Notify the user of the successful or unsuccessful completion of the data transmission; and

e. In the event of unsuccessful transmission, notify the user of the action to be taken.

Volume I, Section 6

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6.0 Security

Section 6.0 addresses four new, specific aspects of voting systems security:

1. Independent Dual Verification Voting Systems: Definition and characteristics of voting systems that produce multiple records of votes. A future version of the VVSG will require that voting systems produce multiple records of ballots or receipts for auditing purposes (Section 6.0.1, Informative).

2. Security Requirements for Voter Verified Paper Audit Trails: Requirements for voter verified paper audit trails, if a State chooses to require them (Section 6.0.2, Normative).

3. Use of Wireless Networking in Voting Systems: Requirements for wireless networks and the data sent across wireless networks (Section 6.0.3, Normative).

4. Security Requirements for Software Distribution and Setup Validation of Voting System: Requirements for (a) the secure distribution of voting systems software and (b) for verifying that voting systems are operating with the correct software configuration (Section 6.0.4, Normative).

1. Security Overview (Informative)

This section is a discussion of independent verification systems followed by characteristics of independent verification systems which will be used as the basis for future requirements. The characteristics are preliminary and will be evolving with further research.

1. Independent Dual Verification Systems

A primary objective for using electronic voting systems is the production of voting records that are highly precise, highly reliable, and easily counted—in essence, an accurate representation of ballot choices whose handling requirements are reasonable. To meet this objective, there are many factors to consider in an electronic voting system's design, including:

- The environment provided for voting, including the voting site and various environmental factors,
- The ease with which voters can use the voting system, i.e., its usability,
- The robustness and reliability of the voting equipment, and
- The capability of the records to be used in audits.

Independent Dual Verification (IDV) systems have as their primary objective the production of ballot records that are capable of being used in audits in which their correctness can be audited to very high levels of precision. The primary security issues addressed by IDV systems are:

- Whether electronic voting systems are accurately recording ballot choices, and
- Whether the ballot record contents can be audited precisely post-election.

The threats addressed by IDV systems are those that could cause a voting system to inaccurately record the voter's intent or cause a voting system's records to become damaged, i.e., inserted, deleted, or changed. These threats could occur via any number of means including accidental damage or various forms of fraud. The threats are addressed mainly by providing, in the voting system design, the capability for ballot record audits to detect precisely whether specific records are correct as recorded or damaged, missing, or fraudulent.

1.1 Independent Dual Verification Systems: Improved Accuracy in Audits

Independent Verification is the top-level categorization for electronic voting systems that produce multiple records of ballot choices whose contents are capable of being audited to high levels of precision. For this to happen, the records must be produced and made verifiable by the voter, and then subsequently handled according to the following protocol:

- At least two records of the voter's choices are produced and one of the records is then stored such that it cannot be modified by the voting system, e.g. the voting system creates a record of the voter's choices and then copies it to some write-once media.
- The voter must be able to verify that both records are correct, e.g., verify his or her choices on the voting system's display and also verify the second record of choices stored on the write-once media.
- The verification processes for the two verifications must be independent of each other and (a) at least one of the records must be verified directly by the voter, or (b) it is acceptable for the voter to indirectly verify both records if they are stored on different systems produced by different vendors.
- The content of the two records can be checked later for consistency through the use of identifiers that allow the records to be linked.

An assumption is made that at least one set of records is usable in an efficient counting process such as by using an electronic voting system, and the other set of records is usable in an efficient process of verifying its agreement with the other set of records used in the counting process. The sets of records would preferentially be different in form and thus have more resistance to accidental or deliberate damage.

Given these conditions above, the multiple records are said to be distinct and independently verifiable, that is, both records are not under the control of the same processes. As a result of this independence, one record can be used to audit or check up on the accuracy of the other record. Because the storage of the records is separate, an attacker who can compromise one of the records still will face a difficult task in compromising the other.

1.2 Issues in Handling Multiple Records Produced by Independent Dual Verification Systems

There are several fundamental questions that need to be addressed when designing the structure and selecting the physical characteristics of IDV systems records, including:

- How to tell if the records are authentic and not forged,
- How to tell if the integrity of the records has remained intact from the time they were recorded,
- The suitability of the records for various types of auditing, and
- How best to address problems if there are errors in the records.

Whenever an electronic voting system produces multiple records of votes, there is some possibility that one or more of the records may not match. Records can be lost, or deliberately or accidentally damaged, or stolen, or fabricated. Keeping the two records in correspondence with each other can be made more or less difficult depending on the technologies used for the records and the procedures used to handle the records.

As a consequence, it is important to structure the records so that errors and other anomalies can be readily detected during audits. There are a number of techniques that can be used, such as the following:

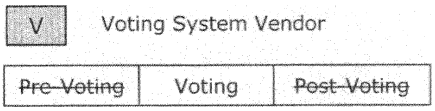
- Associating unique identifiers with corresponding records, e.g., an individual paper record sharing a unique identifier with its corresponding electronic record,
- Including an identification of the specific voting system that produced the records, such as a serial number identifier or by having the voting system digitally sign the records using public key cryptography,
- Including other information about the election and the precinct or location where the records were created,
- Creating checksums of the electronic records and having the voting system digitally sign the entire sets of records so that missing or inserted records can be detected, and
- Structuring the records in open, publicly documented formats that can be readily analyzed on different computing platforms.

The ease or relative difficulty with which some types of records must be handled is also a determining factor in the practical capability to conduct precise audits, given that some types of records are better suited to different types of auditing and different voting environments than others. The factors that make certain types of records more suitable than others could vary greatly depending upon many other criteria, both objective and subjective. For example, paper records may require manual handling by voters or poll workers and thus be more susceptible to damage or loss. At the same time, the extent to which the paper records must be handled will vary depending on the type of voting system in use. Electronic records may by their nature be more suitable for automated audits; however electronic records are still subject to accidental or deliberate damage, loss, and theft.

2. Core Characteristics for Independent Verification Systems

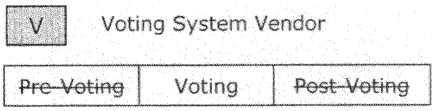
This section contains a preliminary set of characteristics for IDV systems. These characteristics are fundamental in nature and apply to all categories of IDV systems. They will form the basis for future requirements for independent verification systems.

2.1 An Independent Dual Verification Voting System Produces Two Distinct Sets of Records of Ballot Choices Via Interactions With the Voter Such That One Set of Records Can be Compared Against the Other to Check Their Equality of Content



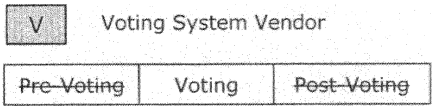
Discussion: This is the fundamental core definition for IDV systems. The records can be checked against one another to determine whether or not the voter's choices were correctly recorded.

2.1.1 The Voter Verifies the Content of Each Record and Either (a) Verifies at Least One of the Records Directly or (b) Verifies Both Records Indirectly if the Records Are Each Under the Control of Independent Processes



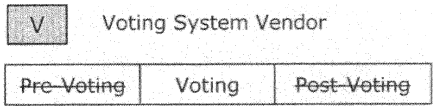
Discussion: Direct Verification involves using human senses, e.g., directly verifying a paper record via one's eyesight. Indirect Verification involves using an intermediary to perform the verification, e.g., verifying an electronic ballot image at the voting system.

2.1.2 The Creation, Storage, and Handling of the Records are Sufficiently Separate Such That the Failure or Compromise of One Record Does Not Cause the Failure or Compromise of Another



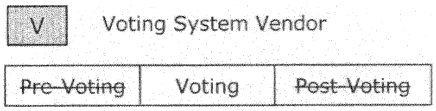
Discussion: The records must be stored on different media and handled independently of each other, so that no one process could compromise all records. If an attack can alter one record, it should still be very difficult to alter the other record.

2.1.2.1 At Least One Record Is Highly Resistant to Damage or Alteration and Should be Capable of Long-Term Storage



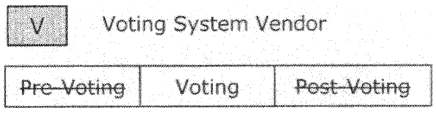
Discussion: At least one of the records should be difficult to alter or damage so that it could be used in case the counted records are damaged or lost.

2.1.3 The Processes of Verification for the Multiple Records do not all Depend for Their Integrity on the Same Device, Software Module, or System, and are Sufficiently Separate Such That Each Record Provides Evidence of the Voter's Choices Independently of Its Other Corresponding Record



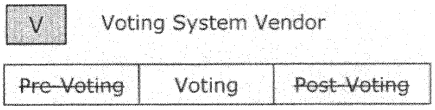
Discussion: For example, the verification of an electronic record on a DRE is not sufficiently separate from the verification of an electronic record located on a token but performed by the same DRE as the verification for the first record. Verification of the paper record by one's senses is sufficiently separate in this case.

2.1.4 The Records Can Be Used in Checks of One Another, Such That if One Set of Records Can Be Used in an Efficient Counting Process, the Other Set of Records Can Be Used for Checking Its Agreement With the First Set of Records



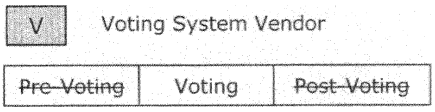
Discussion: For example, an electronic record can be used in an efficient counting process. A second paper record can be used to verify the accuracy of the electronic record; however its suitability for efficient counting is less clear. If a paper record can be used in an automated scan process, it may be more suitable.

2.1.5 The Records Within a Set are Linked to Their Corresponding Records in the Other Set by Including a Unique Identifier Within Each Record That Can Be Used to Identify the Record's Corresponding Record in the Other Set



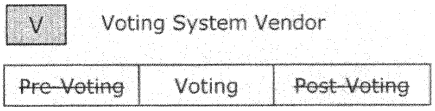
Discussion: The identifier should serve the purpose of uniquely identify the record so as to identify duplicates and/or for cross-checking two record types.

2.1.6 Each Record Includes an Identification of the Voting Site/Precinct

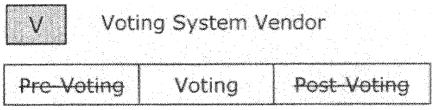


Discussion: If the voting site and precinct are different, both should be included.

2.1.7 The Records Include Information Identifying Whether the Balloting is Provisional, Early, or on Election Day, and Information That Identifies the Ballot Style In Use

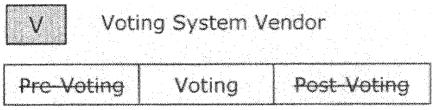


2.1.8 The Records Include a Voting Session Identifier that is Generated When The Voting Station is Placed in Voting Mode and That Can Be Used to Identify The Records as Being Created During That Voting Session



Discussion: If there are several voting sessions on the same voting station on the same day, the voting session identifiers must be different. They should be generated from a random number generator.

2.1.9 The Records Include An Identifier of The Voting System that is Unique To that Style of Voting Systems



Discussion: The identifier could be a serial number or other unique ID.

2.1.10 The cryptographic Software in Independent Verification Voting Systems is Approved by The U.S. Government's Cryptographic Module Validation Program (CMVP) as Applicable

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The voting systems may use cryptographic software for a number of different purposes, including calculating checksums, encrypting records, authentication, generating random numbers, and for digital signatures. This software should be reviewed and approved by the Cryptographic Module Validation Program. There may be cryptographic voting schemes where the cryptographic algorithms used are necessarily different from any algorithms that have approved CMVP implementations, thus CMVP approved software shall be used where feasible. The CMVP web site is *http://csrc.nist.gov/cryptval.*

2. Requirements for Voter Verified Paper Audit Trails (Normative)

This section contains requirements for Voter Verified Paper Audit Trail (VVPAT) voting systems. VVPAT is not mandatory. These requirements apply only to voting systems that include a VVPAT component and are consistent with the definition of Independent Dual Verification (IDV) systems from Section 6.0.1. Requirements for usability, accessibility, and privacy from Volume I, Section 2.2.7 apply to VVPAT. The requirements in this section apply only to VVPAT systems; the requirements do not apply to other types of voting systems and are not intended to in any way restrict use or operation of other types of voting systems.

1. Display and Print a Paper Record

1.1 The Voting Station Shall Print and Display a Paper Record of the Voter's Ballot Choices Prior to the Voter Making the Ballot Choices Final

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This is the basic requirement for VVPAT capability. It requires that the paper record be created as a distinct representation of the voter's ballot choices. It requires that the paper record contain the same information as contained in the electronic record and be suitable for use in verifications and recounts of the election and of the voting station's electronic records. Thus, either the paper or electronic record could be used as the ballot of record for the election.

1.1.1 The Paper Record Shall Constitute A Complete Record of Ballot Choices That Can Be Used To Assess The Accuracy of The Voting Station's Electronic Record, To Verify The Election Results, And In Full Recounts.

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement exists to make clear that it is possible to use the paper record for checks of the voting station's accuracy in recording voter's ballot choices, as well as usable for election audits (such as mandatory 1% recounts). The paper record shall also be suitable for use in full manual recounts of the election.

1.1.2 The Paper Record Shall Contain All Information Stored in the Electronic Record

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The electronic record cannot hide any information related to ballot choices; all information relating to ballot choices must be equally present in both records. The electronic record may contain other items that don't necessarily need to be on the paper record, such as digital signature information.

2. VVPAT Voting Station Usability

2.1 All Usability Requirements From Volume I, Section 2.2.7 Shall Apply to Voting Stations With VVPAT

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The requirements in this section are in addition to those requirements from Section 2.2.7. They require that the paper record be formatted and displayed so that the voter is able to verify his or her votes with maximum reasonable ease and satisfaction, and that instructions be provided to the voter to handle all relevant aspects of the voter verification.

2.1.1 The Voting Station Shall Be Capable of Showing the Information on the Paper in a Font Size of at Least 3.0 mm, and Should Be Capable of Showing the Information in at Least Two Font Ranges, (a) 3.0–4.0 mm and (b) 6.3–9.0 mm, Under Control of the Voter or Poll Worker

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: In keeping with requirements in Section 2.2.7, the paper record should use the same font sizes as displayed by the voting station, but at least be capable of 3.0 mm. While larger font sizes may assist most voters with poor vision, certain disabilities such as tunnel vision are best addressed by smaller font sizes.

2.1.2 The Paper and Electronic Records Shall Be Presented so as to Allow for Easy, Simultaneous Comparison

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

2.1.2.1 The Paper and Electronic Records Shall Be Positioned so That the Voter Can, at the Same Posture, Easily Read and Compare the Two Records

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The voter should not have to shift positions when comparing the records.

2.1.2.2 If The Paper Record Cannot Be Displayed in Its Entirety, a Means Shall Be Provided to Allow the Voter to View the Entire Ballot

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Possible solutions include scrolling the paper or printing a new sheet of paper.

2.1.2.3 If the Paper Record Cannot Be Displayed in Its Entirety on a Single Page, Each Page of the Record Shall Be Numbered and the Last Page Shall Be Clearly Distinguished

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

2.1.3 The Instructions for Performing the Verification Process Shall Be Made Available to the Voter in A Location on the Voting Station

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: All instructions need to meet the accessibility requirements contained in Section 2.2.7.

3. VVPAT Voting Station Accessibility

3.1 All Accessibility Requirements From Section 2.2.7 Shall Apply to Voting Stations With VVPAT

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Requirements in this section are in addition to the accessibility and alternative language requirements from Section 2.2.7. They make explicit that an accessible vote verification procedure for voters be provided at voting sites, including voters with disabilities, limited English proficiency (LEP), and voters with Native American and Alaska Native languages that are not written.

3.1.1 The Voting Station Shall Display, Print, and Store a Paper Record in any of the Alternative Languages Chosen for Making Ballot Selections

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For the purposes of voter privacy, it must not be possible to identify voters based on their use of alternative languages. Requirement 6.0.2.5.1.3 addresses this issue.

3.1.1.1 For the Purposes of Verification, Candidate Names on the Records Shall Be in English

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement is included to assist manual auditing of the paper records.

3.1.1.2 Other Markings Not Related to Ballot Selection on The Paper Record Shall Be In English

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Other markings may include designations of the precinct and the election.

3.1.2 If the Normal Procedure Includes VVPAT, the Accessible Voting Station Should Provide Features That Enable Voters Who Are Blind to Perform This Verification

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement is repeated from Section 2.2.7 and included here for emphasis. This requirement will be mandatory in future versions.

4. Approve or Spoil the Paper Record

4.1 The Voting Station Shall Allow the Voter to Approve or Spoil the Paper Record

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The voting station cannot create an electronic record without its corresponding paper record. It requires that the voting station mark the electronic record as accepted or spoiled in the voter's presence, and if spoiled, the corresponding electronic record be marked as spoiled and be preserved. It requires that the voting station display a warning message when a spoil limit is reached.

4.1.1 The Voting Station Shall, in the Presence of The Voter, Mark the Paper Record as Being Accepted by the Voter or Spoiled

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: If a paper record is marked as spoiled, then the corresponding electronic record is presented to the voter for update.

4.1.2 The Voting Station Should Mark and Preserve Electronic and Paper Records That Have Been Spoiled

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For the purposes of reconciliation of records, electronic and paper spoiled records should be retained and analyzed.

4.1.3 Following the Close of Polls, a Means Shall Be Provided to Reconcile the Number of Spoiled Paper Records With the Number of Occurrences of Spoiled Electronic Records, and Procedures Shall Be in Place to Address Any Discrepancies

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

[Best practice for voting officials] Appropriate procedures are needed for reconciling the number of spoiled paper records with the number of spoiled electronic records and for addressing any discrepancies after the close of polls.

4.1.4 Prior to the Maximum Number of Spoiled Ballots Occurring, the Voting Station Shall Display a Warning Message to the Voter Indicating That the Voter May Spoil Only One More Ballot

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The maximum number of spoiled ballots varies from state to state.

4.1.5 If the Maximum Number of Spoiled Ballots Occurs, the Voting Station Should Provide a Way to Permit the Voter to Cast a Ballot, as Required

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Possible solutions include using other equipment, using a paper ballot, or accepting the last ballot cast. This capability defined by state and local jurisdiction.

[Best practice for voting officials] Appropriate procedures are needed to permit the voter to cast a ballot if the maximum number of spoiled ballots occurs.

[Best practice for voting officials] Appropriate procedures are needed to address situations in which a voter is unable to review the paper record.

[Best practice for voting officials] Appropriate procedures are needed to address situations in which a voter indicates that the electronic and paper records do not match. If the records do not match, a potentially serious error has likely occurred, and voting officials may need to take appropriate actions such as removing the voting station from service and quarantining its records for later analysis.

4.1.6 The Voting Station Should Not Record the Electronic Record as Being Approved By The Voter Until the Paper Record Has Been Stored

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: In general it is better not to record any record as being approved until the record that is independent of the voting system is approved by the voter.

4.1.7 Vendor Documentation Shall Include Procedures for Returning a Voting Station to Correct Operation After a Voter Has Used It Incompletely or Incorrectly; This Procedure Shall Not Cause Discrepancies Between the Tallies of the Electronic and Paper Records

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

5. Preserve Voter Privacy and Anonymity

5.1 The Voter's Privacy and Anonymity Shall be Preserved During the Process of Recording, Verifying, and Auditing Ballot Choices

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Privacy requirements from Section 2.2.7 apply to voting stations with VVPAT; requirements in this section are in addition to those requirements from Section 2.2.7. They require that the voter's privacy be maintained during the verification step, including requirements that the paper record contain no human or machine-readable markings that could identify the voter and that the paper and electronic records be stored in ways that preserve the privacy and anonymity of the voter.

5.1.1 The Privacy and Anonymity of the Voter's Verification of His or Her Ballot Choices on the Electronic and Paper Records Shall Be Maintained

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

5.1.1.1 When the Voter is Responsible for Depositing a Paper Record in the Ballot Box, the Accessible Voting Station Shall Maintain the Privacy and Anonymity of Voters Unable to Manually Handle Paper

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

5.1.2 The Electronic and Paper Records Shall be Created and Stored in Ways that Preserve the Privacy and Anonymity of the Voter

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This can be accomplished in various ways including shuffling the order of the records or other methods to separate the order of stored records.

5.1.3 The Privacy and Anonymity of Voters Whose Paper Records Contain Any of the Alternative Languages Chosen for Making Ballot Selections Shall be Maintained

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: One method for accomplishing this is to ensure that no less than, e.g., five voters use any of the alternative languages for their ballot selections.

[Best practice for voting officials] Appropriate procedures are needed to ensure the privacy and anonymity of voters whose paper records contain any of the alternative languages chosen for making ballot selections.

5.1.4 The Voter Shall Not be Able to Leave the Voting Area With the Paper Record if the Information on the Paper Record Can Directly Reveal the Voter's Choices

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

[Best practice for voting officials] Appropriate procedures are needed to prevent voters from leaving the voting area with a paper record that can directly reveal the voter's choices.

5.1.5 Unique Identifiers Shall Not be Displayed in a Way That Is Easily Memorable by the Voter

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Unique identifiers on the paper record are displayed or formatted in such a way that they are not memorable to voters, such as by obscuring them in other characters.

6. Electronic and Paper Record Structure

6.1 The Voting Station's Ballot Records Shall Be Structured and Contain Information So as to Support Highly Precise Audits of Their Accuracy

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: It requires that electronic records and paper records contain election precinct information, information to link the paper record to its corresponding electronic record, and information identifying the voting station. It requires that the electronic records be maintained in a format that can be exported to a different computer, *e.g.,* a personal computer, and that the format be well-documented to support analysis of the records.

6.1.1 All Cryptographic Software in the Voting Station Should be Approved by the U.S. Government's Cryptographic Module Validation Program (CMVP) as Applicable

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The voting station may use cryptographic software for a number of different purposes, including calculating checksums, encrypting records, authentication, generating random numbers, and for digital signatures. This software should be reviewed and approved by the Cryptographic Module Validation Program. There may be cryptographic voting schemes where the cryptographic algorithms used are necessarily different from any algorithms that have approved CMVP implementations, thus CMVP approved software should be used where feasible but is not required. The CMVP web site is *http://csrc.nist.gov/cryptval.*

6.1.2 The Electronic and Paper Records Shall Include Information About the Election

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.2.1 The Voting Station Shall be Able to Include an Identification of the Particular Election, the Voting Site/Precinct, and the Voting Station

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: If the voting site and precinct are different, both should be included. Some of this information may have to be excluded in certain cases to protect voter privacy.

6.1.2.2 The Records Shall Include Information Identifying Whether the Balloting is Provisional, Early, or on Election Day, and Information that Identifies the Ballot Style in Use

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.2.3 The Records Shall Include a Voting Session Identifier That is Generated When the Voting Station is Placed in Voting Mode and That can be Used to Identify the Records as Being Created During that Voting Session

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: If there are several voting sessions on the same voting station on the same day, the voting session identifiers must be different. They should be generated from a random number generator.

6.1.3 The Electronic and Paper Records Shall be Linked by Including a Unique Identifier Within Each Record That can be Used to Identify Each Record Uniquely and Each Record's Corresponding Record

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The identifier serves the purpose of uniquely identifying the record so as to identify duplicates and/or for crosschecking two record types.

6.1.4 The Voting Station Should Generate and Store a Digital Signature for Each Electronic Record

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.5 The Electronic Records Shall be Able to be Exported for Auditing or Analysis on Standards Based and/or COTS Information Technology Computing Platforms

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.5.1 The Exported Electronic Records Shall be in a Publicly Available, Non-Proprietary Format

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: It is advantageous when all electronic records, regardless of manufacture, use the same format or can easily be converted to a publicly available, non-proprietary format, e.g., the OASIS Election Markup Language (EML) Standard.

6.1.5.2 The Voting Station Should Export the Records Accompanied by a Digital Signature of the Collection of Records, Which Shall be Calculated on the Entire Set of Electronic Records and Their Associated Digital Signatures

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This is necessary to determine if records are missing or substituted.

6.1.5.3 The Voting System Vendor Shall Provide Documentation as to the Structure of the Exported Records and How They Shall be Read and Processed by Software

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.5.4 The Voting System Vendor Shall Provide a Software Program That Will Display the Exported Records and That May Include Other Capabilities Such as Providing Vote Tallies and Indications of Undervotes

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.6 The Paper Record Should be Created in a Format That May be Made Available Across Different Manufacturers of Electronic Voting Systems

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Future standards may require some commonality in the format of paper records.

6.1.7 The Paper Record Shall be Created Such That Its Contents Are Machine-Readable

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This can be done by using specific OCR fonts.

6.1.7.1 The Paper Record Should Contain Error Correcting Codes for the Purposes of Detecting Read Errors and for Preventing Other Markings on the Paper Record to be Misinterpreted When Machine Reading the Paper Record

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement is not mandatory if, for example, a state prohibits non-human-readable information on the paper record. This requirement serves the purpose of detecting scanning errors and preventing stray or deliberate markings on the paper from being interpreted as valid data.

6.1.8 Any Automatic Accumulation of Electronic or Paper Records Shall be Capable of Detecting and Discarding Duplicate Copies of the Records

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.9 The Voting Station Should be Able to Print a Barcode With Each Paper Record that Contain the Human Readable Contents of the Paper Record and Digital Signature Information

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This requirement is not mandatory if, for example, a state prohibits non-human-readable information on the paper record.

6.1.9.1 The Barcode Shall Use an Industry-Standard Format and Shall be Able to be Read Using Readily Available Commercial Technology

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Examples of such codes are Maxi Code or PDF417.

6.1.9.2 If the Paper Record's Corresponding Electronic Record Contains a Digital Signature, the Digital Signature Shall be Included in the Barcode

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.9.3 The Barcode Shall Not Contain Any Information Other Than the Paper Record's Human Readable Content and Digital Signature Information

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

6.1.10 The Voting System Vendor Shall Provide Full Documentation of Procedures for Exporting Its Electronic Records and Reconciling Its Electronic Records With Its Paper Records

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7. Equipment Security and Reliability

7.1 The Voting Station Equipment Shall be Secure, Reliable, and Easily Maintained

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.1 The Voting Station Shall be Physically Secure From Tampering, Including Intentional Damage

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

[Best practice for voting officials] Appropriate procedures are needed to ensure that voting systems are physically secured from tampering and intentional damage.

7.1.1.1 The Voting Station Shall Provide a Standard, Publicly Documented Printer Port (or the Equivalent) Using a Standard Communication Protocol

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Using a standard, publicly documented printer protocol assists in security evaluations of its software.

7.1.1.2 The Paper Path Between the Printing, Viewing and Storage of The Paper Record Shall be Protected and Sealed From Access Except by Authorized Election Officials

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.1.3 The Printer Shall Not be Permitted to Communicate With Any Other System or Machine Other Than the Single Voting Machine to Which it is Connected

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.1.4 The Printer Shall Only be Able to Function as a Printer; It Shall Not Contain Any Other Services (e.g., Provide Copier or Fax Functions) or Network Capability

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.1.5 Printer Access to Replace Consumables Such as Ink or Paper Shall Only be Possible if it Does Not Compromise the Sealed Printer Paper Path

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.1.6 The Ballot Box Storing the Paper Records Shall be Sealed and Secured and No Access Shall be Provided to Poll Workers

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.1.7 Tamper-Evident Seals or Physical Security Measures Shall Protect the Connection Between the Printer and the Voting Station, so that the Connection Cannot be Broken or Interfered With Without Leaving Extensive and Obvious Evidence

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.2 The Voting Station's Printer Shall be Highly Reliable and Easily Maintained

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.2.1 The Voting Station Should Detect Errors and Malfunctions such as Paper Jams or Low Supplies of Consumables such as Paper and Ink That May Prevent Paper Records from Being Correctly Displayed Printed or Stored

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This could be accomplished in a variety of different ways: for example, a printer that is out of paper or jammed could issue audible alarms, with the alarm different for each condition.

7.1.2.2 If Errors or Malfunctions Occur, the Voting Station Shall Suspend Voting Operations and Should Present a Clear Indication to The Voter and Election Officials of the Malfunctions

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The voting station does not record votes if errors or malfunctions occur.

7.1.2.3 Printing Devices Should Either (a) Contain Paper and Ink of Sufficient Capacity so as not to Require Reloading or Opening Equipment Covers or Enclosures and Circumvention of Security Features, or (b) Be Able to Reload Paper and Ink with Minimal Disruption to Voting and Without Circumvention of Security Features such as Seals

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.2.4 Vendor Documentation Shall Include Procedures for Investigating and Resolving Printer Malfunctions Including but Not Limited to Printer Operations, Misreporting of Votes, Unreadable Paper Records, and Power Failures

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.2.5 Vendor Documentation Shall Include Printer Reliability Information Including Mean Time Between Failure Information and Shall Include Recommendations for Appropriate Numbers of Backup Printer and Printer Supplies

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.3 Protective Coverings Intended to be Transparent on Voting Station Devices Shall be Maintainable via a Predefined Cleaning Process. If The Coverings Become Damaged Such That They Obscure the Paper Record, They Shall be Replaceable

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

7.1.4 The Paper Record Shall be Sturdy, Clean, and of Sufficient Durability to be Used for Verifications, Reconciliations, and Recounts Conducted Manually and via Machine Reading Equipment

V	Voting System Vendor	
~~Pre-Voting~~	Voting	~~Post-Voting~~

3. Wireless Requirements (Normative)

This section provides wireless requirements for implementing and using wireless capabilities within a voting system. These requirements reduce, but don't eliminate, the risk of using wireless communications for voting systems.

Wireless is defined as any means of communication that occurs without wires. This normally covers the entire electromagnetic spectrum. For the purposes of this section wireless includes radio frequency (RF), infrared, (IR), and microwave.

Since the wireless communications path on which the signals travel is via the air and not via a wire or cable, devices other than those intended to receive the wireless signal (e.g., voting data) can receive (intentionally and unintentionally) the wireless signals. Some of the wireless communications paths (i.e., signals) are weakened by walls and distance, but are not stopped. This makes it possible to eavesdrop from a distance as well as transmit wireless signals (e.g., interference or intrusive data) from a distance. In many cases the wireless signals cannot be seen, heard, or felt, thus making the presence of wireless communication hard to determine by the human senses. The use of wireless technology introduces severe risk and should be approached with extreme caution. The requirements in this section (i.e., controlling and identifying usage, protecting the transmitted data and path, and protecting the system) mitigate these risks.

The requirements that are applicable to all types of wireless communications are presented, followed by requirements that are applicable to a specific part of the electromagnetic spectrum (e.g., audible, radio frequency, and infrared). These latter requirements only apply to systems using those parts of the spectrum.

There are other concerns when evaluating wireless usage, specifically radio frequency. A device's radio frequencies usage and the power output are governed by Federal Communications Commission (FCC) regulations and therefore all RF wireless communications devices are subject to the applicable FCC requirements. However, these FCC regulations do not fully address RF wireless interference caused by multiple FCC compliant devices. That is, the RF wireless used in a voting system may be using the same RF wireless of another non-voting wireless system and which may potentially cause a degradation of the wireless performance or a complete wireless failure for the voting system. Sometimes a particular wireless technology permits a power output range, which may be used to overcome interference received from another device. A radio emissions site test can determine the extent of potential existing interference at the location where the wireless voting system is to be used. A radio emission site test can also determine the extent that the RF wireless transmission of the voting system escapes the building in which the RF wireless voting system is used.

1. Relationship to Volume I, Section 5: "Telecommunications"

1.1 At a Minimum Wireless Communications Shall Meet the Requirements Listed in Volume I, Section 5, "Telecommunications"

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

2. Controlling Usage

2.1 If Wireless Communications Are Used in a Voting System, Then the Vendor Shall Supply Documentation Describing How to Use All Aspects of Wireless Communications in a Secure Manner

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

2.1.1 This documentation shall include:

- A complete description of the uses of wireless in the voting system including descriptions of the data elements and signals that are to be carried by the wireless mechanism,
- A complete description of the vulnerabilities associated with this proposed use of wireless, including vulnerabilities deriving from the insertion, deletion, modification, capture, or suppression of wireless messages,
- A complete description of the techniques used to mitigate the risks associated with the described

vulnerabilities including techniques used by the vendor to ensure that wireless cannot send or receive messages other than those situations specified in the documentation. Cryptographic techniques shall be carefully and fully described, including a description of cryptographic key generation, management, use, certification, and destruction, and

- A rationale for the inclusion of wireless in the proposed voting system, based on a careful and complete description of the perceived advantages and disadvantages of using wireless for the documented uses compared to using non-wireless approaches.

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: In general, convenience is not a sufficiently compelling reason, on its own, to justify the inclusion of wireless communications in a voting system. If convenience is cited as an advantage of wireless, it shall be balanced against the difficulty of working with cryptographic keys.

[Best Practice for Voting Officials] When using encryption to ensure that the wireless communication is secure, appropriate procedures are needed for cryptographic key management.

2.1.2 The Details of All Cryptographic Protocols Used for Wireless Communications, Including the Specific Features and Data, Shall be Documented

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

2.1.3 The Wireless Documentation Shall be Closely Reviewed for Accuracy, Completeness, and Correctness

T	Testing Authority	
Pre-Voting	~~Voting~~	~~Post-Voting~~

2.1.3.1 This Review Shall be Done Either Through an Open and Public Review or by a Subject Area Recognized Expert

T	Testing Authority	
Pre-Voting	~~Voting~~	~~Post-Voting~~

2.1.4 There Shall be No Undocumented Use of the Wireless Capability, Nor Shall There be Any Use of the Wireless Capability That Is Not Entirely Controlled by the Voting Official

T	Testing Authority	
Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: This can be tested by reviewing all of the software, hardware, and documentation and by testing the status of wireless activity during all phases of testing.

2.2 If a Voting System Includes Wireless Capabilities, Then the Voting System Should be Able to Accomplish the Same Function if Wireless Capabilities are Not Available Due to an Error or No Service

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

2.2.1 The Vendor Shall Provide Documentation How to Accomplish These Functions When Wireless Is Not Available

V	Voting System Vendor	
Pre-Voting	Voting	~~Post-Voting~~

2.3 The System Shall be Designed and Configured Such That it Is Not Vulnerable to a Single Point of Failure Using Wireless Communications That Causes a Total Loss of Any of Voting Capabilities

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

Discussion: Rewritten from Volume 1, Section 5.2.6 Integrity item (c)

2.4 If a Voting System Includes Wireless Capabilities, Then the System Shall Have the Ability to Turn on the Wireless Capability When it is to be Used and to Turn Off the Wireless Capability When the Wireless Capability is Not in Use

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

2.5 If a Voting System Includes Wireless Capabilities, Then the System Shall Not Activate the Wireless Capabilities without Confirmation From a Voting Official

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

3. Identifying Usage

Since there are a wide variety of wireless technologies (both standard and proprietary) and differing physical properties of wireless signals, it is important to identify some of the characteristics of the wireless technologies used in the voting system

3.1 If a Voting System Provides Wireless Communications Capabilities, Then There Shall be a Method for Determining the Existence of the Wireless Communications Capabilities

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

3.2 If a Voting System Provides Wireless Communications Capabilities, Then There Shall be An Indication that Allows One to Determine When the Wireless Communications (e.g., Radio Frequencies) Capability is Active

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

3.2.1 The Indication Should be Visual

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

3.3 If a Voting System Provides Wireless Communications Capabilities, Then the Type of Wireless Communications Used (e.g., Radio Frequencies) Shall be Identified Either via a Label or via the Voting Systems Documentation

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

4. Protecting the Transmitted Data

The transmitted data, especially via wireless communications, needs to be protected to ensure confidentiality and integrity. Examples of election information that needs to be protected

include: ballot definitions, ballot instructions (audio), voting device counts, precinct counts, opening of poll signal, and closing of poll signal.

Examples of non—specific election information that needs to be protected include: Protocol messages, address or device identification information, and passwords.

Since radio frequency wireless signals radiate in all directions and pass through most construction material, anyone may easily receive the wireless signals. In contrast, infrared signals are line of sight and do not pass through most construction materials. However to a lesser extent, infrared signals can still be received by other devices that are in the line of sight. Similarly, wireless signals can also be easily transmitted by others in order to create unwanted signals. Thus to protect the privacy and confidentiality of the information, encryption is required. The following requirements are rewritten from Volume I, Section 6.5.3.

4.1 All Information Transmitted via Wireless Communications Shall be Encrypted and Authenticated, with the Exception of Wireless T-Coil Coupling, to Protect Against Eavesdropping and Data Manipulation Including Modification, Insertion, and Deletion

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

4.1.1 The Encryption Shall be as Defined in Federal Information Processing Standards (FIPS) 197, ''Advanced Encryption Standard (AES)''

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

4.1.1.1 The Cryptographic Modules Used Shall Comply With FIPS 140–2, Security Requirements for Cryptographic Modules

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

4.1.2 The Capability to Transmit Non-Encrypted and Non-Authenticated Information via Wireless Communications Shall Not Exist

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

4.1.2.1 If Wireless Communication (Audible) is Used, and if the Receiver of the Wireless Transmission is the Human Ear, then the Information Shall Not be Encrypted (i.e., This Specifically Covers the Case of the Wireless T-Coil Coupling for Assistive Devices Used by People Who are Hard of Hearing—See Volume I, Section 2.2.7.2 DRE Standards Item C)

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

5. Protecting the Wireless Path

With the exception of wireless communications using audible and infrared, it is technically infeasible to use physical means to prevent denial of service (DoS) attacks. If wireless communications are used, then the following capabilities shall exist in order to mitigate the effects of a denial of service (DoS) attack:

5.1 The Voting System Shall be Able to Function Properly Throughout a DoS Attack, Since the DoS Attack May Continue Throughout the Voting Process.

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

5.2 The Voting System Shall Function Properly as if the Wireless Capability Were Never Available for Use

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

5.3 Alternative Procedures or Capabilities Shall Exist to Accomplish the Same Functions That the Wireless Communications Capability Would Have Done

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

5.4 The Wireless (Audible) Path Shall be Protected or Shielded

T	Testing Authority	
~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Protecting the audible path is a tradeoff between the high volume level necessary for an individual to hear with the low volume level necessary to keep others from hearing, as well as protecting from interference (i.e., noise) from the polling place, voting station, or voting environment. The same is true for the audible path if a voter's speech is to be captured by the voting device. This wireless communication's path protection is necessary to protect privacy. Some audio headsets may already satisfy this requirement for the hearing part, while a soundproof voting booth may be necessary in some other cases (e.g., voice recordings).

5.5 Infrared

Since infrared has the line-of-sight (LoS) property, securing the wireless path can be accomplished by shielding the path between the wireless communicating devices with an opaque enclosure. However this is only practical for short distances. Additionally, this type of shielding can help to prevent accidental damage to the eyes by the infrared signal.

5.5.1 The Shielding Shall be Strong Enough to Prevent Escape of the Voting System's Signal, as well as Strong Enough to Prevent Infrared Saturation Jamming

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

6. Protecting the Voting System from a Wireless-based Attack

The security of the wireless voting systems is as important as the information transmitted. If a voting system becomes compromised, there is no way to determine the harm to the system until the compromise is discovered and an investigation is conducted to determine the extent of the damage.

Physical security measures (Volume I, Section 6.3) to prohibit access to a voting system are not possible when using a wireless communications interface. This is similar to when access is through a telecommunications interface, but it is worsened by the fact that there is no wire (physical communication path) to physically secure and by the various physical properties of the electromagnetic spectrum used.

This section covers and reaffirms the applicable overall system capabilities defined in Volume I, Section 2 as well as authentication requirements.

6.1 The Security Requirements Listed in Volume I, Section 2.2.1 Shall be Applicable to Systems With Wireless Communications

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

6.2 The Accuracy Requirements Listed in Volume I, Section 2.2.2 Shall be Applicable to Systems With Wireless Communications

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

6.2.1 The Use of Wireless Communications That May Cause Impact to the System's Accuracy Through Electromagnetic Stresses Is Prohibited

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

6.3 The Error Recovery Requirements Listed in Volume I, Section 2.2.3, Shall Be Applicable to Systems With Wireless Communications

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

6.4 All Wireless Communications Actions Shall Be Logged

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

Discussion: A log of important information is maintained to monitor the wireless communications. This is to ensure that the wireless communications are only used by authorized users with authorized access to authorized devices or services, or to determine if these requirements were not followed. This relates to the system audit requirements (Volume I, Section 2.2.5) and integrity (Volume I, Section 2.2.4), if wireless communications are used.

6.4.1 The Log Shall Contain at Least the Following Entries: Times Wireless Activated and Deactivated, Services Accessed, Identification of Device to Which Data Was Transmitted to or Received From, Identification of Authorized User, and Successful and Unsuccessful Attempts To Access Wireless Communications or Service

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

Discussion: Other information such as the number of frames or packets transmitted or received at various logical layers may be useful, but is dependent on the wireless technology used.

[Best Practice for Voting Officials] Appropriate procedures are needed to ensure that wireless communication actions are logged and capture at least the following information: Times wireless activated and deactivated, services accessed, identification of device to which data was transmitted to or received from, identification of authorized user, and successful and unsuccessful attempts to access wireless communications or service.

6.5 Authentication

Authentication is an important part in the protection and security of the wireless communications. It provides a mechanism to verify the identity and legitimacy of a person, device, services, or system. Authenticating users, devices and services helps to secure the wireless communications and prevent unauthorized access to the system, services and/or information.

6.5.1 Device Authentication Shall Occur Before Any Access to or Services From the Voting System are Granted Through Wireless Communications

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

6.5.2 User Authentication Shall Be at Least Level 2 as Per NIST Special Publication 800–63 Version 1.0.1, ''Electronic Authentication Guideline.''

V	Voting System Vendor	
Pre-Voting	Voting	Post-Voting

4. Distribution of Voting System Software and Setup Validation (Normative)

This section specifies requirements for the distribution of voting system software and the setup validation performed on voting system equipment. These requirements are applicable to voting systems that have completed qualification testing. The goal of the software distribution requirements is to ensure that the correct voting system software has been distributed without modification. The goal of setup validation requirements, including requirements for verifying the presence of qualified software and the absence of other software, is to ensure that voting system equipment is in a proper initial state before being used.

In general, a voting system can be considered to be composed of multiple other systems including polling place systems, central counting/aggregation systems, and election management systems. These other systems may reside on different computer based platforms at different locations and run different software. Voting system software is considered to be all executable code and associated configuration files critical for the proper operation of the voting system regardless of the location of installation and functionality provided. This includes third party software such as operating systems, drivers, etc.

1. Software Distribution Methodology Requirements

1.1 The Vendor Shall Document All Software Including Voting System Software, Third Party Software (Such as Operating Systems, Drivers, etc.) To Be Installed on Voting Equipment of the Qualified Voting System, and Installation Programs

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

1.1.1 The Documentation Shall Have a Unique Identifier (Such as a Serial Number) for the Following Set of Information: Documentation, Software Vendor Name, Product Name, Version, Qualification Number of the Voting System, File Names and Paths or Other Location Information (Such as Storage Addresses) of the Software

V	Voting System Vendor	
Pre-Voting	~~Voting~~	~~Post-Voting~~

1.1.2 The Documentation Shall Designate All Software Files as Static, Semi-Static, or Dynamic

V Voting System Vendor

Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: Static voting system software such as executable code does not change based on the election being conducted or the voting equipment upon which it is installed. Semi-static voting system software contains configuration information for the voting system based on the voting equipment that is installed and the election being conducted. Semi-static software is only modified during the installation of (a) the voting system software on voting equipment or (b) the election specific software such as ballot formats. Dynamic voting system software changes over time once installed on voting equipment. However, the specific time or value of the change in the dynamic software is usually unknown a priori making it impossible to create reference information to verify the software.

1.2 The EAC Accredited Testing Authority Shall Witness the Final Build of the Executable Version of the Qualified Voting System Software Performed by the Vendor

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.2.1 The Testing Authority Shall Create a Complete Record of the Build That Includes: A Unique Identifier (Such as a Serial Number) for the Complete Record, List of Unique Identifiers of Write-Once Media Associated with the record, Time, Date, Location, Name and Signatures of All People Present, Source Code and Resulting Executable File Names, Version of Voting System Software, Qualification Number of the Voting System, the Name and Versions of All (Including Third Party) Libraries, and the Name, Version, and Configuration Files of the Development Environment Used for the Build

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.2.2 The Record of the Source Code and Executable Files Shall be Made on Write-Once Media. Each Piece of Write-Once Media Shall Have a Unique Identifier

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: Write-once media includes technology such as a CD–R, ROM, or PROM (but not EEPROM or CD–RW). The unique identifiers appear on indelibly printed labels and in a digitally signed file on the write-once media.

1.2.3 The Testing Authority Shall Retain This Record Until the Voting System Ceases to be Qualified

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.2.4 The EAC Accredited Testing Authority Shall Create a Subset of the Complete Record of the Build That Includes a Unique Identifier (Such as a Serial Number) of the Subset, the Unique Identifier of the Complete Record, List of Unique Identifiers of Write-Once Media Associated With the Subset, Vendor, Product Name, Version of Voting System Software, Qualification Number of the Voting System, All the Files That Resulted from the Build and Binary Images of All Installation Programs

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.2.5 The Record of the Software Shall be Made on Write-Once Media. Each Piece of Write-Once Media Shall Have a Unique Identifier

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.2.6 The Testing Authority Shall Retain a Copy, Send a Copy to the Vendor, and Send a Copy to the NIST National Software Reference Library (NSRL) [1] and/or to Any Other Repository Named by the Election Assistance Commission

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

Discussion: The NSRL was established to meet the needs of the law enforcement community for court admissible digital evidence by providing an authoritative source of commercial software reference information. Information is available at *www.nsrl.nist.gov.*

1.2.7 The Testing Authority Shall Retain This Record Until the Voting System Ceases to be Qualified

T Testing Authority

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.3 The Vendor Shall Provide the NSRL or Other EAC Designated Repository With a Copy of All Third Party Software

V Voting System Vendor

Pre-Voting	~~Voting~~	~~Post-Voting~~

1.4 All Voting System Software, Installation Programs, Third Party Software (Such as Operating Systems, Drivers, etc.) Used to Install or to be Installed on Voting System Equipment Shall be Distributed on a Write-Once Media

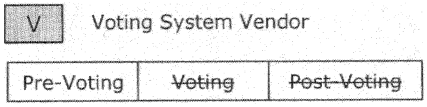
V Voting System Vendor

Pre-Voting	~~Voting~~	~~Post-Voting~~

[Best Practice for Voting Officials] Voting software used to install the qualified voting systems can be obtained on write-once media from the voting system vendor or an EAC accredited testing authority.

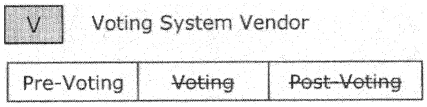
[1] The National Software Reference Library (NSRL) is a repository of software established and directed by the National Institute of Standards and Technology. It was designed to meet the need for court admissible evidence in the identification of software files. The EAC designated the NSRL as a repository for voting system software.

1.4.1 The Vendor Shall Document That the Process Used to Verify the Software Distributed on Write-Once Media is the Qualified Software by Using the Reference Information Provided by the NSRL or Other EAC Designated Repository

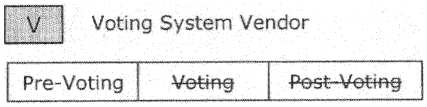


[Best Practice for Voting Officials] The reference information produced by the NSRL or other EAC designated repository can be used to verify that the correct software has been received.

1.4.2 The Voting System Equipment Shall be Designed to Allow the Voting System Administrator to Verify That the Software is the Qualified Software by Comparing it to Reference Information Produced by the NSRL or Other EAC Designated Repository Before Installing the Software

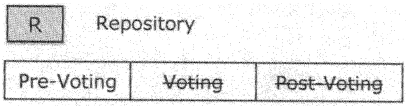


1.4.3 The Vendors and Testing Authority Shall Document to Whom They Provide Voting System Software Write-Once Media

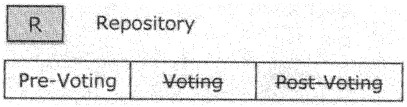


2. Generation and Distribution Requirements for Reference Information

2.1 The NSRL or Other EAC Designed Repository Shall Generate Reference Information Using the Binary Images of the (a) Qualified Voting System Software Received on Write-Once Media From Testing Authorities and (b) Election Specific Software Received on Write-Once Media From Jurisdictions

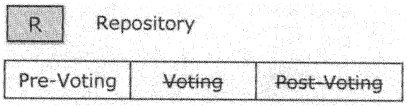


2.1.1 The NSRL or Other EAC Designed Repository Shall Generate Reference Information in at Least One of the Following Forms: (a) Complete Binary Images, (b) Cryptographic Hash Values, or (c) Digital Signatures of the Software

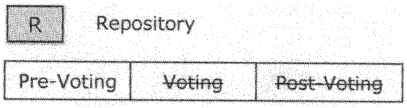


Discussion: Although binary images, cryptographic hashes, and digital signatures can detect a modification or alteration in the software, they cannot determine if the change to the software was accidental or intentional.

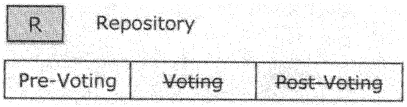
2.1.1.1 The NSRL or Other EAC Designated Repository Shall Create a Record of the Creation of Reference Information That Includes: A Unique Identifier (Such as a Serial Number) for the Record, File Names of Software and Associated Unique Identifier(s) of the Write-Once Media From Which Reference Information is Generated, Time, Date, Name of People Who Generated Reference Information, the Type of Reference Information Created, Qualification Number of Voting System (If Issued), Voting System Software Version, Product Name, and Vendor



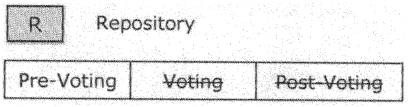
2.1.1.2 The NSRL or Other EAC Designated Repository Shall Retain the Write-Once Media Used to Generate the Reference Information Until the Voting System Ceases to be Qualified



2.1.1.3 The NSRL or Other EAC Designated Repository That Generates Hash Value and/or Digital Signature Reference Information Shall Use FIPS Approved Algorithms for Hashing and Signing

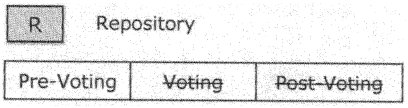


2.1.1.4 The NSRL or Other EAC Designated Repository That Generates Hash Values, Digital Signatures Reference Information, or Cryptographic Keys Shall Use a FIPS 140–2 Level 1 or Higher Validated Cryptographic Module



Discussion: *See http://www.csrc.nist.gov/cryptval/* for information on FIPS 140–2.

2.1.1.5 The NSRL or Other EAC Designated Repository That Generates Sets of Hash Values and Digital Signatures for Reference Information Shall Include a Hash Value or Digital Signature Covering the Set of Reference Information



6.1 Scope

This section describes essential security capabilities for a voting system, encompassing the system's hardware, software, communications, and documentation. The Standards recognize that no predefined set of security standards will address and defeat all conceivable or theoretical threats. However, the Standards articulate requirements to achieve acceptable levels of integrity, reliability, and inviolability. Ultimately, the objectives of the security standards for voting systems are:

- To establish and maintain controls that can ensure that accidents, inadvertent mistakes, and errors are minimized,
- To protect the system from intentional manipulation and fraud, and from malicious mischief,
- To identify fraudulent or erroneous changes to the system, and
- To protect secrecy in the voting process.

The Standards are intended to address a broad range of risks to the integrity of a voting system. While it is not possible to identify all potential risks, the Standards identify several types of risk that must be addressed by a voting system. These include:

- Unauthorized changes to system capabilities for:
- Defining ballot formats,
- Casting and recording votes,
- Calculating vote totals consistent with defined ballot formats, and
- Reporting vote totals,

• Alteration of voting system audit trails,
• Changing, or preventing the recording of, a vote,
• Introducing data for a vote not cast by a registered voter,
• Changing calculated vote totals,
• Preventing access to vote data, including individual votes and vote totals, to unauthorized individuals, and
• Preventing access to voter identification data and data for votes cast by the voter such that an individual can determine the content of specific votes cast by the voter.

This section describes specific capabilities that vendors shall integrate into a voting system in order to address the risks listed above.

6.1.1 System Components and Sources

The requirements of this section apply to the broad range of hardware, software, communications components, and documentation that comprises a voting system. These requirements apply to components:
• Provided by the voting system vendor and the vendor's suppliers,
• Furnished by an external provider (for example providers of personal computers and commercial off-the-shelf (COTS) operating systems) where the components are capable of being used during voting system operation, and
• Developed by a voting jurisdiction.

6.1.2 Location and Control of Software and Hardware on Which It Operates

The requirements of this section apply to all software used in any manner to support any voting-related activity, regardless of the ownership of the software or the ownership and location of the hardware on which the software is installed or operated. These requirements apply to software that operates on:
• Voting devices and vote counting devices installed at polling places under the control or authority of the voting jurisdiction, and
• Ballot printers, vote counting devices, and other hardware typically installed at central or precinct locations (including contractor facilities).

However, some requirements are applicable only in circumstances specified by this section.

6.1.3 Elements of Security Outside Vendor Control

The requirements of this section apply to the capabilities of a voting system provided by the vendor. The Standards recognizes that effective security requires safeguards beyond those provided by the vendor. Effective security demands diligent security practices by the purchasing jurisdiction and the jurisdictions representatives. These practices include:
• Administrative and management controls for the voting system and election management, including access controls,
• Internal security procedures,
• Adherence to, and enforcement of, operational procedures (e.g., effective password management),
• Security of physical facilities, and
• Organizational responsibilities and personnel screening.

Because specific standards for these elements are not under the direct control of the vendor, they will be addressed in forthcoming Operational Guidelines that address best practices for jurisdictions conducting elections and managing the operation of voting systems.

6.1.4 Organization of this Section

The standards presented in this section are organized as follows:
• *Access Control:* These standards addresses procedures and system capabilities that limit or detect access to critical system components in order to guard against loss of system integrity, availability, confidentiality, and accountability.
• *Equipment and Data Security:* These standards address physical security measures and procedures that prevent disruption of the voting process at the poll site and corruption of voting data.
• *Software Security:* These standards address the installation of software, including firmware, in the voting system and the protection against malicious software.
• *Telecommunication and Data Transmission:* These standards address security for the electronic transmission of data between system components or locations over both private and public networks
• *Security for Transmission of Official Data Over Public Communications Networks:* These standards address security for systems that communicate individual votes or vote totals over public communications networks.

It should be noted that computer-generated audit controls facilitate system security and are an integral part of software capability. These audit requirements are presented in section 4.

6.2 Access Control

Access controls are procedures and system capabilities that detect or limit access to system components in order to guard against loss of system integrity, availability, confidentiality, and accountability. Access controls provide reasonable assurance that system resources such as data files, application programs, and computer-related facilities and equipment are protected against unauthorized operation, modification, disclosure, loss, or impairment. Unauthorized operations include modification of compiled or interpreted code, run-time alteration of flow control logic or of data, and abstraction of raw or processed voting data in any form other than a standard output report by an authorized operator.

Access controls may include physical controls, such as keeping computers in locked rooms to limit physical access, and technical controls, such as security software programs designed to prevent or detect unauthorized access to sensitive files. The access controls contained in this section of the Standards are limited to those controls required of system vendors. Access controls required of jurisdictions will be addressed in future documents detailing operational guidelines for jurisdictions.

6.2.1 Access Control Policy

The vendor shall specify the general features and capabilities of the access control policy recommended to provide effective voting system security.

6.2.1.1 General Access Control Policy

Although the jurisdiction in which the voting system is operated is responsible for determining the access policies applying to each election, the vendor shall provide a description of recommended policies for:
a. Software access controls,
b. Hardware access controls,
c. Communications,
d. Effective password management,
e. Protection abilities of a particular operating system,
f. General characteristics of supervisory access privileges,
g. Segregation of duties, and
h. Any additional relevant characteristics.

6.2.1.2 Individual Access Privileges

Voting system vendors shall:
a. Identify each person to whom access is granted, and the specific functions and data to which each person holds authorized access,
b. Specify whether an individual's authorization is limited to a specific time, time interval, or phase of the voting or counting operations, and
c. Permit the voter to cast a ballot expeditiously, but preclude voter access to all other aspects of the vote-counting processes.

6.2.2 Access Control Measures

Vendors shall provide a detailed description of all system access control measures designed to permit authorized access to the system and prevent unauthorized access. Examples of such measures include:

a. Use of data and user authorization,

b. Program unit ownership and other regional boundaries,

c. One-end or two-end port protection devices,

d. Security kernels,

e. Computer-generated password keys,

f. Special protocols,

g. Message encryption, and

h. Controlled access security.

Vendors also shall define and provide a detailed description of the methods used to prevent unauthorized access to the access control capabilities of the system itself.

6.3 Physical Security Measures

A voting system's sensitivity to disruption or corruption of data depends, in part, on the physical location of equipment and data media, and on the establishment of secure telecommunications among various locations. Most often, the disruption of voting and vote counting results from a physical violation of one or more areas of the system thought to be protected. Therefore, security procedures shall address physical threats and the corresponding means to defeat them.

6.3.1 Polling Place Security

For polling place operations, vendors shall develop and provide detailed documentation of measures to anticipate and counteract vandalism, civil disobedience, and similar occurrences. The measures shall:

a. Allow the immediate detection of tampering with vote casting devices and precinct ballot counters, and

b. Control physical access to a telecommunications link if such a link is used.

6.3.2 Central Count Location Security

Vendors shall develop and document in detail the measures to be taken in a central counting environment. These measures shall include physical and procedural controls related to the:

a. Handling of ballot boxes,

b. Preparing of ballots for counting,

c. Counting operations, and

d. Reporting data.

6.4 Software Security

Voting systems shall meet specific security requirements for the installation of software and for protection against malicious software.

6.4.1 Software and Firmware Installation

The system shall meet the following requirements for installation of software, including hardware with embedded firmware:

a. If software is resident in the system as firmware, the vendor shall require and state in the system documentation that every device is to be retested to validate each ROM prior to the start of elections operations,

b. To prevent alteration of executable code, no software shall be permanently installed or resident in the system unless the system documentation states that the jurisdiction must provide a secure physical and procedural environment for the storage, handling, preparation, and transportation of the system hardware,

c. The system bootstrap, monitor, and device-controller software may be resident permanently as firmware, provided that this firmware has been shown to be inaccessible to activation or control by any means other than by the authorized initiation and execution of the vote-counting program, and its associated exception handlers,

d. The election-specific programming may be installed and resident as firmware, provided that such firmware is installed on a component (such as computer chip) other than the component on which the operating system resides; and

e. After initiation of election day testing, no source code or compilers or assemblers shall be resident or accessible.

6.4.2 Protection Against Malicious Software

Voting systems shall deploy protection against the many forms of threats to which they may be exposed such as file and macro viruses, worms, Trojan horses, and logic bombs. Vendors shall develop and document the procedures to be followed to ensure that such protection is maintained in a current status.

6.5 Telecommunications and Data Transmission

There are four areas that must be addressed by telecommunications and data transmission security capabilities:

- Access control for telecommunications capabilities,
- Data integrity,
- Detection and prevention of data interception, and
- Protection against external threats to which commercial products used by a voting system may be susceptible.

6.5.1 Access Control

Voting systems that use telecommunications to communicate between system components and locations are subject to the same security requirements governing access to any other system hardware, software, and data function.

6.5.2 Data Integrity

Voting systems that use electrical or optical transmission of data shall ensure the receipt of valid vote records is verified at the receiving station. This should include standard transmission error detection and correction methods such as checksums or message digest hashes. Verification of correct transmission shall occur at the voting system application level and ensure that the correct data is recorded on all relevant components consolidated within the polling place prior to the voter completing casting of his or her ballot.

6.5.3 Data Interception Prevention

Voting systems that use telecommunications as defined in Section 5 to communicate between system components and locations before the poll site is officially closed shall:

a. Implement an encryption standard currently documented and validated for use by an agency of the U.S. Federal Government; and

b. Provide a means to detect the presence of an intrusive process, such as an Intrusion Detection System.

6.5.4 Protection Against External Threats

Voting systems that use public telecommunications networks shall implement protections against external threats to which commercial products used in the system may be susceptible.

6.5.4.1 Identification of COTS Products

Voting systems that use public telecommunications networks shall provide system documentation that clearly identifies all COTS hardware and software products and communications services used in the development and/or operation of the voting system, including:

a. Operating systems,

b. Communications routers,

c. Modem drivers, and

d. Dial-up networking software.

Such documentation shall identify the name, vendor, and version used for each such component.

6.5.4.2 Use of Protective Software

Voting systems that use public telecommunications networks shall use

protective software at the receiving-end of all communications paths to:

a. Detect the presence of a threat in a transmission,

b. Remove the threat from infected files/data,

c. Prevent against storage of the threat anywhere on the receiving device,

d. Provide the capability to confirm that no threats are stored in system memory and in connected storage media, and

e. Provide data to the system audit log indicating the detection of a threat and the processing performed.

Vendors shall use multiple forms of protective software as needed to provide capabilities for the full range of products used by the voting system.

6.5.4.3 Monitoring and Responding to External Threats

Voting systems that use public telecommunications networks may become vulnerable, by virtue of their system components, to external threats to the accuracy and integrity of vote recording, vote counting, and vote consolidation and reporting processes. Therefore, vendors of such systems shall document how they plan to monitor and respond to known threats to which their voting systems are vulnerable. This documentation shall provide a detailed description, including scheduling information, of the procedures the vendor will use to:

a. Monitor threats, such as through the review of assessments, advisories, and alerts for COTS components issued by the Computer Emergency Response Team (CERT), for which a current listing can be found at *http://www.cert.org,* the National Infrastructure Protection Center (NIPC), for which a current listing can be found at *http://www.nipc.gov/warnings/warnings.htm,* and the Federal Computer Incident Response Capability (FedCIRC), for which additional information can be found at *http://www.fedcirc.gov/,*

b. Evaluate the threats and, if any, proposed responses,

c. Develop responsive updates to the system and/or corrective procedures,

d. Submit the proposed response to the ITAs and appropriate states for approval, identifying the exact changes and whether or not they are temporary or permanent,

e. After implementation of the proposed response is approved by the state, assist clients, either directly or through detailed written procedures, how to update their systems and/or to implement the corrective procedures no later than one month before an election, and

f. Address threats emerging too late to correct the system at least one month before the election, including:

(1) Providing prompt, emergency notification to the ITAs and the affected states and user jurisdictions,

(2) Assisting client jurisdictions directly, or advising them through detailed written procedures, to disable the public telecommunications mode of the system, and

(3) After the election, modifying the system to address the threat, submitting the modified system to an ITA and appropriate state certification authority for approval, and assisting client jurisdictions directly, or advising them through detailed written procedures, to update their systems and/or to implement the corrective procedures after approval.

6.5.5 Shared Operating Environment

Ballot recording and vote counting can be performed in either a dedicated or non-dedicated environment. If ballot recording and vote counting operations are performed in an environment that is shared with other data processing functions, both hardware and software features shall be present to protect the integrity of vote counting and of vote data. Systems that use a shared operating environment shall:

a. Use security procedures and logging records to control access to system functions,

b. Partition or compartmentalize voting system functions from other concurrent functions at least logically, and preferably physically as well,

c. Controlled system access by means of passwords, and restriction of account access to necessary functions only, and

d. Have capabilities in place to control the flow of information, precluding data leakage through shared system resources.

6.5.6 Access to Incomplete Election Returns and Interactive Queries

If the voting system provides access to incomplete election returns and interactive inquiries before the completion of the official count, the system shall:

a. For equipment that operates in a central counting environment, be designed to provide external access to incomplete election returns only if that access for these purposes is authorized by the statutes and regulations of the using agency. This requirement applies as well to polling place equipment that contains a removable memory module, or that may be removed in its entirety to a central place for the consolidation of polling place returns.

b. Use voting system software and its security environment designed such that data accessible to interactive queries resides in an external file, or database, that is created and maintained by the elections software under the restrictions applying to any other output report, namely, that:

(1) The output file or database has no provision for write-access back to the system.

(2) Persons whose only authorized access is to the file or database are denied write-access, both to the file or database, and to the system.

6.6 Security for Transmission of Official Data Over Public Communications Networks

DRE systems that transmit data over public telecommunications networks face security risks that are not present in other DRE systems. This section describes standards applicable to DRE systems that use public telecommunications networks.

6.6.1 General Security Requirements for Systems Transmitting Data Over Public Networks

All systems that transmit data over public telecommunications networks shall:

a. Preserve the secrecy of a voter's ballot choices, and prevent anyone from violating ballot privacy,

b. Employ digital signature for all communications between the vote server and other devices that communicate with the server over the network, and

c. Require that at least two authorized election officials activate any critical operation regarding the processing of ballots transmitted over a public communications network takes place, i.e. the passwords or cryptographic keys of at least two employees are required to perform processing of votes.

6.6.2 Voting Process Security for Casting Individual Ballots over a Public Telecommunications Network

Systems designed for transmission of telecommunications over public networks shall meet security standards that address the security risks attendant with the casting of ballots from poll sites controlled by election officials using voting devices configured and installed by election officials and/or their vendor or contractor, and using in-person authentication of individual voters.

6.6.2.1 Documentation of Mandatory Security Activities

Vendors of systems that cast individual ballots over a public

telecommunications network shall provide detailed descriptions of:

a. All activities mandatory to ensuring effective system security to be performed in setting up the system for operation, including testing of security before an election; and

b. All activities that should be prohibited during system setup and during the time frame for voting operations, including both the hours when polls are open and when polls are closed.

6.6.2.2 Capabilities to Operate During Interruption of Telecommunications Capabilities

These systems shall provide the following capabilities to provide resistance to interruptions of telecommunications service that prevent voting devices at the poll site from communicating with external components via telecommunications:

a. Detect the occurrence of a telecommunications interruption at the poll site and switch to an alternative mode of operation that is not dependent on the connection between poll site voting devices and external system components,

b. Provide an alternate mode of operation that includes the functionality of a conventional DRE machine without losing any single vote,

c. Create and preserve an audit trail of every vote cast during the period of interrupted communication and system operation in conventional DRE system mode,

d. Upon reestablishment of communications, transmit and process votes accumulated while operating in conventional DRE system mode with all security safeguards in effect, and

e. Ensure that all safeguards related to voter identification and authentication are not affected by the procedures employed by the system to counteract potential interruptions of telecommunications capabilities.

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7 Quality Assurance

7.1 Scope

Quality Assurance provides continuous confirmation that a voting system conforms with the Standards and to the requirements of state and local jurisdictions. Quality Assurance is a vendor function with associated practices that is initiated prior to system development and continues throughout the maintenance life cycle of the voting system. Quality Assurance focuses on building quality into a system and reducing dependence on system tests at the end of the life cycle to detect deficiencies, thus helping ensure the system:

- Meets stated requirements and objectives;
- Adheres to established standards and conventions;
- Functions consistent with related components and meets dependencies for use within the jurisdiction; and
- Reflects all changes approved during its initial development, internal testing, qualification, and, if applicable, additional certification processes.

7.2 General Requirements

The voting system vendor is responsible for designing and implementing a quality assurance program to ensure that the design, workmanship, and performance requirements of this standard are achieved in all delivered systems and components. At a minimum, this program shall:

a. Include procedures for specifying, procuring, inspecting, accepting, and controlling parts and raw materials of the requisite quality;

b. Require the documentation of the hardware and software development process;

c. Identify and enforce all requirements for:

(1) In-process inspection and testing that the manufacturer deems necessary to ensure proper fabrication and assembly of hardware, and

(2) Installation and operation of software (including firmware).

d. Include plans and procedures for post-production environmental screening and acceptance test; and

e. Include a procedure for maintaining all data and records required to document and verify the quality inspections and tests.

7.3 Components from Third Parties

A vendors who does not manufacture all the components of its voting system, but instead procures components as standard commercial items for assembly and integration into a voting system, should verify that the supplier vendors follow documented quality assurance procedures that are at least as stringent as those used internally by the voting system vendor.

7.4 Responsibility for Tests

The manufacturer or vendor shall be responsible for:

a. Performing all quality assurance tests;

b. Acquiring and documenting test data; and

c. Providing test reports for review by the ITA, and to the purchaser upon request.

7.5 Parts & Materials Special Tests and Examinations

In order to ensure that voting system parts and materials function properly, vendors shall:

a. Select parts and materials to be used in voting systems and components according to their suitability for the intended application. Suitability may be determined by similarity of this application to existing standard practice, or by means of special tests;

b. Design special tests, if needed, to evaluate the part or material under conditions accurately simulating the actual operating environment; and

c. Maintain the resulting test data as part of the quality assurance program documentation.

7.6 Quality Conformance Inspections

The vendor performs conformance inspections to ensure the overall quality of the voting system and components delivered to the ITA for testing and to the jurisdiction for implementation. To meet the conformance inspection requirements the vendor or manufacturer shall:

a. Inspect and test each voting system or component to verify that it meets all inspection and test requirements for the system; and

b. Deliver a record of tests, or a certificate of satisfactory completion, with each system or component.

7.7 Documentation

Vendors are required to produce documentation to support the development and formal testing of voting systems. To meet documentation requirements, vendors shall provide complete product documentation with each voting systems or components, as described Volume II, Section 2 for the TDP. This documentation shall:

a. Be sufficient to serve the needs of the ITA, voters, election officials, and maintenance technicians;

b. Be prepared and published in accordance with standard industrial practice for information technology and electronic and mechanical equipment; and

c. Consist, at a minimum, of the following:

(1) System overview;

(2) System functionality description;
(3) System hardware specification;
(4) Software design and specifications;
(5) System security specification;
(6) System test and verification specification;
(7) System operations procedures;
(8) System maintenance procedures;
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8 Configuration Management

8.1 Scope

This section contains specific requirements for configuration management of voting systems. For the purpose of the Standards, configuration management is defined as a set of activities and associated practices that ensures full knowledge and control of the components of a system, starting with its initial development and progressing through its ongoing maintenance and enhancement. This section describes activities in terms of their purposes and outcomes. It does not describe specific procedures or steps to be employed to accomplish them. Specific steps and procedures are left to the vendor to select.

Vendors are required to submit these procedures to the Independent Test Authority (ITA) as part of the Technical Data Package (TDP) for system qualifications described in Volume II, Voting Systems Qualification Testing Standards, for review against the requirements of this section. Additionally, state or local election legislation, regulations, or contractual agreements may require the vendor to conform to additional standards for configuration management or to adopt specific required procedures. Further, authorized election officials or their representatives reserve the right to inspect vendor facilities and operations to determine conformance with the vendor's reported procedures and with any additional requirements.

8.1.1 Configuration Management Requirements

Configuration management addresses a broad set of recordkeeping, audit, and reporting activities that contribute to full knowledge and control of a system and its components. These activities include:

- Identifying discrete system components;
- Creating records of a formal baseline and later versions of components;
- Controlling changes made to the system and its components;
- Releasing new versions of the system to ITAs;
- Releasing new versions of the system to customers;
- Auditing the system, including its documentation, against configuration management records;
- Controlling interfaces to other systems; and
- Identifying tools used to build and maintain the system.

8.1.2 Organization of Configuration Management Standards

The standards for configuration management presented in this section include:

- Application of configuration management requirements;
- Configuration management policy;
- Configuration identification;
- Baseline, promotion, and demotion procedures;
- Configuration control procedures;
- Release process;
- Configuration audits; and
- Configuration management resources.

8.1.3 Application of Configuration Management Requirements

Requirements for configuration management apply regardless of the specific technologies employed to all voting systems subject to the Standards. These system components include:

a. Software components;
b. Hardware components;
c. Communications components;
d. Documentation;
e. Identification and naming and conventions (including changes to these conventions) for software programs and data files;
f. Development and testing artifacts such as test data and scripts; and
g. File archiving and data repositories.

8.2 Configuration Management Policy

The vendor shall describe its policies for configuration management in the TDP. This description shall address the following elements:

a. Scope and nature of configuration management program activities; and
b. Breadth of application of the vendor's policies and practices to the voting system (i.e., extent to which policies and practices apply to the total system, and extent to which policies and practices of suppliers apply to particular components, subsystems, or other defined system elements.

8.3 Configuration Identification

Configuration identification is the process of identifying, naming, and acquiring configuration items. Configuration identification encompasses all system components.

8.3.1 Structuring and Naming Configuration Items

The vendor shall describe the procedures and conventions used to:

a. Classify configuration items into categories and subcategories;
b. Uniquely number or otherwise identify configuration items; and
c. Name configuration items;

8.3.2 Versioning Conventions

When a system component is used to identify higher-level system elements, a vendor shall describe the conventions used to:

a. Identify the specific versions of individual configuration items and sets of items that are used by the vendor to identify higher level system elements such as subsystems;
b. Uniquely number or otherwise identify versions; and
c. Name versions.

8.4 Baseline, Promotion, and Demotion Procedures

The vendor shall establish formal procedures and conventions for establishing and providing a complete description of the procedures and related conventions used to:

a. Establish a particular instance of a component as the starting baseline;
b. Promote subsequent instances of a component to baseline status as development progresses through to completion of the initial completed version released to the ITAs for qualification testing; and
c. Promote subsequent instances of a component to baseline status as the component is maintained throughout its life cycle until system retirement (i.e., the system is no longer sold or maintained by the vendor).

8.5 Configuration Control Procedures

Configuration control is the process of approving and implementing changes to a configuration item to prevent unauthorized additions, changes, or deletions. The vendor shall establish such procedures and related conventions, providing a complete description of those procedures used to:

a. Develop and maintain internally developed items;

b. Acquire and maintain third-party items;

c. Resolve internally identified defects for items regardless of their origin; and

d. Resolve externally identified and reported defects (i.e., by customers and ITAs).

8.6 Release Process

The release process is the means by which the vendor installs, transfers, or migrates the system to the ITAs and, eventually, to its customers. The vendor shall establish such procedures and related conventions, providing a complete description of those used to:

a. Perform a first release of the system to an ITA;

b. Perform a subsequent maintenance or upgrade release of the system, or a particular components, to an ITA;

c. Perform the initial delivery and installation of the system to a customer, including confirmation that the installed version of the system matches exactly the qualified system version; and

d. Perform a subsequent maintenance or upgrade release of the system, or a particular component, to a customer, including confirmation that the installed version of the system matches exactly the qualified system version.

8.7 Configuration Audits

The Standards require two types of configuration audits: Physical Configuration Audits (PCA) and Functional Configuration Audits (FCA).

8.7.1 Physical Configuration Audit

The PCA is conducted by the ITA to compare the voting system components submitted for qualification to the vendor's technical documentation. For the PCA, a vendor shall provide:

a. Identification of all items that are to be a part of the software release;

b. Specification of compiler (or choice of compilers) to be used to generate executable programs;

c. Identification of all hardware that interfaces with the software;

d. Configuration baseline data for all hardware that is unique to the system;

e. Copies of all software documentation intended for distribution to users, including program listings, specifications, operations manual, voter manual, and maintenance manual;

f. User acceptance test procedures and acceptance criteria; and

g. Identification of any changes between the physical configuration of the system submitted for the PCA and that submitted for the FCA, with a certification that any differences do not degrade the functional characteristics; and

h. Complete descriptions of its procedures and related conventions used to support this audit by:

(1) Establishing a configuration baseline of the software and hardware to be tested; and

(2) Confirming whether the system documentation matches the corresponding system components.

8.7.2 Functional Configuration Audit

The FCA is conducted by the ITA to verify that the system performs all the functions described in the system documentation. The vendor shall:

a. Completely describe its procedures and related conventions used to support this audit for all system components;

b. Provide the following information to support this audit:

(1) Copies of all procedures used for module or unit testing, integration testing, and system testing;

(2) Copies of all test cases generated for each module and integration test, and sample ballot formats or other test cases used for system tests; and

(3) Records of all tests performed by the procedures listed above, including error corrections and retests.

In addition to such audits performed by ITAs during the system qualification process, elements of this audit may also be performed by state election organizations during the system certification process, and individual jurisdictions during system acceptance testing.

8.8 Configuration Management Resources

Often, configuration management activities are performed with the aid of automated tools. Assuring that such tools are available throughout the system life cycle, including if the vendor is acquired by or merged with another organization, is critical to effective configuration management. Vendors may choose the specific tools they use to perform the record keeping, audit, and reporting activities of the configuration management standards. The resources documentation standard provided below focus on assuring that procedures are in place to record information about the tools to help ensure that they, and the data they contain, can be transferred effectively and promptly to a third party should the need arise. Within this context, a vendor is required to develop and provide a complete description of the procedures and related practices for maintaining information about:

a. Specific tools used, current version, and operating environment;

b. Physical location of the tools, including designation of computer directories and files; and

c. Procedures and training materials for using the tools.

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9 Overview of Qualification Tests

9.1 Scope

This section provides an overview of the testing process for qualification testing of voting systems. Qualification testing is the process by which a voting system is shown to comply with the requirements of the Standards and the requirements of its own design and performance specifications.

Qualification testing encompasses the examination of software; tests of hardware under conditions simulating the intended storage, operation, transportation, and maintenance

environments; the inspection and evaluation of system documentation; and operational tests to validate system performance and function under normal and abnormal conditions. The testing also evaluates the completeness of the vendor's developmental test program, including the sufficiency of vendor tests conducted to demonstrate compliance with stated system design and performance specifications, and the vendor's documented quality assurance and configuration management practices. The tests address individual system components or elements, as well as the integrated system as a whole. Since 1994, qualification tests for voting systems have been performed by Independent Test Authorities (ITAs) certified by the National Association of State Election Directors (NASED). NASED has certified an ITA for either the full scope of qualification testing or a distinct subset of the total scope of testing. The test process described in this section may be conducted by one or more ITAs, depending on the nature of tests to be conducted and the expertise of the certified ITAs.

Qualification testing is distinct from all other forms of testing, including developmental testing by the vendor, certification testing by a state election organization, and system acceptance testing by a purchasing jurisdiction:

- Qualification testing follows the vendor's developmental testing;
- Qualification testing provides an assurance to state election officials and local jurisdictions of the conformance of a voting system to the Standards as input to state certification of a voting system and acceptance testing by a purchasing jurisdiction; and
- Qualification testing may precede state certification testing, or may be conducted in parallel as established by the certification program of individual states.

Generally a voting system remains qualified under the standards against which it was tested, as long as all modifications made to the system are evaluated and passed by a certified ITA. The qualification test report remains valid for as long as the voting system remains unchanged from the last tested configuration. However, if a new threat to a particular voting system is discovered, it is the prerogative of NASED to determine which qualified voting systems are vulnerable, whether those systems need to be retested, and the specific tests to be conducted. In addition, when new standards supersede the standards under which the system was qualified, it is the prerogative of NASED to determine when systems that were qualified under the earlier standards will lose their qualification, unless they are tested to meet current standards.

The remainder of this section describes the documentation and equipment required to be submitted by the vendor, the scope of qualification testing, the applicability to voting system components, and the flow of the test process.

9.2 Documentation Submitted by Vendor

The vendor shall submit to the ITA documentation necessary for the identification of the full system configuration submitted for evaluation and for the development of an appropriate test plan by the ITA for system qualification testing.

One element of the documentation is the Technical Data Package (TDP). The TDP contains information that that defines the voting system design, method of operation, and related resources. It provides a system overview and documents the system's functionality, hardware, software, security, test and verification specifications, operations procedures, maintenance procedures, and personnel deployment and training requirements. It also documents the vendor's configuration management plan and quality assurance program. If the system was previously qualified, the TDP also includes the system change notes.

This documentation is used by the ITA in constructing the qualification testing plan and is particularly important in constructing plans for the re-testing of systems that have been qualified previously. Re-testing of systems submitted by vendors that consistently adhere to particularly strong and well documented quality assurance and configuration management practices will generally be more efficient than for systems developed and maintained using less rigorous or less well documented practices. Volume II provides a detailed description of the documentation required for the vendor's quality assurance and configuration management practices used for the system submitted for qualification testing.

9.3 Voting Equipment Submitted by Vendor

Vendors may seek to market a complete voting system or an interoperable component of a voting system. Nevertheless, vendors shall submit for testing the specific system configuration that is to be offered to jurisdictions or that comprises the component to be marketed plus the other components with which the vendor recommends that component be used. The system submitted for testing shall meet the following requirements:

a. The hardware submitted for qualification testing shall be equivalent, in form and function, to the actual production versions of the hardware units or the COTS hardware specified for use in the TDP;

b. The software submitted for qualification testing shall be the exact software that will be used in production units;

c. Engineering or developmental prototypes are not acceptable, unless the vendor can show that the equipment to be tested is equivalent to standard production units in both performance and construction; and

d. Benchmark directory listings shall be submitted for all software/firmware elements (and associated documentation) included in the vendor's release as they would normally be installed upon setup and installation.

9.4 Testing Scope

The qualification test process is intended to discover vulnerabilities that, should they appear in actual election use, could result in failure to complete election operations in a satisfactory manner.

Five types of focuses guide the overall qualification testing process:

- Operational accuracy in the recording and processing of voting data, as measured by target error rate, for which the maximum acceptable error rate is no more than one in ten million ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions (while it would be desirable that there be an error rate of zero, if this had to be proven by a test, the test itself would take an infinity of time);
- Operational failures or the number of unrecoverable failures under conditions simulating the intended storage, operation, transportation, and maintenance environments for voting systems, using an actual time-based period of processing test ballots;
- System performance and function under normal and abnormal conditions; and
- Completeness and accuracy of the system documentation and configuration management records to enable purchasing jurisdictions to effectively install, test, and operate the system.

Qualification testing complements and evaluates the vendor's developmental testing, including any beta testing. The ITA evaluates the completeness of the vendor's

developmental test program, including the sufficiency of vendor tests conducted to demonstrate compliance with the Standards as well as the system's performance specifications. The ITA undertakes sample testing of the vendor's test modules and also designs independent system-level tests to supplement and check those designed by the vendor. Although some of the qualification tests are based on those prescribed in the Military Standards, in most cases the test conditions are less stringent, reflecting commercial, rather than military, practice. The ITA may use automated software testing tools to assist in this process if they are available for the software under examination.

The procedure for disposition of system deficiencies discovered during qualification testing is described in Volume II of the Standards. This procedure recognizes that some but not necessarily all operational malfunctions (apart from software logic defects) may result in rejection. Basically, any defect that results in or may result in the loss or corruption of voting data, whether through failure of system hardware, software, or communication, through procedural deficiency, or through deficiencies in security and audit provisions, shall be cause for rejection. Otherwise, malfunctions that result from failure to comply fully with other requirements of this standard will not in every case warrant rejection. Specific failure definition and scoring criteria are also contained in Volume II.

9.4.1 Test Categories

The qualification test procedure is presented in several parts:

- Functionality testing;
- Hardware testing;
- Software evaluation;
- System-level integration tests, including audits; and
- Examination of documented vendor practices for quality assurance and for configuration management.

In practice, there may be concurrent indications of hardware and software function, or failure to function, during certain examinations and tests. Operating tests of hardware partially exercise the software as well and therefore supplement software qualification. Security tests exercise hardware, software and communications capabilities. Documentation review conducted during software qualification supplements the review undertaken for system-level testing.

The qualification test procedures are presented in these categories because test authorities frequently focus separately on each. The following subsections provide information that test authorities need to conduct testing.

Not all systems being tested are required to complete all categories of testing. For example, if a previously-qualified system has had hardware modifications, the system may be subject only to non-operating environmental stress testing of the modified component, and a partial system-level test. If a system consisting of general purpose COTS hardware or one that was previously qualified has had modifications to its software, the system is subject only to software qualification and system-level tests, not hardware testing. However, in all cases the system documentation and configuration management records will be examined to confirm that they completely and accurately reflect the components and component versions that comprise the voting system.

9.4.1.1 Focus of Functionality Tests

Functionality testing is performed to confirm the functional capabilities of a voting system submitted for qualification. The ITA designs and performs procedures to test a voting system against the requirements outlined in Section 2. In order to best compliment the diversity of the voting systems industry, this part of the qualification testing process is not rigidly defined. Although there are basic functionality testing requirements, additions or variations in testing are appropriate depending on the system's use of specific technologies and configurations, the system capabilities, and the outcomes of previous testing.

9.4.1.2 Focus of Hardware Tests

Hardware testing begins with non-operating tests that require the use of an environmental test facility. These are followed by operating tests that are performed partly in an environmental facility and partly in a standard test laboratory or shop environment.

The non-operating tests are intended to evaluate the ability of the system hardware to withstand exposure to the various environmental conditions incidental to voting system storage, maintenance, and transportation. The procedures are based on test methods contained in Military Standards (MIL–STD) 810D, modified where appropriate, and include such tests as: Bench handling, vibration, low and high temperature, and humidity.

The operating tests involve running the system for an extended period of time under varying temperatures and voltages. This period of operation ensures with confidence that the hardware meets or exceeds the minimum requirements for reliability, data reading, and processing accuracy contained in Section 3. The procedure emphasizes equipment operability and data accuracy; it is not an exhaustive evaluation of all system functions. Moreover, the severity of the test conditions, in most cases, has been reduced from that specified in the Military Standards to reflect commercial and industrial, rather than military and aerospace, practice.

9.4.1.3 Focus of Software Evaluation

The software qualification tests encompass a number of interrelated examinations, involving assessment of application source code for its compliance with the requirements spelled out in Volume I, Section 4. Essentially, the ITA will look at programming completeness, consistency, correctness, modifiability, structuredness and traceability, along with its modularity and construction. The code inspection will be followed by a series of functional tests to verify the proper performance of all system functions controlled by the software.

The ITA may inspect COTS generated software source code in the preparation of test plans and to provide some minimal scanning or sampling to check for embedded code or unauthorized changes. Otherwise, the COTS source code is not subject to the full code review and testing. For purposes of code analysis, the COTS units shall be treated as unexpanded macros.

9.4.1.4 Focus of System-Level Integration Tests

The functionality, hardware, and software qualification tests supplement a fuller evaluation performed by the system-level integration tests. System-level tests focus on these aspects jointly, throughout the full range of system operations. They include tests of fully integrated system components, internal and external system interfaces, usability and accessibility, and security. During this process election management functions, ballot-counting logic, and system capacity are exercised. The process also includes the Physical Configuration Audit (PCA) and the Functional Configuration Audit (FCA).

The ITA tests the interface of all system modules and subsystems with each other against the vendor's specifications. Some, but not all, systems use telecommunications capabilities as defined in Section 5. For those systems that do use such capabilities, components that are located at the poll site or separate vote counting site are tested for effective

interface, accurate vote transmission, failure detection, and failure recovery. For voting systems that use telecommunications lines or networks that are not under the control of the vendor (e.g., public telephone networks), the ITA tests the interface of vendor-supplied components with these external components for effective interface, vote transmission, failure detection, and failure recovery.

The security tests focus on the ability of the system to detect, prevent, log, and recover from a broad range of security risks as identified in Section 6. The range of risks tested is determined by the design of the system and potential exposure to risk. Regardless of system design and risk profile, all systems are tested for effective access control and physical data security. For systems that use public telecommunications networks, to transmit election management data or official election results (such as ballots or tabulated results), security tests are conducted to ensure that the system provides the necessary identity-proofing, confidentiality, and integrity of transmitted data. The tests determine if the system is capable of detecting, logging, preventing, and recovering from types of attacks known at the time the system is submitted for qualification. The ITA may meet these testing requirements by confirming the proper implementation of proven commercial security software.

The interface between the voting system and its users, both voters and election officials, is a key element of effective system operation and confidence in the system. At this time, general standards for the usability of voting systems by the average voter and election officials have not been defined, but are to be addressed in the next update of the Standards. However, standards for usability by individual voters with disabilities have been defined in Section 2.7 based on Section 508 of the Rehabilitation Act Amendments of 1998. Voting systems are tested to ensure that an accessible voting station is included in the system configuration and that its design and operation conforms with these standards.

The Physical Configuration Audit (PCA) compares the voting system components submitted for qualification to the vendor's technical documentation and confirms that the documentation submitted meets the requirements of the Standards. As part of the PCA, the ITA also witnesses the build of the executable system to ensure that the qualified executable release is built from the tested components.

The Functional Configuration Audit (FCA) is an exhaustive verification of every system function and combination of functions cited in the vendors' documentation. Through use, the FCA verifies the accuracy and completeness of the system's TDP. The various options of software counting logic that are claimed in the vendor's documentation shall be tested during the system-level FCA. Generic test ballots or test entry data for DRE systems, representing particular sequences of ballot-counting events, will test the counting logic during this audit.

9.4.1.5 Focus of Vendor Documentation Examination

The ITA reviews the documentation submitted by the vendor to evaluate the extent to which it conforms to the requirements outlined in Sections 7 and 8 for vendor configuration and quality assurance practices. The ITA also evaluates the conformance of other documentation and information provided by the vendor with the vendor's documented practices for quality assurance and configuration management.

The Standards do not require on-site examination of the vendor's quality assurance and configuration management practices during the system development process. However, the ITA conducts several activities while at the vendor site to witness the system build that enable assessment of the vendor's quality assurance and configuration management practices and conformance with them. These include surveys, interviews with individuals at all levels of the development team, and examination of selected internal work products such as system change requests and problem tracking logs.

9.4.2 Sequence of Tests and Audits

There is no required sequence for performing the system qualification tests and audits. For a new system, not previously qualified, a test using the generic test ballot decks might be performed before undertaking any of the more lengthy and expensive tests or documentation review. The ITA or vendor may, however, schedule the PCA, FCA, or other tests in any convenient order, provided that the prerequisite conditions for each test have been met before it is initiated.

9.5 Test Applicability

Qualification tests are conducted for new systems seeking initial qualification as well as for systems that are modified after qualification.

9.5.1 General Applicability

Voting system hardware, software, communications and documentation are examined and tested to determine suitability for elections use. Examination and testing addresses the broad range of system functionality and components, including system functionality for pre-voting, voting, and post-voting functions described in Section 2. All products custom designed for election use shall be tested in accordance with the applicable procedures contained in this section. COTS hardware, system software and communications components with proven performance in commercial applications other than elections, however, are exempted from certain portions of the test as long as such products are not modified for use in a voting system. Compatibility of these products all other components of the voting system shall be determined through functional tests integrating these products with the remainder of the system.

9.5.1.1 Hardware

Specifically, the hardware test requirements shall apply in full to all equipment used in a voting system with the exception of the following:

a. Commercially available models of general purpose information technology equipment that have been designed to an ANSI or IEEE standard, have a documented history of successful performance for relevant requirements of the standards, and have demonstrated compatibility with the voting system components with which they interface;

b. Production models of special purpose information technology equipment that have a documented history of successful performance under conditions equivalent to election use for relevant requirements of the standards and that have demonstrated compatibility with the voting system components with which they interface; and

c. Any ancillary devices that do not perform ballot definition, election database maintenance, ballot reading, ballot data processing, or the production of an official output report; and that do not interact with these system functions (e.g.; modems used to broadcast results to the press, printers used to generate unofficial reports, or CRTs used to monitor the vote counting process).

This equipment shall be subject to functional and operating tests performed during software evaluation and system-level testing. However, it need not undergo hardware non-operating tests. If the system is

composed entirely of off-the-shelf hardware, then the system also shall not be subject to the 48-hour environmental chamber segment of the hardware operating tests.

9.5.1.2 Software

Software qualification is applicable to the following:

a. Application programs that control and carry out ballot processing, commencing with the definition of a ballot, and including processing of the ballot image (either from physical ballots or electronically activated images), and ending with the system's access to memory for the generation of output reports;

b. Specialized compilers and specialized operating systems associated with ballot processing; and

c. Standard compilers and operating systems that have been modified for use in the vote counting process.

Specialized software for ballot preparation, election programming, vote recording, vote tabulation, vote consolidation and reporting, and audit trail production shall be subjected to code inspection. Functional testing of all these programs during software evaluation and system-level testing shall exercise any specially tailored software off-line from the ballot counting process (e.g.; software for preparing ballots and broadcasting results).

9.5.2 Modifications to Qualified Systems

Changes introduced after the system has completed qualification under these Standards or earlier versions of the national Voting System Standards will necessitate further review.

9.5.2.1 General Requirements for Modifications

The ITA will determine tests necessary for to qualify the modified system based on a review of the nature and scope of changes, and other submitted information including the system documentation, vendor test documentation, configuration management records, and quality assurance information. Based on this review, the ITA may:

a. Determine that a review of all change documentation against the baseline materials is sufficient for recommendation for qualification; or

b. Determine that all changes must be retested against the previously qualified version (this will include review of changes to source code, review of all updates to the TDP, and a performance of system-level and functional tests); or

c. Determine that the scope of the changes is substantial and will require a complete retest of the hardware, software, and/or telecommunications.

9.5.2.2 Basis for Limited Testing Determinations

The ITA may determine that a modified system will be subject only to limited qualification testing if the vendor demonstrates that the change does not affect demonstrated compliance with these Standards for:

a. Performance of voting system functions;

b. Voting system security and privacy;

c. Overall flow of system control; and

d. The manner in which ballots are defined and interpreted, or voting data are processed.

Limited qualification testing is intended to facilitate the correction of defects, the incorporation of improvements, the enhancement of portability and flexibility, and the integration of vote-counting software with other systems and election software.

9.6 Qualification Test Process

The qualification test process may be performed by one or more ITAs that together perform the full scope of tests required by the Standards. Where multiple ITAs are involved, testing shall be conducted first for the voting system hardware, firmware, and related documentation; then for the system software and communications; and finally for the integrated system as a whole. Voting system hardware and firmware testing may be performed by one ITA independently of the other testing performed by other ITAs. Testing may be coordinated across ITAs so that hardware/firmware tested by one ITA can be used in the overall system tests performed by another ITA.

Whether one or more ITAs are used, the testing generally consists of three phases:

- Pre-test Activities;
- Qualification Testing; and
- Qualification Report Issuance and Post-test Activities.

9.6.1 Pre-test Activities

Pre-test activities include the request for initiation of testing and the pre-test preparation.

9.6.1.1 Initiation of Testing

Qualification testing shall be conducted at the request of the vendor, consistent with the provision of the Standards. The vendor shall:

a. Request the performance of qualification testing from among the certified ITAs,

b. Enter into formal agreement with the ITAs for the performance of testing, and

c. Prepare and submit materials required for testing consistent with the requirements of the Standards.

Qualification testing shall be conducted for the initial version of a voting system as well as for all subsequent changes to the system prior to release for sale or for installation. As described in Section 9.5.2, the nature and scope of testing for system changes or new versions shall be determined by the ITA based on the nature and scope of the modifications to the system and on the quality of system documentation and configuration management records submitted by the vendor.

9.6.1.2 Pre-test Preparation

Pre-test preparation encompasses the following activities:

a. The vendor shall prepare and submit a complete TDP to the ITA. The TDP should consist of the items listed in Section 9.2 and specified in greater detail in Standards Volume II;

b. The ITA shall perform an initial review of the TDP for completeness and clarity and request additional information as required;

c. The vendor shall provide additional information, if requested by the ITA;

d. The vendor and ITA shall enter into an agreement for the testing to be performed by the ITA in exchange for payment by the vendor; and

e. The vendor shall deliver to the ITA all hardware and software needed to perform testing.

9.6.2 Qualification Testing

Qualification testing encompasses the preparation of a test plan, the establishment of the appropriate test conditions, the use of appropriate test fixtures, the witness of the system build and installation, the maintenance of qualification test data, and the evaluation of the data resulting from tests and examinations.

9.6.2.1 Qualification Test Plan

The ITA shall prepare a Qualification Test Plan to define all tests and procedures required to demonstrate compliance with Standards, including:

a. Verifying or checking equipment operational status by means of manufacturer operating procedures;

b. Establishing the test environment or the special environment required to perform the test;

c. Initiating and completing operating modes or conditions necessary to evaluate the specific performance characteristic under test;

d. Measuring and recording the value or range of values for the characteristic to be tested, demonstrating expected performance levels;

e. Verifying, as above, that the equipment is still in normal condition and status after all required measurements have been obtained;

f. Confirming that documentation submitted by the vendor corresponds to the actual configuration and operation of the system; and

g. Confirming that documented vendor practices for quality assurance and configuration management comply with the Standards.

A recommended outline for the test plan and the details of required testing are contained in Standards Volume II.

9.6.2.2 Qualification Test Conditions

The ITA may perform Qualification tests in any facility capable of supporting the test environment. The following practices shall be employed:

a. Preparations for testing, arrangement of equipment, verification of equipment status, and the execution of procedures shall be witnessed by at least one independent, qualified observer, who shall certify that all test and data acquisition requirements have been satisfied;

b. When a test is to be performed at ''standard'' or ''ambient'' conditions, this requirement shall refer to a nominal laboratory or office environment, with a temperature in the range of 68 to 75 degrees Fahrenheit, and prevailing atmospheric pressure and relative humidity; and

c. Otherwise, all tests shall be performed at the required temperature and electrical supply voltage, regulated within the following tolerances:

(1) Temperature +/−4 degrees F

(2) Electrical supply voltage +/−2 vac.

9.6.2.3 Qualification Test Fixtures

ITAs may use test fixtures or ancillary devices to facilitate qualification testing. These fixtures and devices may include arrangements for automating the operation of voting devices and the acquisition of test data:

a. For systems that use a light source as a means of detecting voter selections, the generation of a suitable optical signal by an external device is acceptable. For systems that rely on the physical activation of a switch, a mechanical fixture with suitable motion generators is acceptable;

b. ITAs may use a simulation device, and appropriate software, to speed up the process of testing and eliminate human error in casting test ballots, provided that the simulation covers all voting data detection and control paths that are used in casting an actual ballot. In the event that only partial simulation is achieved, then an independent method and test procedure shall be used to validate the proper operation of those portions of the system not tested by the simulator; and

c. If the vendor provides a means of simulating the casting of ballots, the simulation device is subject to the same performance, reliability, and quality requirements that apply to the voting device itself.

9.6.2.4 Witness of System Build and Installation

Although most testing is conducted at facilities operated by the ITA, a key element of voting system testing shall be conducted at the vendor site. The ITA responsible for testing voting system software, telecommunications, and integrated system operation (i.e., system wide testing) shall witness the final system build, encompassing hardware, software and communications, and the version of associated records and documentation. The system elements witnessed, including their specific versions, shall become the specific system version that is recommended for qualification.

9.6.2.5 Qualification Test Data Requirements

The following qualification test data practices shall be employed:

a. A test log of the procedure shall be maintained. This log shall identify the system and equipment by model and serial number;

b. Test environment conditions shall be noted; and

c. All operating steps, the identity and quantity of simulated ballots, annotations of output reports, the elapsed time for each procedure step, and observations of equipment performance and, in the case of non-operating hardware tests, the condition of the equipment shall be recorded.

9.6.2.6 Qualification Test Practices

The ITA shall conduct the examinations and tests defined in the Test Plan such that all applicable tests identified in Standards Volume II are executed to determine compliance with the requirements in Sections 2–8 of the Standards. The ITA shall evaluate data resulting from examinations and tests, employing the following practices:

a. If any malfunction or data error is detected that would be classified as a relevant failure using the criteria in Volume II, its occurrence, and the duration of operating time preceding it, shall be recorded for inclusion in the analysis of data obtained from the test, and the test shall be interrupted;

b. If a malfunction is due to a defect in software, then the test shall be terminated and system returned to the vendor for correction;

c. If the malfunction is other than a software defect, and if corrective action is taken to restore the equipment to a fully operational condition within 8 hours, then the test may be resumed at the point of suspension;

d. If the test is suspended for an extended period of time, the ITA shall maintain a record of the procedures that have been satisfactorily completed. When testing is resumed at a later date, repetition of the successfully completed procedures may be waived, provided that no design or manufacturing change has been made that would invalidate the earlier test results;

e. Any and all failures that occurred as a result of a deficiency shall be classified as purged, and test results shall be evaluated as though the failure or failures had not occurred, if the:

(1) Vendor submits a design, manufacturing, or packaging change notice to correct the deficiency, together with test data to verify the adequacy of the change;

(2) Examiner of the equipment agrees that the proposed change will correct the deficiency; and

(3) Vendor certifies that the change will be incorporated into all existing and future production units; and

f. If corrective action cannot be successfully taken as defined above, then the test shall be terminated, and the equipment shall be rejected.

9.6.3 Qualification Report Issuance and Post-Test Activities

Qualification report issuance and post-test activities encompass the activities described below:

a. The ITA may issue interim reports to the vendor, informing the vendor of the testing status, findings to date, and other information. Such reports do not constitute official test reports for voting system qualification;

b. The ITA shall prepare a Qualification Test Report that confirms the voting has passed the testing conducted by the ITA. The ITA shall include in the Qualification Test Report the date testing was completed, the specific system version addressed by the report, the version numbers of all system elements separately identified with a version number by the vendor, and the scope of tests conducted. A recommended outline for the test report is contained in Volume II;

c. Where a system is tested by multiple ITAs, each ITA shall prepare a Qualification Test Report;

d. The ITA shall deliver the Qualification Test Report to the vendor and to NASED;

e. NASED shall issue a single Qualification Number for the system to the vendor and to the ITAs. The issuance of a Qualification Number indicates that the system has been tested by certified ITAs for compliance with the national test standards and qualifies for the certification process of states that have adopted the national standards;

f. This number applies to the system as a whole only for the configuration and versions of the system elements tested by the ITAs and identified in the Qualification Test Reports. The Qualification Number does not apply to individual system components or untested configurations; and

g. The Qualification Number is intended for use by the states and their jurisdictions to support state and jurisdiction processes concerning voting systems. States and their jurisdictions shall request ITA Qualification Test Reports based on the Qualification Number as part of their voting system certification and procurement processes systems that rely on the Standards.

9.6.4 Resolution of Testing Issues

The NASED Voting Systems Board (the Board) is responsible for resolving questions about the application of the Standards in the testing of voting systems. The Secretariat for the Board will relay its decisions to the NASED certified ITAs and voting system vendors. The Federal Election Commission will monitor these decisions in order to determine which of them, if any, should be reflected in a subsequent version of the standards.

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Glossary for Voting Systems

This glossary contains terms from the VSS–2002 as well as the inclusion of additional terms needed to understand voting and related areas such as security, human factors, and testing. Each term includes a definition and its source as well as an association, where

- Source is the source from which the definition originates. A list of these sources is found in section A.2.
- Association is the domain for which the term applies, e.g., voting, testing, security. There may be multiple domains identified for a term. There is no relevance given to the order in which the domains are listed. A list of these associations is found in section A.3.

At this time, a term may contain multiple definitions. The intent is to eventually select one definition per term, unless multiple definitions are necessary to convey the appropriate meanings of the term.

Some of the terms in the VSS–2002 have been deprecated due to changes in voting systems, voting process and/or mandates in HAVA. A list of these deprecated terms is in section A.4 List of Deprecated Terms.

A.1 Glossary

A

Abandoned Ballot: Ballot that the voter did not cast into the ballot box or record vote on DRE before leaving the polling place. See also fled voter.
Association: Voting.
Source: No attribution.

Absentee Ballot: Ballot prepared or designed for an absentee voter. Definition of an absentee ballot is jurisdiction dependent.
Association: Voting.
Source: No attribution.

Acceptance Testing: Examination of a voting system and its components by the purchasing election authority (usually in a simulated-use environment) to validate performance of delivered units in accordance with procurement requirements, and to validate that the delivered system is, in fact, the certified or qualified system purchased.
Association: Testing, voting.
Source: VSS.

Access Board: Independent federal agency devoted to accessibility for people with disabilities.
Association: Human factors, HF: Accessibility.
Source: No attribution.

Accessibility: Measurable characteristic that indicates the degree to which a system is available to, and usable by, individuals with disabilities. The most common disabilities include those associated with vision, hearing and mobility, as well as cognitive disabilities. The HAVA also includes accessibility requirements for Native American and Alaska Native citizens and alternative language access for voters with limited English proficiency.
Association: Human factors, HF: Accessibility.
Source: NIST HF Rpt, HAVA.

Accessible Voting Station (Acc-VS): Voting Station equipped for individuals with disabilities referred to in HAVA 301(a)(3)(B)
Association: HF: Accessibility, voting.
Source: HAVA.

Accreditation: (1) Formal recognition that a laboratory is competent to carry out specific tests or calibrations or types of tests or calibrations. (2) Procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.
Association: Testing, standardization.
Source: (1) NIST HB 150, (2) ISO Guide 2–6.

Accreditation Body: (1) Authoritative body that performs accreditation. (2) An independent organization responsible for assessing the performance of other organizations against a recognized standard, and for formally confirming the status of those that meet the standard.
Association: Testing, conformity assessment.
Source: (1) ISO 17000, (2) IEEE 1583.

Accuracy: (1) Extent to which a given measurement agrees with an accepted standard for that measurement. (2) Closeness of the agreement between the result of a measurement and a true value of the particular quantity subject to measurement.

Note 1: Accuracy is a qualitative concept.
NOTE 2: The term precision should not be used for accuracy.

Association: Testing.
Source: (1) IEEE 1583, (2) VIM.

Accuracy for Voting Systems: Ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data.
Association: Voting, testing.
Source: VSS.

Adequate Security: Security commensurate with the risk and the magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information. See also risk assessment.
Association: Computer security.
Source: OMB A130.

Alternative Formats: In the context of voting systems, the ballot or accompanying information is said to be in an alternative format if it is in a representation other than the written English normally displayed to non-disabled English-literate voters. NOTE: The usual purpose of these formats is to provide accessibility to voters with disabilities or those with limited English proficiency. Examples include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with Part 1194 of the standards for Section 508 of the Rehabilitation Act Amendments.

Association: HF: Accessibility.
Source: IEEE 1583, Section 508.

Alternative Language Voting Station (ALVS): voting station designed to be usable by voters who have limited English proficiency, i.e., cannot read English.
Association: HF: Accessibility, voting.
Source: No attribution.

Approval: Permission for a product or process to be marketed or used for stated purposes or under stated conditions. NOTE: Approval can be based on fulfillment of specified requirements or completion of specified procedures.
Association: Testing, conformity assessment.
Source: ISO 17000.

Attestation: Issue of a statement, based on a decision following review, that fulfillment of specified requirements has been demonstrated. NOTE: The resulting statement is also known as a statement of conformity.
Association: Testing, conformity assessment.
Source: ISO 17000.

Audio Ballot: Voter interface which provides the voter with audio stimuli and allows the voter to communicate intent to the voting system through vocalization or physical actions. See also ballot.
Association: Voting, human factors, HF: Accessibility.
Source: FL Statutes.

Audio-Tactile Interface (ATI): Voter interface designed so as not to require visual reading of a ballot. Audio is used to convey information to the voter and sensitive tactile controls allow the voter to convey information to the voting system.
Association: HF: Accessibility, voting.
Source: No attribution.

Audit: Systematic, independent, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements are fulfilled. NOTE: While audit applies to management systems, assessment applies to conformity assessment bodies as well as more generally.
Association: Testing, conformity assessment, security.
Source: ISO 17000.

Audit Trail: Recorded information that allows election officials to view the steps that occurred on the equipment included in an election to verify or reconstruct the steps followed without compromising the ballot or voter secrecy.
Association: Voting, security.
Source: No attribution.

Audit Trail for DRE: Paper printout of votes cast, produced by direct response electronic (DRE) voting machines, which election officials may use to crosscheck electronically tabulated totals.
Association: Voting, security.
Source: NASS.

Availability: Ensuring timely and reliable access to and use of information.
Association: Security.
Source: 44 U.S.C.

B

Ballot: (1) Physical record of the selections made by a voter in all of the races or contests in a particular election. Typically used in the context of hand-counted paper, punched card, or optical mark-sense ballots. When the ballot is recorded in electronic form, the term ballot image is preferred. (2) An official presentation of all of the contests to be decided in a particular election. These may be printed on the ballot (sense 1), printed on a ballot label (as used for punched-card and mechanical-lever voting machines), presented on a computer display screen, or in some alternative form such as audio. See also, audio ballot, ballot image, video ballot, electronic voter interface.
Association: Voting.
Source: No attribution.

Ballot Configuration: Particular set of contests to appear on the ballot for a particular election district, their order, the list of ballot positions for each contest, and the binding of candidate names to ballot positions.
Association: Voting.
Source: No attribution.

Ballot Counter: Counter in a voting device that counts the ballots cast in a single election or election test.
Association: Voting.
Source: VSS.

Ballot Counting Logic: Software logic that defines the combinations of voter choices that are valid and invalid on a given ballot and that determines how the vote choices are totaled in a given election. States differ from each other in the way they define valid and invalid votes and in their vote-counting procedures.
Association: Voting.
Source: VSS.

Ballot Format: One of any number of specific ballot configurations issued to the appropriate precinct. At a minimum, ballot formats differ from one another in content. They may also differ in size of type, graphical presentation, language used, or method of presentation (e.g., visual or audio). Also referred to as ballot style.
Association: Voting.
Source: VSS.

Ballot Image: (1) Electronically produced record of all votes cast by a single voter. (2) Record of all votes produced by a single voter. See also Cast Vote Record
Association: Voting.
Source: (1) VSS, (2) no attribution.

Ballot Instructions: The official instructional material presented with the ballot (sense 2) to the voter. In some contexts, this is in the form of an instructional poster in the voting booth, in some contexts, as text on the ballot label, in any form, presented to voters for expressing their selections in an election. This may be printed on the ballot (sense 1), presented in audio form, posted in the voting booth, printed on the ballot label or presented with the ballot presentation.
Association: Voting.
Source: No attribution.

Ballot Measure: A contest on ballot where the voter may vote yes or no. This term is typically used for referenda, amendments to state constitutions and tax questions, but not for yes/no votes in judicial retention races.
Association: Voting.
Source: No attribution.

Ballot Preparation: Process of using election databases or other means to select the specific contests and questions to be contained in a ballot format and related instructions; preparing and testing election-specific software containing these selections; producing all possible ballot formats; and validating the correctness of ballot materials and software containing these selections for an upcoming election.
Association: Voting.
Source: VSS.

Ballot Position: Abstract choice that is represented by a single line item where a vote may be recorded in a ballot or ballot image.
Association: Voting.
Source: VSS.

Ballot Production: Process of converting the ballot format to a medium ready for use in the physical ballot production or electronic presentation.
Association: Voting.
Source: VSS.

Ballot Rotation: Process of varying the order of the candidate names within a given contest to reduce the impact of voter bias towards the candidate(s) listed first.
Association: Voting.
Source: VSS.

Ballot Set: See ballot image.
Association: Voting.

Source: VSS.

Ballot Scanner: Device used to read the data from a marksense ballot.
Association: Voting.
Source: VSS.

Ballot Style: See ballot format.
Association: Voting.
Source: VSS.

Baseline: Product configuration that has been formally submitted for review against the VVSG, which thereafter serves as the basis for further development; and can be changed and offered to jurisdictions only through formal change control and requalification procedures (and/or recertification procedures where applicable).
Association: Voting, testing.
Source: VSS.

C

Calibration: Set of operations that establish, under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material measure, and the corresponding known values of a quantity intended to be measured.
Association: Testing.
Source: NIST HB 150.

Candidate: Person contending in a race for office. A candidate may be explicitly presented as one of the choices on the ballot or may be a write-in candidate.
Association: Voting.
Source: NIST HF Rpt.

Candidate Register: Record that reflects the total votes cast for the candidate. This record is augmented as each ballot is cast on a DRE or as digital signals from the conversion of voted paper ballots are logically interpreted and recorded.
Association: Voting.
Source: VSS, IEEE 1583.

Canvass: (1) Compilation of election returns and validation of the outcome that form the basis of the official results by political subdivision. (2) Compilation of election returns for validation and approval by the political subdivision of the outcome, which form the basis for the official results.
Association: Voting.
Source: (1) VSS, IEEE 1583, (2) no attribution.

Cast Ballot: Ballot in which voter has taken final action in the selection of candidates and measures and submits the ballot to the appropriate jurisdiction.
Association: Voting.
Source: No attribution.

Cast Vote Record (CVR): Permanent record of all votes produced by a single voter whether in electronic or paper copy form. Used for counting votes. Also referred to as ballot set or ballot image when used to refer to electronic ballots.
Association: Voting.
Source: (1) IEEE 1583.

Catastrophic System Failure: Total loss of function or functions, such as the loss or unrecoverable corruption of voting data or the failure of an on-board battery of volatile memory.
Association: Voting.
Source: VSS.

Central Counting: Counting of ballots in one or more locations selected by the election authority for the processing or counting, or both, of ballots.
Association: Voting.
Source: IL Statutes.

Certification: (1) Procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements. (2) Third-party attestation related to products, processes, systems or persons. See also State Certification and EAC Certification.
Association: Testing, conformity assessment.
Source: (1) ISO Guide 2–6, (2) ISO 17000.

Certification Testing: Deprecated, replaced by State Certification. Note: This term is being clarified with respect to testing State or Federal Standards. See also EAC Certification.
Association: Testing, conformity assessment, voting.
Source: VSS.

Challenged Ballot: Ballot provided to individuals whose eligibility to vote has been questioned. Once voted, such ballots are not included in the tabulation until after the voter's eligibility is confirmed. See also provisional ballot.
Association: Voting.
Source: VSS.

Checksum: Computed value representing the sum of the contents of an instance of digital data; used to check whether errors have occurred in transmission or storage.
Association: Security.
Source: No attribution.

Claim of Conformance: Statement by a vendor proclaiming that a specific product conforms to a particular standard or set of standard profiles, a claim which is verified or refuted by a testing authority.
Association: Testing, conformity assessment.
Source: No attribution.

Client: Any person or organization that engages the services of a testing or calibration laboratory.
Association: Testing.
Source: NIST HB 150.

Closed Primary: Primary election in which voters receive a ballot listing only those candidates running for office in the political party with which the voters are affiliated, along with nonpartisan offices and ballot issues presented at the same election.
Association: Voting.
Source: VSS.

Commercial Off-the-Shelf (COTS): Commercial, readily available hardware devices (which may be electrical, electronic, mechanical, etc.; such as card readers, printers, or personal computers) or software products (such as operating systems, programming language compilers, database management systems, subsystems, components; software, etc.).
Association: IT.
Source: VSS, IEEE 1583.

Common Industry Format (CIF): Refers to the format described in ANSI/INCITS 354–2001 ''Common Industry Format (CIF) for Usability Test Reports.''
Association: HF: Usability.
Source: ANSI 354.

Compliance point: Identified, testable requirement.
Association: Testing, conformity assessment.
Source: No attribution.

Component: (1) Element within a larger system; a component can be hardware or software. For hardware, a physical part of a subsystem that can be used to compose larger systems (e.g., circuit boards, internal modems, processors, computer memory). For software, a module of executable code that performs a well-defined function and interacts with other components. (2) Individual elements or items that collectively comprise a device, e.g., circuit boards, internal modems, processors, disk drives, and computer memory.
Association: IT.
Source: (1) No attribution, (2) VSS.

Confidentiality: (1) Prevention of unauthorized disclosure of information. (2) Preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.
Association: Security.
Source: (1) IEEE 1583, (2) 44 U.S.C.

Configuration Identification: Element of configuration management, consisting of selecting the configuration items for a system and recording their functional and physical characteristics in technical documentation.
Association: Testing, software engineering.

Source: IEEE 1583.

Configuration Item: Aggregation of hardware, software, or both that is designated for configuration management and treated as a single entity in the configuration management process.

Association: Testing, software engineering.

Source: IEEE 1583.

Configuration Management: Discipline applying technical and administrative direction and surveillance to identify and document functional and physical characteristics of a configuration item, control changes to these characteristics, record and report change processing and implementation status, and verify compliance with specified requirements.

Association: Testing, software engineering.

Source: IEEE 1583.

Configuration Management Plan: Document detailing the process for identifying, controlling and managing various released items (code, hardware, documentation etc.)

Association: Testing, software engineering.

Source: IEEE 1583.

Conformance: See conformity

Association: Testing, standardization.

Source: No attribution.

Conformance Testing: Process of testing an implementation against the requirements specified in one or more standards. The outcomes of a conformance test are generally a pass or fail result, possibly including reports of problems encountered during the execution. Also known as conformity assessment.

Association: Testing, standardization.

Source: NIST HB 150.

Conformity: Fulfillment by a product, process or service of specified requirements.

Association: Testing, standardization.

Source: ISO Guide 2–6.

Conformity Assessment: Demonstration that specified requirements relating to a product, process, system, person or body are fulfilled. See also testing, inspection, certification, accreditation, conformity assessment bodies.

Association: Testing, standardization.

Source: ISO 17000.

Conformity Assessment Body: Body that performs conformity assessment services. NOTE: An accreditation body is not a conformity assessment body.

Association: Testing, standardization.

Source: ISO 17000.

Consensus: General agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments.

Association: Standardization.

Source: ISO Guide 2–4.

Contest: Decision to be made within an election, which may be a race for office or a referendum, propositions and/or questions. A single ballot may contain one or more contests.

Association: Voting.

Source: No attribution.

Count: Process of totaling votes.

Association: Voting.

Source: VSS, IEEE 1583.

Counted Ballot: Ballot that has been processed and whose votes are included in the candidate and measures vote totals.

Association: Voting.

Source: No attribution.

Corrective Action: Action taken to eliminate the causes of an existing deficiency or other undesirable situation in order to prevent recurrence.

Association: Testing.

Source: NIST HB 143.

Cross Filing: See Cross-party Endorsement.

Association: Voting.

Source: VSS.

Cross-party Endorsement: Endorsement of a single candidate or slate of candidates by more than one political party. The candidate or slate appears on the ballot representing each endorsing political party. Also referred to as cross filing.

Association: Voting.

Source: VSS, IEEE 1583.

Cryptographic Key: Value used to control cryptographic operations, such as decryption, encryption, signature generation or signature verification.

Association: Security.

Source: NIST SP 800–63.

Cryptography: Discipline that embodies the principles, means, and methods for the transformation of data in order to hide their semantic content, prevent their unauthorized use, or prevent their undetected modification.

Association: Security.

Source: NIST SP 800–59.

Cumulative Voting: Practice where voters are permitted to cast as many votes as there are seats to be filled. Voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidates.

Association: Voting.

Source: VSS, IEEE 1583.

D

Data Accuracy: (1) Data accuracy is defined in terms of ballot position error rate. This rate applies to the voting functions and supporting equipment that capture, record, store, consolidate and report the specific selections, and absence of selections, made by the voter for each ballot position. (2) The system's ability to process voting data absent internal errors generated by the system. It is distinguished from data integrity, which encompasses errors introduced by an outside source.

Association: Testing, security.

Source: (1) VSS, (2) IEEE 1583.

Data Integrity: Invulnerability of the system to accidental intervention or deliberate, fraudulent manipulation that would result in errors in the processing of data. It is distinguished from data accuracy that encompasses internal, system-generated errors.

Association: Security.

Source: IEEE 1583.

Decertification: Withdrawal of certification of voting system hardware and software.

Association: Testing, conformity assessment.

Source: HAVA.

Design Entity: Component of a design, named and referenced uniquely, that is both structurally and functionally different from other elements.

Association: Software engineering.

Source: IEEE 1583.

Design Entity Attributes: Named characteristic or property of a design entity, which provides a statement of fact about the entity. Attributes define the design entity and not the design process.

Association: Software engineering.

Source: IEEE 1583.

Designating Authority: Body established within government or empowered by government to designate conformity assessment bodies, suspend or withdraw their designation or remove their suspension from designation.

Association: Testing, conformity assessment.

Source: ISO 17000.

Designation: Governmental authorization of a conformity assessment body to perform specified conformity assessment activities.

Association: Testing, conformity assessment.

Source: ISO 17000.

Device: Functional unit that performs its assigned tasks as an integrated whole.

Association: IT.

Source: VSS.

Digital Signature: Asymmetric key operation where the private key is used

to digitally sign an electronic document and the public key is used to verify the signature. Digital signatures provide authentication and integrity protection.
Association: Security.
Source: SP 800–63.

Direct Record Electronic (DRE) Voting System: Voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records in internal and/or external memory components. It produces a tabulation of the voting data stored in a removable memory component and/or in printed copy.
Association: Voting
Source: VSS, IEEE 1583.

Directly Verified: Voting system that allows the voter to verify at least one representation of his or her ballot with his/her own senses, not using any software or hardware intermediary. Examples of a directly verified voting system include DRE with a voter verified paper trail or marksense system. This is in contrast with an indirectly verified voting system.
Association: Voting, security.
Source: No attribution.

Disability: Disability means, with respect to an individual, (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment.
Association: Human factors, HF: Accessibility
Source: ADA.

DRE Display: Part of the DRE that displays the electronic record.
Association: Security, voting.
Source: No attribution.

DRE–VVPAT: DRE voting system containing VVPAT capability. See also Direct Record Electronic Voting System and Voter Verified Paper Audit Trail.
Association: Security, voting.
Source: No attribution.

Dynamic Voting System Software: Software that changes over time once it is installed on the voting equipment. See also voting system software.
Association: Voting.
Source: No attribution.

E

EAC: Election Assistance Commission.

Early Voting: Voter completes the ballot in person at a county office or other designated polling site or ballot drop site prior to Election Day. The ballot is cast and not retrievable. NOTE: Early voting is not the same as absentee voting. Also known as Early In-Person Voting.
Association: Voting.
Source: Electionline.

Election Coding: See Election Programming.
Association: Voting.
Source: IEEE 1583.

Election Databases: Data file or set of files that contain geographic information about political subdivisions and boundaries, all contests and questions to be included in an election, and the candidates for each contest.
Association: Voting.
Source: VSS, IEEE 1583.

Election Definition: Abstract definition of the races and questions that may appear on ballot forms.
Association: Voting.
Source: No attribution.

Election District: Geographic area represented by a public official who is elected by voters residing within the district boundaries. The district may cover an entire state or political subdivision, may be a portion of the state or political subdivision, or may include portions of more than one political subdivision.
Association: Voting.
Source: VSS, IEEE 1583.

Election Management System: Set of processing functions and databases within a Voting System that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.
Association: Voting.
Source: VSS, IEEE 1583.

Election Officials: Term used to designate the group of people associated with conducting an election, including election personnel and poll workers.
Association: Voting.
Source: No attribution.

Election Programming: Process by which election officials or their designees use voting system software to logically define the ballot for a specific election.
Association: Voting.
Source: VSS, IEEE 1583.

Electronic Ballot Printer (EBP): DRE-like device that fully prints paper-based ballots with selected vote choices for tabulation by a separate ballot scanner.
Association: Voting.
Source: IEEE 1583.

Electronic Cast Vote Record (ECVR): Deprecated, replaced by Cast Vote Record (CVR).
Association: Voting.
Source: IEEE 1583.

Electronic Vote Capture System (EVCS): Election system that encompasses DREs as well as accessible ballot printers (ABPs) when they are combined with the ballot scanner that processes the printed ballot. See also Voter Verified Paper Audit.
Association: Voting.
Source: IEEE 1583.

Electronic Voter Interface: Subsystem within a DRE voting system which communicates ballot information to a voter in video, audio or Braille form and which allows the voter to select candidates and issues by means of vocalization or physical actions.
Association: Voting, Human factors, HF: Accessibility.
Source: FL Statutes.

Electronic Voting Machine: Any system that utilizes an electronic component. Term is generally used to refer to DREs. See also Voting Equipment, Voting System.
Association: Voting.
Source: NASS.

Electronically-Assisted Ballot Marker (EBM): Machines that provide assistance to voters who are visually impaired, who have difficulty reading English, or in other cases where a voter has difficulty correctly marking by hand a preprinted paper ballot that is to be counted in optical scan systems. The device marks, or helps to mark selected vote choices on a previously inserted, preprinted paper ballot. The machine then provides audio, tactile, or visual feedback to the voter on what choices they have made on the ballot. The resulting ballots are later tabulated on the same unit that processes ordinary hand-marked paper ballots.
Association: Voting, human factors.
Source: IEEE 1583.

Entity Relationship Diagram (ERD): A data modeling technique that creates a graphical representation of the entities, and the relationships between entities, within an information system.
Association: Software engineering.
Source: IEEE 1583.

Error correction code: Coding system that incorporates extra parity bits in order to detect errors.
Association: Security.
Source: WordNet.

E-Voting: (1) Term frequently used to refer to DREs and other types of electronic voting equipment, but may be misleading as it implies remote access via a computer network or the Internet. (2) Election system that allows a voter to record his or her secure and secret ballot electronically. See also DRE, Electronic Voting Machine.

Association: Voting.
Source: (1) NASS, (2) Whatis.com.

F

Federal Information Processing Standard (FIPS): Standard for adoption and use by federal agencies that has been developed within the National Institute of Standards and Technology (NIST) Information Technology Laboratory and published by NIST, an part of the U.S. Department of Commerce.
Association: Security, standardization.
Source: No attribution.

Firmware: Computer programs (software) stored in read-only memory (ROM) devices embedded in the system and not capable of being altered during system operation.
Association: IT.
Source: IEEE 1583.

Fled Voter: Voter who has begun the process of using voting equipment to cast a ballot and has exited the polling site without completing the casting of the ballot, thereby leaving the voting equipment in a state in which election procedures must be used to decide whether the fled voter's incomplete ballot will be cast before the voting equipment is reset. See also abandoned ballot.
Association: Voting.
Source: No attribution.

Font: Family or assortment of characters of a given size and style, e.g., 9-point Bodoni modern. See type font.
Association: Human factors, typography.
Source: ANSI Dict.

Functional Configuration Audit (FCA): Exhaustive verification of every system function and combination of functions cited in the vendor's documentation. Through use the FCA verifies the accuracy and completeness of the system's Voter Manual, Operations Procedures, Maintenance Procedures, and Diagnostic Testing Procedures.
Association: testing, voting.
Source: VSS, IEEE 1583.

Functional Test: Test performed to verify or validate the accomplishment of a function or a series of functions.
Association: Testing.
Source: VSS, IEEE 1583.

G

General Election: Election in which voters, regardless of party affiliation, are permitted to select persons to fill public office and vote on ballot issues. Where the public office may be filled by a candidate affiliated with a political party or when permitted by law, unaffiliated candidate and voters choose among the candidates.
Association: Voting.
Source: VSS, IEEE 1583.

H

Hash: Algorithm that maps a bit string of arbitrary length to a fixed-length bit string. Approved hash functions satisfy the following properties: (a) It is computationally infeasible to find any input that map to any prespecified output, and (b) it is computationally infeasible to find any two distinct inputs that map to the same output.
Association: Voting.
Source: NIST SP 800–63.

HAVA: Help America Vote Act of 2002.
Association: Voting.
Source: No attribution.

Human Computer Interaction: Discipline concerned with the design, evaluation and implementation of interactive computing systems for human use and with the study of major phenomena surrounding them.
Association: Human factors.
Source: ACM SIGCHI.

Human Factors (or Ergonomics): Scientific discipline concerned with the understanding of interactions among humans and other elements of a system, and the profession that applies theory, principles, data and methods to design in order to optimize human well-being and overall system performance.
Association: Human factors.
Source: IEA.

I

Indirectly Verified: Voting system that allows a voter to verify the ballot produced by his or her vote only via hardware or software intermediary. An example of an indirectly verified voting system is a touch screen DRE where the voter verifies the ballot through the assistance of audio stimuli. This is in contrast to directly verified voting systems.
Association: Voting, security.
Source: No attribution.

Implementation Conformance Statement: See Implementation Statement.

Implementation Statement: Statement by a vendor indicating the capabilities, features, and optional functions as well as extensions that have been implemented. Also known as implementation conformance statement.
Association: Testing.
Source: No attribution.

Independent Testing Authority (ITA): Deprecated, replaced by Voting System Testing Laboratory. Organization certified by the National Association of State Election Directors (NASED) to perform qualification testing.
Association: Testing, Voting.
Source: VSS.

Information Security: Protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability.
Association: Security.
Source: 44 U.S.C.

Inspection: Examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgment, with general requirements. NOTE: Inspection of a process may include inspection of persons, facilities, technology and methodology.
Association: Testing, conformity assessment.
Source: ISO 17000.

Integrity: (1) Prevention of unauthorized modification of information. (2) Guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity.
Association: Security.
Source: (1) IEEE 1583, (2) 44 U.S.C.

K

Key Management: Activities involving the handling of cryptographic keys and other related security parameters (e.g., passwords) during the entire life cycle of the keys, including their generation, storage, establishment, entry and output, and zeroization.
Association: Security.
Source: FIPS 140–2.

L

Logic and Accuracy Testing: Testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles, etc.) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.
Association: Voting, testing.
Source: IEEE 1583.

Logical Correctness: Condition signifying that, for a given input, a computer program will satisfy the program specification (produce the required output).
Association: Testing.
Source: VSS, IEEE 1583.

M

Marksense: System by which votes are recorded by means of marks made in

voting response fields designated on one or both faces of a ballot card or series of cards. Marksense systems may use an optical scanner or similar sensor to read the ballots. Also known as Optical Scan.
Association: Voting.
Source: VSS, IEEE 1583.

Measure Register: Record that reflects the total votes cast for and against a specific ballot issue. This record is augmented as each ballot is cast on a DRE or as digital signals from the conversion of voted paper ballots are logically interpreted and recorded.
Association: Voting.
Source: VSS, IEEE 1583.

Mechanical Lever Voting Machine: Machine that directly records a voter's choices via mechanical level-actuated controls into a counting mechanism that tallies the votes without using a physical ballot.
Association: Voting.
Source: ME Statutes.

Multi-seat Content: Contest in which multiple candidates can run, up to a specified number of seats. Voters may vote for no more than the specified number of candidates. Also known as field race.
Association: Voting.
Source: NIST HF Rpt.

N

NVLAP: The NIST National Voluntary Laboratory Accreditation Program.
Association: Testing.
Source: No attribution.

Non-partisan Office: Elected office for which candidates run independent of political party affiliation.
Association: Voting.
Source: VS, IEEE 1583.

Nonvolatile Memory: Memory in which information can be stored indefinitely with no power applied. Static RAM, ROMs and EPROMs are examples of nonvolatile memory.
Association: IT.
Source: VSS, IEEE 1583.

O

On-Site Absentee Voting: See Early Voting.

Open Primary: Primary election in which voters, regardless of political affiliation, may choose in which party's primary they will vote. Some states require voters to publicly declare their choice of party ballot at the polling place, after which the poll worker provides or activates the appropriate ballot. Other states allow the voters to make their choice of party ballot within the privacy of the voting booth. Voters also may be permitted to vote on nonpartisan offices and ballot issues that are presented at the same election.
Association: Voting.
Source: VSS, IEEE 1583.

Operational Environment: See Voting Equipment Operational Environment.
Association: Voting, IT.
Source: IEEE 1583.

Operations Procedures: See Voting Equipment Operations Procedures.
Association: Voting, IT.
Source: IEEE 1583.

Optical Scan, Optical Scan System: See Marksense.
Association: Voting.
Source: IEEE 1583.

Overvotes: (1) Generally prohibited practice of voting for more than the allotted number of candidates for the office being contested. (2) The voting for more than the allotted number of selections in a race. (3) Occurs when the number of alternatives selected by a voter in a contest exceeds the maximum number allowed for that contest. Also known as overvoting.
Association: Voting.
Source: (1) VSS, (2) IEEE 1583, (3) NIST HF Rpt.

P

Paper-based Voting System: Voting system that records votes, counts votes, and produces a tabulation of the vote count, using one or more ballot cards or a written list of choices.
Association: Voting.
Source: VSS, IEEE 1583.

Paper Record: Paper ballot image or summary that is a copy of the electronic record and that is verifiable by a voter. See also ballot image.
Association: Voting, security.
Source: No attribution.

Partisan Office: Elected office for which (partisan and non-partisan) candidates run as representatives of a political party.
Association: Voting.
Source: VSS, IEEE 1583.

Pass/Fail Criteria: Decision factor or expected result used to determine if software or hardware passes a test case.
Association: Testing.
Source: IEEE 1583.

Physical Configuration Audit (PCA): (1) Inspection that compares the voting system components submitted for qualification to the vendor's technical documentation and confirms that the documentation submitted meets the requirements of the VVSG. As part of the PCA, the building of the executable system to ensure that the qualified executable release is built from the tested components is also witnessed. (2) Review, by the test authority, of the vendor's technical documentation, source code, and observation of the code compile.
Association: Testing, voting.
Source: (1) VSS, (2) IEEE 1583.

Precinct Count: Counting of ballots on automatic tabulating equipment provided by the election authority in the same precinct polling place in which those ballots have been cast.
Association: Voting.
Source: IL Statutes.

Point Size: Method of measuring type, where the size of a font is measured from the top of the tallest character to the bottom of the lowest character.
Association: Human factors, typography.
Source: No attribution.

Political Subdivision: Any unit of government, such as counties and cities but often excepting school districts, having authority to hold elections for public offices or on ballot issues.
Association: Voting.
Source: VSS.

Polling Location: Physical address of a polling place.
Association: Voting.
Source: VSS, IEEE 1583.

Polling Place: Facility that is staffed by poll workers and equipped with voting equipment, to which voters from a given precinct come to cast in-person ballots. See also voting station.
Association: Voting.
Source: VSS, IEEE 1583.

Precinct: Administrative division representing a geographic area in which voters cast ballots at the same polling place. Voters casting absentee ballots may also be combined into one or more administrative absentee precincts for purposes of tabulating and reporting votes. Generally, voters in a polling place precinct are eligible to vote in a general election using the same ballot format. In some jurisdictions, however, the ballot formats may be different due to split precincts or required ballot rotations within the precinct.
Association: Voting.
Source: VSS, IEEE 1583.

Precision: (1) Extent to which a given set of measurements of the same sample agree with their mean. Thus, precision is commonly taken to be the standard deviation estimated from sets of duplicate measurements made under conditions of repeatability, that is, independent test results obtained with the same method on identical test material, in the same laboratory or test facility, by the same operator using the same equipment in short intervals of time. (2) Degree of refinement in measurement or specification, especially as represented by the number of digits given.
Association: Testing, statistics.

Source: IEEE 1583.

Pre-Standard: Document that is adopted provisionally by a standardizing body and made available to the public in order that the necessary experience may be gained from its application on which to base a standard.

Association: Standardization.

Source: ISO Guide 2–4.

Primary Election: Election held to determine which candidate will represent a political party in the general election. Some states have an open primary, while others have a closed primary. Sometimes elections for nonpartisan offices and ballot issues are held during primary elections.

Association: Voting.

Source: VSS.

Primary Presidential Delegation Nominations: Primary election in which voters choose the delegates to the Presidential nominating conventions allotted to their states by the national party committees.

Association: Voting.

Source: VSS.

Privacy: Voting system is said to provide privacy when it makes it impossible for others to find out how the voter voted.

Association: Security, voting.

Source: No attribution.

Private Key: The secret part of an asymmetric key pair that is typically used to digitally sign or decrypt data.

Association: Security.

Source: NIST SP 800–63.

Profile: (1) Subset of a standard for a particular constituency that identifies the features, options, parameters, and implementation requirements necessary for meeting a particular set of requirements. (2) Specialization of a standard for a particular context, with constraints and extensions that are specific to that context.

Association: Standardization.

Source: (1) ISO 8632, (2) no attribution.

Provisional Ballot: Ballot provided to individuals who claim they are eligible to vote but whose eligibility cannot be confirmed when they present themselves to vote. Once voted, such ballots are not included in the tabulation until after the voter's eligibility is confirmed. See also challenged ballot.

Association: Voting.

Source: VSS, IEEE 1583, NASS.

Public Information Package (PIP): Data to be published openly and made available to all without let or hindrance, irrespective of need-to-know.

Association: Testing.

Source: No attribution.

Public Key: Public part of an asymmetric key pair that is typically used to verify signatures or encrypt data.

Association: Security.

Source: NIST SP 800–63.

Public Key Certificate: Digital document issued and digitally signed by the private key of a Certification Authority that binds the name of a subscriber to a public key. The certificate indicates that the subscriber identified in the certificate has sole control and access to the private key.

Association: Security.

Source: NIST SP 800–63.

Public Network Direct Record Electronic (DRE) Voting System: Form of DRE voting system that uses electronic ballots and transmits vote data from the polling place to another location (such as a central count facility) over a public network beyond the control of the election authority.

Association: Voting.

Source: VSS.

Punchcard Voting System: Voting system where votes are recorded by means of punches made in voting response fields designated on one or both faces of a ballot card or series of cards.

Association: Voting.

Source: VSS, IEEE 1583.

Q

Qualification Number: Deprecated. A number issued by NASED (National Association of State Election Directors) to a system that has been tested by certified Independent Test Authorities for compliance with the qualification test standards. Issuance of a Qualification Number indicates that the system qualifies for certification process of states that have adopted the Standards. Note: Qualification Numbers for Voting Systems that were qualified for compliance to the 1990 Voting System Standards are still valid. Voting Systems that were qualified for compliance to the Voting System Standards 2002 will need to be assigned an EAC Certification number.

Association: Testing, voting.

Source: VSS.

Qualification Test Report: Deprecated, replaced by Test Report for EAC Certification.

Association: Testing, voting.

Source: VSS, NIST HB150.

Qualification Testing: Examination and testing of a computerized voting system by using qualification test standards to determine if the system complies with the qualification performance and test standards and with its own specifications. This process occurs prior to state certification.

Association: Testing, voting.

Source: VSS.

Quality Assurance Plan: Document that identifies the system and actions required to provide adequate assurance that an item or product conforms to the documented technical requirements.

Association: Testing.

Source: IEEE 1583.

Quality Control: Operational techniques and activities that are used to fulfill requirements for quality.

Association: Testing.

Source: NIST HB 150.

Quality Manual: Document stating the quality policy and describing the quality system of an organization.

Association: Testing, software engineering.

Source: NIST HB 150.

R

Race: Contest between candidates.

Association: Voting.

Source: No attribution.

Ranked Order Voting: Practice that allows voters to rank candidates in a contest in order of choice: 1, 2, 3 and so on. It takes a majority to win. If anyone receives a majority of the first choice votes, that candidate wins that election. If not, the last place candidate is deleted, and all ballots are counted again, but this time each ballot cast for the deleted candidate counts for the next choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote. The practice is also known as instant runoff voting, preferences or preferential voting, or choice voting.

Association: Voting.

Source: VSS, IEEE 1583.

Read Ballot: Ballot that has been processed but may or may not be counted.

Association: Voting.

Source: No attribution.

Recall Issue with Options: Process that allows voters to remove their elected representatives from office prior to the expiration of their terms of office. Often, the recall involves not only the question of whether a particular officer should be removed from office, but also the question of naming a successor in the event that there is an affirmative vote for the recall.

Association: Voting.

Source: VSS.

Recertification: State examination, and possibly the retesting of a voting system that was modified subsequent to

receiving state certification. The object of this process is to determine if the modification still permits the system to function properly in accordance with state requirements.

Association: Voting.

Source: VSS, IEEE.

Record: (n) Data that are preserved by a voting system, not necessarily in any particular form. (v) To preserve such data.

Association: Voting.

Source: No attribution.

Records: Recordings of evidence of activities performed or results achieved (e.g., forms, reports, test results), which serve as a basis for verifying that the organization and the information system are performing as intended. Also used to refer to units of related data fields (i.e., groups of data fields that can be accessed by a program and that contain the complete set of information on particular items).

Association: Security.

Source: NIST SP 800–53.

Recount: Process conducted for verifying the votes counted in an election.

Association: Voting.

Source: No attribution.

Referendum: Contest between two (or more) choices in response to a question (e.g., bond issue, recall, retention of a judge in office, proposed amendment).

Association: Voting.

Source: NIST HF Rpt.

Repeatability: Ability to obtain independent test results by using the same testing method on identical test items in the same testing laboratory by the same operator using the same equipment within short intervals of time.

Association: Testing, conformity assessment.

Source: ISO 5725.

Report: (n) Printed record, formatted for human readability, that is produced by a voting system. (v) to produce such a record.

Association: Voting.

Source: No attribution.

Reproducibility: Ability to obtain test results with the same test method on identical test items in different testing laboratories with different operators using different equipment.

Association: Testing, conformity assessment.

Source: ISO 5725.

Requirement: Provision that conveys criteria to be fulfilled. See also compliance point.

Association: Testing, standardization.

Source: NIST HB 150.

Residual Vote: Total number of votes that cannot be counted for a specific contest. There may be multiple reasons for residual votes (*e.g.*, declining to vote for the contest, overvoting in a contest, failure to cast ballot before leaving polling place).

Association: Voting, human factors.

Source: NIST HF Rpt.

Risk Assessment: Process of identifying the risks to system security and determining the probability of occurrence, the resulting impact, and additional safeguards that would mitigate this impact.

Association: Security.

Source: NIST SP 800–30.

Rolloff: Difference between number of votes cast for contests in the higher offices on the ballot and the number cast for contests that are lower on the ballot. It sometimes referred to as voter fatigue.

Association: Voting, human factors.

Source: NIST HF Rpt.

Runoff Election: Election to select a winner following a primary, or sometimes a general election, in which no candidate in the contest received the required minimum percentage of the votes cast. The two candidates receiving the most votes for the race in question proceed to the runoff election.

Association: Voting.

Source: VSS, IEEE 1583.

S

Second Chance Voting: Provides that voters are notified when their ballots contain errors and are given a chance to correct them. Required by HAVA 2002.

Association: Voting.

Source: NASS.

Secret Key: Cryptographic key that is used with a symmetric cryptographic algorithm that is uniquely associated with one or more entities and is not be made public. The use of the term ''secret'' in this context does not imply a classification level, but rather implies the need to protect the key from disclosure.

Association: Security.

Source: NIST SP 800–57.

Section 508: Amendment by Congress in 1998, to the Rehabilitation Act to require federal agencies to make their electronic and information technology accessible to people with disabilities. Section 508 was enacted to eliminate barriers in information technology.

Association: HF: accessibility

Source: No attribution.

Security Controls: Management, operational, and technical controls (*i.e.*, safeguards or countermeasures) prescribed for an information system to protect the confidentiality, integrity, and availability of the system and its information.

Association: Security.

Source: FIPS 199, NIST SP 800–53.

Semi-static Voting System Software: Software that contains configuration information for the voting system based on the voting equipment that is installed and the election being conducted. Semi-static software is only modified during the installation of the voting system software on voting equipment or the election specific software such as ballot formats. See also voting system software.

Association: Voting.

Source: No attribution.

Specification, Technical: Document that prescribes technical requirements to be fulfilled by a product, process or service.

Association: Standardization.

Source: ISO Guide 2–4.

Split Precinct: Precinct containing more than one ballot format in order to accommodate a contiguous geographic area served by the precinct that contains more than one election district.

Association: Voting.

Source: VSS, IEEE 1583.

Spoiled Ballot: Ballot that has been voted but will not be cast.

Association: Voting.

Source: No attribution.

Standard: Document established by consensus and approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context.

Association: Standardization.

Source: ISO Guide 2–4.

Standard, Product: Standard that specifies requirements to be fulfilled by a product or a group of products, to establish its fitness for purpose. A product standard may include, in addition to the fitness for purpose requirements, directly or by reference, aspects such as terminology, sampling, testing, packaging, and labeling and sometimes processing requirements.

Association: Standardization.

Source: ISO Guide 2–6.

Standard, Testing: Standard that is concerned with test methods, sometimes supplemented with other provision related to testing, such as sampling, use of statistical methods, or sequence of test.

Association: Standardization.

Source: ISO Guide 2–6.

Standard on Data to Be Provided: Standard that contains a list of characteristics for which values or other data are to be stated for specifying the product, process, or service.

Association: Standardization.

Source: ISO Guide 2–4.

State Certification: State examination and possibly testing of a voting system to determine its compliance with state laws, regulations, and rules and any other state requirements for vote systems.

Association: Testing, conformity assessment, voting.

Source: VSS.

Static Voting System Software: Software that does not change based on the election being conducted or the voting equipment upon which it is installed, *e.g.*, executable code. See also voting system software.

Association: Voting.

Source: No attribute.

Straight Party Voting: Mechanism by which voters are permitted to cast a vote indicating the selection of all candidates on the ballot for a single political party.

Association: Voting.

Source: VSS, IEEE 1583.

Support Software: Software that aids in the development or maintenance of other software, for example, compilers, loaders and other utilities.

Association: IT.

Source: VSS, IEEE 1583.

Symmetric (Secret) Encryption Algorithm: Encryption algorithms using the same secret key for encryption and decryption.

Association: Security.

Source: NIST SP 800–49.

T

Tabulation: See Count.

Association: Voting.

Source: VSS, IEEE 1583.

T-Coil: Inductive coil used in some hearing aids to allow reception of an audio band magnetic field signal, instead of an acoustic signal. The magnetic or inductive mode of reception is commonly used in conjunction with telephones, auditorium loop systems and other systems that provide the required magnetic field output.

Association: Human Factors, HF: Accessibility.

Source: ANSI C63.19.

Tabulator: Device that counts votes.

Association: Voting.

Source: No attribution.

Technical Data Package: Vendor documentation relating to the voting system that shall be submitted with the system as a precondition of qualification testing.

Association: Testing, voting.

Source: VSS.

Telecommunications: Transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Association: IT.

Source: IEEE 1583.

Test: Technical operation that consists of the determination of one or more characteristics of a given product, process or service according to a specified procedure.

Association: Testing.

Source: ISO Guide 2–4, NIST HB 150.

Test Campaign: Sum of the work by a VSTL on a single product or system from contract through test plan, conduct of testing for each requirement (including hardware, software, and systems), reporting, archiving, and responding to issues afterwards.

Association: Testing, voting.

Source: NIST HB 150–22.

Test Case Specification: Document identifying the specific inputs and expected result for each test identified in the test plan.

Association: Testing.

Source: IEEE 1583.

Test Design Specification: Expanded detail of the test approach identified in the test plan for the related tests.

Association: Testing.

Source: IEEE 1583.

Test Method: Specified technical procedure for performing a test.

Association: Testing, conformity assessment.

Source: ISO Guide 2.

Test Plan: Document created prior to testing that outlines the scope and nature of testing, items to be tested, test approach, resources needed to perform testing, test tasks, risks and schedule.

Association: Testing, conformity assessment.

Source: IEEE 1583.

Testing: Determination of one or more characteristics of an object of conformity assessment, according to a procedure. Testing typically applies to materials, products, or processes.

Association: Testing, conformity assessment.

Source: ISO 17000.

Testing Authority: Organization that performs qualification testing and produces qualification test reports. See also Voting System Testing Laboratory.

Association: Testing, conformity assessment.

Source: No attribution.

Test Report for EAC Certification: Report of results of independent testing of a voting system indicating the data testing was completed, the specific system version tested, and the scope of tests conducted.

Association: Testing, voting.

Source: VSS, NIST HB 150.

Touch Screen Voting Machine: Machine that utilizes a computer screen whereby a voter executes that voter's choices by touching designated locations on the screen and that then tabulates those choices.

Association: Voting.

Source: ME Statutes.

Traceability: Ability to relate a property of the result of a measurement or the value of a standard to stated references.

Association: Testing.

Source: VIM.

Type font: Type of a given size and style, e.g., 10-point Bodoni Modern.

Association: Human factors.

Source: ANSI Dict.

U

Uncertainty: Parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to that which is being measured.

Association: Testing.

Source: VIM, NIST HB 150.

Undervote: (1) Occurs when the number of alternatives selected by a voter in a contest is less than the maximum number allowed for that contest. (2) Practice of voting for less than the total number of election contests listed on the ballot, or of voting for less than the number of positions to be filled for a single office (i.e., A person would undervote if a contest required the selection of three out of a given number of candidates, and the voter chose only two candidates). Also known as undervoting.

Association: Voting.

Source: (1) NIST HF Rpt. (2) VSS, IEEE 1583, NASS.

Usability: Effectiveness, efficiency and satisfaction with which a specified set of users can achieve a specified set of tasks in a particular environment. Usability in the context of voting system standards refers to voters being able to cast valid votes as they intended quickly, without errors and with confidence that their ballot choices as marked were recorded correctly. It also refers to the usability of the setup of voting equipment for the election and the running of the election by poll workers and election administrators.

Association: Human factors, HF: Usability.

Source: ISO 9241, NIST HF Rpt.

Usability Testing: Encompasses a range of methods that examine how users in the target audience actually interact with a system, in contrast to analytic techniques such as usability inspection.

Association: Human factors, HF: Usability.
Source: Usability First Usability Glossary.

User Documentation: See Voting Equipment User Documentation.
Association: Vote, test.
Source: IEEE 1583.

V

Valid Vote: Vote from a ballot or ballot image that conforms to jurisdiction dependent criteria for accepting or rejecting entire ballots, such as stray marks policies and voter eligibility criteria, in a contest that was not overvoted.
Association: Voting.
Source: No attribution.

Validation: Process of evaluating a system or component during or at the end of the development process to determine whether it satisfies specified requirements.
Association: Testing.
Source: VSS.

Verification: Process of evaluating a system or component to determine whether the products of a given development phase satisfy the conditions (such as specifications) imposed at the start of the phase.
Association: Testing.
Source: VSS.

Verification and Validation (V&V): Process of determining whether requirements for a system or component are complete and correct, the products of each development phase fulfill the requirements or conditions imposed by the previous phase, and the final system or component complies with specified requirements.
Association: Testing.
Source: IEEE 1583.

Video Ballot: Electronic voter interface which presents ballot information and voting instructions as video images. See also ballot.
Association: Voting, human factors, HF: Accessibility.
Source: FL Statutes.

Vote Capture Station: Component of a voting system that captures and stores records of voter choices. See also witness device.
Association: Voting.
Source: No attribution.

Vote for N of M: Ballot choice in which voters are allowed to vote for a limited number of candidates for a single office from a larger field of candidates.
Association: Voting.
Source: VSS, IEEE 1583.

Voted Ballot: Ballot that a voter has finished filling in, but has not yet cast or spoiled.
Association: Voting.
Source: No attribution.

Voter Registration System: Set of processing functions and data storage that maintains records of eligible voters. This system generally is not considered a part of a Voting System subject to the 2002 Voting System Standards.
Association: Voting.
Source: VSS.

Voter Verified Audit Record: (1) Human-readable printed record of all of a voter's selections presented to the voter before the vote is cast. (2) Printed version of the ballot that voters may view and check for accuracy before their votes are cast. See also Voter Verified Record or Voter Verified Paper Trail.
Association: Voting.
Source: (1) IEEE 1583, (2) NASS.

Voter-Verified Paper Trail (VVPT): See Voter Verified Audit Record.

Voting Environment: Aspects of the voting milieu outside of the voting system that are encountered by voters, e.g., ramps, lighting, noise, temperature, electro-magnetic interference. See also voting equipment operational environment.
Association: Human factors, voting.
Source: No attribution.

Voting Equipment: Any mechanical, electromechanical, or electronic components of a voting system. See also Electronic Voting Machine.
Association: Voting.
Source: No attribution.

Voting Equipment Operational Environment: All software, hardware (including facilities, furnishings and fixtures), materials, documentation, and the interface used by the election personnel, maintenance operator, poll worker, and voter, required for voting equipment operations. See also voting environment.
Association: Voting.
Source: IEEE 1583.

Voting Equipment Operations Procedures: Ordered steps that election personnel, poll workers or voters follows to perform the tasks for each operational environment.
Association: Voting.
Source: IEEE 1583.

Voting Equipment User Documentation: Electronic or printed material that provides information for the election officials or voters.
Association: Voting.
Source: IEEE 1583.

Voting Machine: Mechanical or electronic equipment for the direct recording and tabulation of votes. See also voting system.
Association: Voting.
Source: OH Statutes.

Voting Officials: Term used to designate the group of people associated with elections, including election personnel, poll workers, ballot designers and those responsible for the installation, operation and maintenance of the voting systems.
Association: Voting.
Source: No attribution.

Voting Position: Specific response fields on a ballot where the voter indicates the selection of a candidate or ballot proposition.
Association: Voting.
Source: VSS, IEEE 1583.

Voting Process: Entire array of procedures, people, resources, equipment and locales by which elections are conducted.
Association: Voting.
Source: No attribution.

Voting Station: Location within the polling place where voters may record their votes. A voting station includes the voting booth or enclosure and the vote-recording device.
Association: Voting.
Source: VSS, IEEE 1583.

Voting System: Combination of mechanical, electromechanical, or electronic equipment and any corresponding documentation. It includes the software required to program, control, and support the equipment that is used to define ballots; to cast and count votes; to report and/or display election results; and to maintain and produce all audit trail information. A voting system may also include the transmission of results over telecommunication networks. It additionally includes the associated documentation used to operate the system, maintain the system, identify system components and their versions, test the system during its development and maintenance, maintain records of system errors and defects, and determine specific changes made after system qualification. See also electronic voting machine, voting equipment, voting machine.
Association: Voting.
Source: VSS.

Voting System Software: All the executable code and associated configuration files needed for the proper operation of the voting system regardless of the location of installation and functionality provided. This includes third party software such as operating systems, drivers, etc. See also dynamic voting system software, semi-static voting system software, and static voting system software.
Association: Voting.
Source: No attribution.

Voting System Testing: Examination and testing of a computerized voting system by using test methods to determine if the system complies with the requirements in the Voluntary Voting System Guidelines and with its own specifications. This process occurs prior to EAC certification and subsequent State certification.
Association: Testing, voting.
Source: VSS.

Voting System Testing Laboratory (VSTL): Testing laboratory accredited by the National Voluntary Laboratory Accreditation Program for testing of voting systems. The Director of NIST submits a list of independent, non-Federal VSTLs to the EAC for accreditation.
Association: Testing.
Source: NIST HB 150–22.

VVPAT-Ballot Box: Ballot box containing the paper record.
Association: Security, voting.
Source: No attribution.

VVPAT-Display: Transparent covering over the paper record printed by the DRE-VVPAT. It permits a voter to inspect the paper record but prevents the voter from physically handling the paper record.
Association: Security, voting.
Source: No attribution.

VVPAT-Printer: Printing capability of the voting system, including the printer and any associated device involved in printing the paper records and transferring them to ballot boxes.
Association: Security, voting.
Source: No attribution.

W

Witness Device: Component of a voting system that captures voter verification of the records at the voting station. See also vote capture station.
Association: Voting.
Source: No attribution.

Write-in Voting: Means to cast a vote for an individual not listed on the ballot. Voters may do this by using a marking device to physically write their choice on the ballot or they may use a keypad, touch screen or other electronic means to indicate their choice.
Association: Voting.
Source: VSS, IEEE 1583.

Workspace: See voting station.
Association: Voting.
Source: VSS.

A.2 Sources

Definitions in this Glossary are either extracted from or based on the following sources:

44 U.S.C. United States Code, Title 44, Chapter 35, Information Security, Section 3542, Definitions.

ACM SIGCHI ACM's Special Interest Group on Computer-Human Interaction, *http://www.acm.org/sigchi/* (February 2005).

ADA Americans with Disabilities Act of 1990.

ANSI Dict. American National Dictionary for Information Processing Systems, American National Standards Committee X3, Information Processing Systems, 1982.

ANSI 354 American National Standards Institute, InterNational Committee for Information Technology Standards, Common Industry Format for Usability Test Reports, ANSI/INCITS 354–2001

ANSI C63.19 American National Standards for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, 2001. electionline *electionline.org/*, (March 2005).

FIPS 140–2 Federal Information Processing Standard 140–2, Security Requirements for Cryptographic Modules, May 2001.

FIPS 199 Federal Information Processing Standard 199, Standards for Security Categorization of Federal Information and Information Systems, December 2003.

FIPS 201 Federal Information Processing Standard 201, Personal Identity Verification for Federal Employees and Contractors, February 2005.

FL Statutes Florida Statutes: Section 97.021(3) and Section 101.56062(1)(n) Standards for accessible voting.

HAVA Help America Vote Act of 2002—Public Law 107–252.

IEA International Ergonomics Association, *http://www.iea.cc/*, (February 2005).

IEEE 1583 IEEE P1583/D5.3.2 Draft Standard for the Evaluation of Voting Equipment, December 6, 2004.

IL Statutes Illinois Public Act 093–0574.

ISO 5725 ISO/IEC 5725:1994 Accuracy (trueness and precision) of measurement methods and results.

ISO 9241 ISO/IEC 9241:1997 Ergonomic requirements for office work with visual display terminals (VDT).

ISO 17000 ISO/IEC 17000:2004 Conformity assessment—Vocabulary and general principles.

ISO Guide 2–4 ISO/IEC Guide 2:2004 Standardization and related activities—General vocabulary.

ISO Guide 2–6 ISO/IEC Guide 2:1996 Standardization and related activities—General vocabulary.

ME Statutes Maine LD 1759 Enacted 4/22/2004.

NASS National Association of Secretaries of State Election Reform Key Terms, *http://www.nass.org/Election%20Reform%20Key%20Terms.pdf* (February 2005).

NIST HB 143 NIST Handbook 143 State Weights and Measures Laboratories Program Handbook.

NIST HB 150 NIST Handbook 150:2001 NVLAP Procedures and General Requirements.

NIST HF Rpt. NIST Special Publication 500–256 Improving the Usability and Accessibility of Voting Systems and Products, May 2004.

NIST SP 800–30 NIST Special Publication 800–30 Risk Management Guide for Information Technology Systems, July 2002.

NIST SP 800–49 NIST Special Publication 800–49 Federal S/MIME V3 Client Profile, November 2002.

NIST SP 800–53 NIST Special Publication 800–53 Recommended Security Controls for Federal Information Systems, Appendix B, Glossary.

NIST SP 800–59 NIST Special Publication 800–59 Guideline for Identifying an Information System as a National Security System, August 2003.

NIST SP 800–63 NIST Special Publication 800–63 Electronic Authentication Guideline: Recommendations of the National Institute of Standards and Technology, June 2004.

OH Statutes Ohio HB–262 enacted 5/7/2004.

OMB A130 OMB Circular A–130, Appendix III.

Section 508 Electronic and Information Technology Accessibility Standards (2002) Architectural and Transportation Barriers Compliance Board, 36 CRF Part 1194, *http://www.accessboard.gov/sec508/508standards.htm*.

Usability Glossary Usability First Usability Glossary, *http://www.usabilityfirst.com/glossary/main.cgi*, (February 2005).

VIM The ISO International Vocabulary of Basic and General Terms in Metrology (VIM), 1994.

VSS Voting Systems Standards of 2002 (Federal Election Commission), Volumes I and II.

Whatis.com Whatis.com, IT Encyclopedia, *http://whatis.techtarget.com/definition/0,,sid9_gci491925,00.html* (February 2005).

WordNet WordNet ®2.0, © 2003 Princeton University.

A.3 List of Associations

Conformity Assessment
Human Factors (HF)

HF: accessibility
HF: usability
IT—Information Technology
Security
Software Engineering
Standardization
Testing
Typography
Voting

A.4 List of Deprecated Terms

The following terms are being phased out and replaced by newer terms. Note that there is a transition period where both terms are in use at the same time.

Deprecated term	Replaced by
Certification Testing	State Certification
Electronic Cast Vote Record.	Cast Vote Record
Qualification Number	no replacement at this time
Qualification Test Report.	Test Report for EAC Certification
Qualification Testing	Voting System Testing

Volume I, Appendix B

Table of Contents

B Appendix—Applicable Documents
B.1 Documents Incorporated in the Standards
B.2 Standards Development Documents
B.3 Guidance Documents

B Appendix—Applicable Documents

B.1 Documents Incorporated in the Standards

The following publications have been incorporated into the Standards. When specific provisions from these publications have been incorporated, specific references are made in the body of the Standards.

Federal Regulations	Code of Federal Regulations, Title 20, Part 1910, Occupational Safety and Health Act.	
	Code of Federal Regulations, Title 36, Part 1194, Architectural and Transportation Barriers Compliance Board, Electronic and Information Technology Standards—Final Rule.	
	Code of Federal Regulations, Title 47, Parts 15 and 18, Rules and Regulations of the Federal Communications Commission.	
	Code of Federal Regulations, Title 47, Part 15, ''Radio Frequency Devices'', Subpart J, ''Computing Devices'', Rules and Regulations of the Federal Communications Commission.	
American National Standards Institute (ANSI)	ANSI C63.4	Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9Khz to 40 GHz.
	ANSI C63.19	American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids.
	ANSI–NCITS 354–2001	Industry Usability Reporting and the Common Industry Format.
International Electrotechnical Commission (IEC)	IEC 61000–4–2 (1995–01)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 2 Electrostatic Discharge Immunity Test (Basic EMC publication).
	IEC 61000–4–3 (1996)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 3 Radiated Radio-Frequency Electromagnetic Field Immunity Test.
	IEC 61000–4–4 (1995–01)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 4 Electrical Fast Transient/Burst Immunity Test.
	IEC 61000–4–5 (1995–02)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 5 Surge Immunity Test.
	IEC 61000–4–6 (1996–04)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 6 Immunity to Conducted Disturbances Induced by Radio-Frequency Fields.
	IEC 61000–4–8 (1993–06)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 8 Power-Frequency Magnetic Field Immunity Test. (Basic EMC publication).
	IEC 61000–4–11 (1994–06)	Electromagnetic Compatibility (EMC) Part 4: Testing and Measurement Techniques. Section 11. Voltage Dips, Short Interruptions and Voltage Variations Immunity Tests.
	IEC 61000–5–7 Ed. 1.0 b:2001	Electromagnetic compatibility (EMC) Part 5–7: Installation and mitigation guidelines-Degrees of protection provided by enclosures against electromagnetic disturbances.
National Institute of Standards and Technology	FIPS 140–2	Security Requirements for Cryptographic Modules.
	FIPS 180–2	Secure Hash Standard, August 2002.
	FIPS 186–2	Digital Signature Standard, February 2000.
	FIPS 188	Standard Security Label for Information Transfer.
	FIPS 196	Entity Authentication Using Public Key Cryptography.

	FIPS 197	Advanced Encryption Standard (AES).
	SP 800–63	Electronic Authentication Guideline, Version 1.0.1.
Military Standards	MIL–STD–498	Software Development and Documentation Standard, 1989.
	MIL–STD–810D (2)	Environmental Test Methods and Engineering Guidelines, 19 July 1983.

B.2 Standards Development Documents

The following publications have been used for guidance in the revision of the Standards.

American National Standards Institute (ANSI)	ANSI/ISO/IEC TR 9294.1990	Information Technology Guidelines for the Management of Software Documentation.
	ISO/IEC TR 13335–4:2000	Information technology—Guidelines for the management of IT Security—Part 4: Selection of safeguards.
International Organization for Standardization (ISO).	ISO/IEC TR 13335–3:1998	Information technology—Guidelines for the management of IT Security—Part 3 Techniques for the management of IT security.
	ISO/IEC TR 13335–2:1997	Information technology—Guidelines for the management of IT Security—Part 2: Managing and planning IT security.
International Electro-technical Commission (IEC).	ISO/IEC TR 13335–1:1996	Information technology—Guidelines for the management of IT Security—Part 1: Concepts and models for IT security.
	ISO 10007:1995	Quality Mgmt. Guidelines for Configuration Management.
	ISO 10005–1995	Quality Mgmt. Guidelines for Quality Plans.
	ANSI/ISO/ASQC QS9000–3–1997	QM and QA standards Part 3: Guidelines for the application of ANSI/ISO/ASQC Q9000–1994 to the Development, Supply, Installation, and Maintenance of Computer Software.
Electronic Industries Alliance Standards	MB2, MB5, MB9	Maintainability Bulletins.
	EIA 157	Quality Bulletin.
	EIA QB2–QB5	Quality Bulletins.
	EIA RB9	Failure Mode and Effect Analysis, Revision 71.
	EIA SEB1–SEB4	Safety Engineering Bulletins.
	RS–232–C	Interface Between Data Terminal Equipment and Data Communications Equipment Employing Serial Binary Data Interchange.
	RS–366–A	Interface Between Data Terminal Equipment and Automatic Calling Equipment for Data Communication.
	RS–404	Standard for Start-Stop Signal Quality Between Data Terminal Equipment and Nonsynchronous Data Communication Equipment.
National Institute of Standards and Technology	NISTIR 4909	Software Quality Assurance: Documentation and Reviews.
Institute of Electrical and Electronics Engineers	610.12–1990	IEEE Standard Glossary of Software Engineering Terminology
	730–1998	IEEE Standard for Software Quality Assurance Plans
	828–1998	IEEE Standard for Software Configuration Management Plans
	829–1998	IEEE Standard for Software Test Documentation
	830–1998	IEEE Recommended Practice for Software Requirements Specifications.
Military Standards	MIL–STD–498	Software Development and Documentation, 27 May 1998.

B.3 Guidance Documents

The following publications contain information that is useful in understanding and complying with the Standards.

American National Standards Institute (ANSI)	ANSI/ISO/IEC TR 10176.1998	Information Technology Guidelines for the Preparation of Programming Language Standards.
	ANSI/ISO/IEC 6592.2000	Information Technology Guidelines for the Documentation of Computer Based Application Systems.
International Organization for Standardization (ISO).	ANSI/ISO/ASQC Q9000–3–1997	Quality management and quality assurance standards Part 3: Guidelines for the application of ANSI/IAO/ASQC Q9001–1994 to the Development, supply, installation and maintenance of computer software.
International Electro-technical Commission (IEC).	ANSI/ISO/ASQC Q9000–1–1994	Quality Management and Quality Assurance Standards—Guidelines for Selection and Use.
	ANSI/ISO/ASQC Q10007–1995	Quality Management Guidelines for Configuration Management.
	ANSI X9.31–1998	Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry, 1998.
	ANSI X9.62–1998	Public Key Cryptography for Financial Services Industry: The Elliptic Curve Digital Signature Algorithm, 1998.
	ISO/IEC 9594–8:2001	ITU–T Recommendation X.509 (2000), Information technology—Open Systems Interconnection—The Directory: Public-key and attribute certificate frameworks.
National Institute of Standards and Technology	FIPS 102	Guideline for Computer Security Certification and Accreditation.
	FIPS 112	Password Usage (3).
	FIPS 113	Computer Data Authentication.
Institute of Electrical and Electronics Engineers	488–1987	IEEE Standard Digital Interface for Programmable Instrumentation.
	796–1983	IEEE Standard Microcomputer System Bus IEEE/ANSI Software Engineering Standards.
	750.1–1995	IEEE Guide for Software Quality Assurance Planning.
	1008–1987	IEEE Standard for Software Unit Testing.
	1016–1998	IEEE Recommended Practice for Software Design Descriptions.
	1012–1998	IEEE Guide for Software Verification and Validation Plans.
Military Standards	MIL–HDBK–454	Standard General Requirements for Electronic Equipment.
	MIL–HDBK–470	Maintainability Program for Systems & Equipment.
	MIL–HDBK–781A	Handbook for Reliability Test Methods, Plans, and Environments for Engineering, Development Qualification, and Production.
	MIL–STD–882	Systems Safety Program Requirements.
	MIL–STD–1472	Human Engineering Design Criteria for Military Systems, Equipment and Facilities.
	MIL–STD–973	Configuration Management, 30 September 2000.

Other References		Designing for the Color-Challenged: A Challenge, by Thomas G. Wolfmaier (March 1999); *http://www.sandia.gov/itg/newsletter/mar99/accessibility_color_challenged.html*; Effective Color Contrast: Designing for People with Partial Sight and Color Deficiencies, by Aries Arditi, Ph.D; *http://www.lighthouse.org/color_contrast.htm* Electronic Markup Language (EML), Version 4.0, (Committee Draft) Organization for the Advancement of Structured Information Standards (OASIS), January 24, 2005. RSA Laboratories Technical Note, Public Key Cryptographic Standard (PKCS) #7: Cryptographic Message Syntax Standard, November 1, 1993. RSA Laboratories Technical Note, Extensions and Revisions to PKCS #7, May 13, 1997. The Americans with Disabilities Act Accessibility Guidelines (ADAAG 2202), Access Board; *http://www.access-board.gov/adaag/html/adaag.htm*.

Volume I, Appendix C

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C Appendix—Best Practices for Voting Officials
C.1 Best Practices for Human Factors
C.2 Best Practices for Security

Best Practices for Voting Officials

Many requirements for human factors and security (e.g., wireless communications, software distribution, and setup validation, voter verified paper audit trails) depend not only on voting systems providing specific capabilities but on voting officials developing and carrying out appropriate procedures. Consequently, the Voluntary Voting System Guidelines (VVSG) Version 1 provides guidance in the form of best practices for voting officials. These best practices provide adjuncts to the technical requirements for voting systems in order to ensure the integrity of the voting process and to assist States in properly setting up, deploying, and operating voting systems.

This appendix contains a list of best practices that have been extracted from the body of the VVSG Version 1. The section numbering and introductory text from the VVSG has been retained to provide the context for the best practice as well as to indicate from where it was extracted.

C.1 Best Practices for Human Factors

2.2.7 Human Factors

Human factors is concerned with the understanding of interactions among humans and other elements of a system. The importance of human factors in the design of voting systems has become increasingly apparent. It is not sufficient that the internal operation of these systems is correct; in addition, voters and poll workers must be able to use them effectively. The challenge, then, is to provide a voting system and voting environment that all voters can use comfortably, efficiently, and with justified confidence that they have cast their votes correctly.

2.2.7.1 Accessibility

The Help America Vote Act (HAVA) Section 301(a)(3) reads in part: ''Accessibility for individuals with disabilities—The voting system shall: (A) be accessible for individuals with disabilities, including nonvisual 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; (B) satisfy the requirement of 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.''

Ideally every voter would be able to vote independently and privately.

Best Practices

- When the provision of accessibility involves an alternative format for ballot presentation, then all the other information presented to voters in the case of non-disabled English-literate voters (including instructions, warnings, messages, and ballot choices) is also presented in that alternative format.
- When the primary means of voter identification or authentication uses biometric measures that require a voter to possess particular biological characteristics, the voting process provides a secondary means that does not depend on those characteristics.
- Polling places are subject to the appropriate guidelines of the Americans with Disabilities Act (ADA) of 1990 and of the Architectural Barriers Act (ABA) of 1968.
- On all voting stations, the default color coding maximizes correct perception by voters and operators with color blindness.
- A sanitized headphone or handset is made available to each voter.
- If the normal procedure is for voters to submit their own ballots, then the voting process provides features that enable voters who are blind to perform this submission.
- The Acc-VS provides a clear floor space of 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum for a stationary mobility aid. The clear floor space is level with no slope exceeding 1:48 and positioned for a forward approach or a parallel approach.
- All controls, keys, audio jacks and any other part of the Acc-VS necessary for the voter to operate the voting system are within the reach regions as specified in the VVSG Volume I, Section 2.2.7.1.4.3.
- The Acc-VS incorporates the features listed in the VVSG Volume I, Section 2.2.7.1.2.2.3 (audio presentation) to provide accessibility to voters with hearing disabilities.
- The voting process is made accessible to voters with cognitive disabilities.

2.2.7.2 Limited English Proficiency

HAVA Section 301(a)(4) reads in part: ''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).''

Ideally every voter would be able to vote independently and privately, regardless of language.

Best Practices

• Regardless of the language, candidate names are displayed or pronounced in English on all ballots. For written languages that do not use Roman characters (e.g. Chinese, Japanese, Korean, Arabic), the ballot includes transliteration of candidate names into the relevant language.

2.2.7.3 Usability

HAVA Section 301 begins by addressing the interaction between the voter and the voting system. In addition to these mandates, HAVA Sections 243 and 221(e)(2)(D) address support for improved usability. Usability is defined generally as a measure of the effectiveness, efficiency, and satisfaction achieved by a specified set of users with a given product in the performance of specified tasks. In the context of voting, the primary users are the voters (but also poll workers), the product is the voting system, and the task is the correct representation of one's choices in the election.

Best Practices

• The voting station does not visually present a single race spread over two pages or two columns.

• The ballot clearly indicates the maximum number of candidates for which one can vote within a single race.

• The ballot presents the relationship between the name of a candidate and the mechanism used to vote for that candidate in a consistent manner.

2.2.7.4 Privacy

Voter privacy is strongly supported by HAVA—Sections 221(e)(2)(C) and 301(a)(1). Privacy in the voting context, including the property of the voter being unable to disclose his or her vote, ensures that the voter can make choices based solely on his or her own preferences without intimidation or inhibition. Among other practices, this forbids the issuance of a receipt to the voter that would provide proof to another how he or she voted.

Note that these best practices address privacy concerns in relation to human factors issues and not with respect to the processing of cast ballots.

Best Practices

• The ballot and any input controls are visible only to the voter during the voting session and ballot submission. Poll workers need to take into account such factors as visual barriers, windows, permitted waiting areas for other voters, and procedures for ballot submission when not performed at the voting station, e.g. submission of optiscan ballots to a central reader.

• The audio interface is audible only to the voter.

• As mandated by HAVA 301(a)(1)(C), the voting system notifies the voter of an attempted overvote in a way that preserves the privacy of the voter and the confidentiality of the ballot.

• Appropriate procedures are needed to ensure that absentee balloting enable the voter to preserve privacy. There is no practical means to prevent a voter from revealing an absentee paper ballot to others. But the procedures should ensure that if a voter chooses to maintain privacy, it is not violated at a later stage, in particular when the ballot is received by voting officials.

C.2 Best Practices for Security

VVSG Version 1 addresses four new aspects of voting systems security. The first, independent dual verification is informative and provide characteristics of these systems. It does not yet contain any best practices. There are best practices for the other three sections: Voter Verified Paper Audit Trails, Wireless Requirements, and Software Distribution and Setup Validation.

6.0.2 Requirements for Voter Verified Paper Audit Trails

VVSG Version 1 provides requirements for voter verified paper audit trails (VVPAT) so that States that choose to implement VVPAT or States that are considering implementation can utilize these requirements to help ensure the effective operation of these systems.

6.0.2.4 Approve or Spoil the Paper Record

Best Practices

• Appropriate procedures are needed for reconciling the number of spoiled paper records with the number of spoiled electronic records and for addressing any discrepancies after the close of polls.

• Appropriate procedures are needed to permit the voter to cast a ballot if the maximum number of spoiled ballots occurs.

• Appropriate procedures are needed to address situations in which a voter is unable to review the paper record.

• Appropriate procedures are needed to address situations in which a voter indicates that the electronic and paper records do not match. If the records do not match, a potentially serious error has occurred. Election officials should first verify that the records do not match and then take appropriate actions such as removing the voting station from service and quarantining its records for later analysis.

6.0.2.5 Preserve Voter Privacy and Anonymity

Best Practices

• Appropriate procedures are needed to ensure the privacy and anonymity of voters whose paper records contain any of the alternative languages chosen for making ballot selections.

• Appropriate procedures are needed to prevent voters from leaving the voting area with a paper record that can directly reveal the voter's choices.

6.0.2.7 Equipment Security, Reliability, and Maintainability

Best Practices

• Appropriate procedures are needed to ensure that voting systems are physically secured from tampering and intentional damage.

6.0.3 Wireless Requirements

Wireless is defined as any means of communication that occurs without wires. This includes radio frequency (RF), infrared, (IR) and microwave. The use of wireless technology within a voting system introduces risk and should be approached with caution. Wireless communication is susceptible to disruption, eavesdropping, and interference from other wireless signals. The combination of technical features and functionality built into the voting system along with procedural practices in using and handling the voting system can mitigate the risks of using wireless communications.

6.0.3.2 Controlling Usage

Best Practices

• When using encryption to ensure that the wireless communication is secure, appropriate procedures are needed for cryptographic key management.

6.0.3.6 Protecting the Voting System From a Wireless-Based Attack

Best Practices

• Appropriate procedures are needed to ensure that wireless communication actions are logged and capture at least the following information: times wireless is activated and deactivated, services accessed, identification of device to which data was transmitted to or received from, identification of authorized user, successful and unsuccessful attempts to access wireless communications or service.

6.0.4 Distribution of Voting System Software and Setup Validation

The goal of software distribution requirements is to ensure that the correct voting system software has been

distributed without modification. The goal of setup validation requirements, including requirements for verifying the presence of qualified software and the absence of other software, is to ensure that voting system equipments is in a proper initial state before being used.

6.0.4.1 Software Distribution Methodology Requirements

Best Practices

- Voting software used to install the qualified voting systems can be obtained on write-once media from the voting system vendor or an EAC accredited test authority.
- The reference information produced by the NSRL or other EAC designated repository can be used to verify that the correct software has been received.

6.0.4.2 Generation and Distribution Requirements for Reference Information

Best Practices

- To ensure that the write-once media contains the correct information, a digital signature can be used. The digital signature can replace secure storage of reference information since the digital signature can be used to verify that the reference information media has not been modified or corrupted.
- The vendor's documented values can be used to verify that all voting systems' static and initial register and variable values are correct prior to an election.
- The reference information can be used to verify that voting system software is the correct version of the software prior to an election.
- If differences between the reference information and voting system software are found, then appropriate procedures are needed to handle and resolve these anomalies.

Volume I, Appendix D

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D Appendix—Independent Dual Verification (Informative)

D.1 Independent Dual Verification Systems
D.2 Core Characteristics for IDV Systems
D.3 Split Process IDV Systems
D.4 Witness IDV Systems
D.5 End to End (Cryptographic) IDV Systems

Appendix D

Appendix D is an informative section with characteristics of independent dual verification systems followed by characteristics of the types of independent dual verification systems which will be used as the basis for future requirements. They are preliminary and will be evolving with further research.

D.1. Independent Dual Verification Systems

A primary objective for using electronic voting systems is the production of voting records that are highly precise, highly reliable, and easily counted—in essence, an accurate representation of ballot choices whose handling requirements are reasonable. To meet this objective, there are many factors to consider in an electronic voting system's design, including:

- The environment provided for voting, including the voting site and various environmental factors,
- The ease with which voters can use the voting system, i.e., its usability,
- The robustness and reliability of the voting equipment, and
- The capability of the records to be used in audits.

Independent Dual Verification (IDV) systems have as their primary objective the production of ballot records that are capable of being used in audits in which their correctness can be audited to very high levels of precision. The primary security issues addressed by IDV systems are:

- Whether electronic voting systems are accurately recording ballot choices, and
- Whether the ballot record contents can be audited precisely post-election.

The threats addressed by IDV systems are those that could cause a voting system to inaccurately record the voter's intent or cause a voting system's records to become damaged, i.e., inserted, deleted, or changed. These threats could occur via any number of means including accidental damage or various forms of fraud. The threats are addressed mainly by providing, in the voting system design, the capability for ballot record audits to detect precisely whether specific records are correct as recorded or damaged, missing, or fraudulent.

1.1 Independent Dual Verification Systems: Improved Accuracy in Audits

Independent Verification is the top-level categorization for electronic voting systems that produce multiple records of ballot choices whose contents are capable of being audited to high levels of precision. For this to happen, the records must be produced and made verifiable by the voter, and then subsequently handled according to the following protocol:

- At least two records of the voter's choices are produced and one of the records is then stored such that it cannot be modified by the voting system, e.g., the voting system creates a record of the voter's choices and then copies it to some write-once media.
- The voter must be able to verify that both records are correct, e.g., verify his or her choices on the voting system's display and also verify the second record of choices stored on the write-once media.
- The verification processes for the two verifications must be independent of each other and (a) at least one of the records must be verified directly by the voter, or (b) it is acceptable for the voter to indirectly verify both records if they are stored on different systems produced by different vendors.
- The content of the two records can be checked later for consistency through the use of identifiers that allow the records to be linked.

An assumption is made that at least one set of records is usable in an efficient counting process such as by using an electronic voting system, and the other set of records is usable in an efficient process of verifying its agreement with the other set of records used in the counting process. The sets of records would preferentially be different in form and thus have more resistance to accidental or deliberate damage.

Given these conditions above, the multiple records are said to be distinct and independently verifiable, that is, both records are not under the control of the same processes. As a result of this independence, one record can be used to audit or check up on the accuracy of the other record. Because the storage of the records is separate, an attacker who can compromise one of the records still will face a difficult task in compromising the other.

1.2 Example Independent Dual Verification Systems

The following sections present overviews of several types of IDV systems. Some of these systems have not been marketed as yet but are included here to help clarify approaches to independent verification systems. The systems discussed are:

- Voting systems with a split process architecture,[1]
- End-to-end voting systems that include cryptographic audit schemes,
- Witness voting systems that take a picture of or otherwise capture an indirect verification of ballot choices, and
- Direct independent verification, including some types of voting systems that produce an optically scanned ballot or that produce a voter-verified paper audit trail (VVPAT).

1.2.1 The Split Process Architecture for IDV Systems

A voting machine with a split process architecture consists of vote capture and verification stations that are separate, i.e., two physical devices. A voter inserts an object called a token into the capture station to make ballot selections and then takes the token object to the verification station to review and store his or her votes. The token object could be paper or some write-once read-only media. Two records of the vote are created: One on the token object and one by the verification station. Either could be used in the final count.

For any split process voting system, the interaction between the voter and the split process operates as follows:

1. A voter is given a token object that has been initialized to be blank.
2. Supporting information is written to the token object including the ballot and identification information about the election and precinct.

[1] The split process architecture is otherwise known as the frog protocol, which was first described in the Caltech-MIT report: Voting: What is, What Could Be, as part of a modular voting architecture. The frog term, i.e., the token, was chosen specifically to convey no information about the physical form of the object used to carry vote information between two separate modules of the voting station. The report is available for download at *http://www.vote.caltech.edu/*.

3. The voter inserts the token object into a capture station such as a DRE, which reads the ballot information from the token and then displays the ballot on an input device such as a touch screen. The voter to makes his or her ballot choices, which causes a record of the vote to be recorded on the token object.

4. The voter takes the token object to a separate verification station, which reads the recorded votes from the token object, makes an electronic copy, and displays it to the voter.

5. The voter verifies that the information is correct and then deposits the token object into a container where it can be archived and used later for recounts or audits against the electronic records.

Two sets of records are produced: The electronic records and the token's records. Typically, the electronic records recorded by the verification station would be counted in the election. At least one of the sets of records should be different in form from the other set of records and be resistance to accidental or deliberate damage so that it can remain useful for audits and recounts.

In theory, the physical separation of the ballot capture from the ballot verification may make analysis of the capture and verification devices easier or less costly. The rationale is that the user interface software on the capture station is expected to be complex and difficult to verify for correctness. On the other hand, the verification station's software is expected to be less complicated because it need only copy the contents of the token, display it to the voter, and store the ballot choices.

The verification station's software is considered to be the ''trusted computing base'' of the voting system, because it must be trusted in the verification process and then trusted to store the record for counting, i.e, cast the voter's ballot. The software to implement this capability should be relatively small and thus easier to inspect and test.

In general, segregating functions by placing them on physically different systems is a standard computer security practice for making those functions easier to test for correctness and easier to manage securely.

1.2.2 End to End (Cryptographic) IDV Systems

End to end voting systems use cryptographic techniques to store an encrypted copy of the voter's ballot choices. In this way, ballots can be audited and demonstrated to have been included in the election count.

End to end systems in existence today generally operate as follows:

1. A voter uses a voting station such as a DRE to make ballot choices.

2. The DRE issues a paper receipt to the voter that contains information that permits the voter to verify that the choices were recorded correctly. The information does not permit the voter to reveal his or her choices.

3. The voter may have the option to check that his or her ballot choices were included in the election count, e.g., by checking a Web site of values that (should) match the information on the voter's paper receipt.

End to end systems are sometimes referred to as receipt-based systems. They may provide an assurance not only that the correct set of ballot choices was recorded, but that those choices were included in the election count. Some analyses of auditing and cryptographic systems assert that very small numbers of self-audits are required to verify the correctness of an election.

1.2.3 Witness IDV Systems

A witness voting system creates the second record of ballot choices by using a separate module to record or witness the voter's verification of the first record. The primary feature of a witness system is that the creation of the record does not require action by the voter. This may result in quicker voting times or voting systems that are simpler to use than other approaches that involve multiple, direct verifications by the voter.

An example of a witness system is a DRE with a camera mounted above its screen. The camera takes pictures and saves them independently of the DRE. It would operate as follows:

1. A voter makes ballot choices at the DRE and then presses a button to record his or her vote.

2. The DRE records the ballot choices and uses them in the election count.

3. At the time the button is pressed, the camera takes a picture of the DRE's screen and saves the image (the voter is not included in the picture).

4. This collection of images constitutes a second ballot record that can be used in audits and recounts.

As can be seen by this example, the voter's interactions are reduced to making ballot choices at the DRE and pressing a button to make the selections final. If the DRE were to be compromised such that it secretly recorded the ballot choices incorrectly, the stored photographic images would reflect what the voter had seen and verified at the DRE's screen.

Because the voter may not be able to verify that the creation of the second record was performed accurately, it is important that the creation process be highly reliable and very resistant to accidental or deliberate damage. Also, the suitability of the records for manual or automated auditing is a factor when considering this approach.

1.2.4 Direct IDV Systems

Direct independent dual verification systems produce a record for voter verification that the voter may verify directly with the voter's senses and which is then preserved for auditing or counting. Some optical scan voting system approaches fit into this category (albeit loosely), as well as those systems with VVPAT (Voter Verified Paper Audit Trail) capability.

Some optical scan voting system approaches fit into this category (albeit loosely), as well as those systems with VVPAT (Voter Verified Paper Audit Trail) capability.

The optical scan voting systems approaches in this category are those in which two records are created: A paper and an electronic record. This system uses Optical Scan Recognition (OCR) to create an electronic record from the paper record after the paper record has been directly verified by the voter. The general operation of this system is:

1. A voter uses a marking device such as a DRE to mark a ballot and then presses a button to print the marked ballot onto a piece of paper.

2. The voter directly reviews the paper to ensure its correctness, and if correct, places the paper record into a scanner (some procedure would need to be included to handle spoiled ballots).

3. The scanner converts the paper record into an electronic format. To reduce errors that may result from scanning the paper record, the paper records might contain a barcoded representation of the human readable portion of the ballot.

4. The paper record gets preserved in a ballot box.

No verification of the scanned paper record is performed in the above approach. One may assume that the scanning process is highly accurate and can be trusted to create the electronic record correctly; however it would be preferential for the voter to somehow verify that the record was, in fact, created correctly.

An electronic voting system with VVPAT (Voter Verified Paper Audit Trail) capability is similar to that of the optical scan above but consists typically of a DRE that both creates and records an electronic record, and a printer that creates a paper audit trail of the voter's choices. Like the optical scan system, it creates two distinct representations of the voter's ballot choices: an electronic record and a paper record.

Typically, a voter would use the voting system (called a DRE–VVPAT) as follows:

1. A voter makes ballot selections and indicates that his or her selections are complete.

2. The VVPAT–DRE prints a paper record summary of the voter's ballot choices. An alternative approach to VVPAT involves printing the voter's ballot selections as they are made, e.g., a concurrent or contemporaneous record.

3. The voter inspects and directly verifies that the paper record matches the displayed electronic record (again, a procedure would need to be included to handle spoiled ballots).

4. The paper record gets preserved in a ballot box.

Both approaches described here produce paper records that are verified directly by sight. Voters with sight impairments would require an accessible device for verification that can produce an audible representation of the paper record.

1.3 Issues in Handling Multiple Records Produced by Independent Dual Verification Systems

There are several fundamental questions that need to be addressed when designing the structure and selecting the physical characteristics of IDV systems records, including:

- How to tell if the records are authentic and not forged,
- How to tell if the integrity of the records has remained intact from the time they were recorded,

• The suitability of the records for various types of auditing, and

• How best to address problems if there are errors in the records.

Whenever an electronic voting system produces multiple records of votes, there is some possibility that one or more of the records may not match. Records can be lost, or deliberately or accidentally damaged, or stolen, or fabricated. Keeping the two records in correspondence with each other can be made more or less difficult depending on the technologies used for the records and the procedures used to handle the records.

As a consequence, it is important to structure the records so that errors and other anomalies can be readily detected during audits. There are a number of techniques that can be used, such as the following:

• Associating unique identifiers with corresponding records, e.g., an individual paper record sharing a unique identifier with its corresponding electronic record,

• Including an identification of the specific voting system that produced the records, such as a serial number identifier or by having the voting system digitally sign the records using public key cryptography,

• Including other information about the election and the precinct or location where the records were created,

• Creating checksums of the electronic records and having the voting system digitally sign the entire sets of records so that missing or inserted records can be detected, and

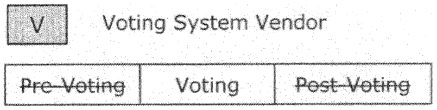
• Structuring the records in open, publicly documented formats that can be readily analyzed on different computing platforms

The ease or relative difficulty with which some types of records must be handled is also a determining factor in the practical capability to conduct precise audits, given that some types of records are better suited to different types of auditing and different voting environments than others. The factors that make certain types of records more suitable than others could vary greatly depending upon many other criteria, both objective and subjective. For example, paper records may require manual handling by voters or poll workers and thus be more susceptible to damage or loss. At the same time, the extent to which the paper records must be handled will vary depending on the type of voting system in use. Electronic records may by their nature be more suitable for automated audits; however electronic records are still subject to accidental or deliberate damage, loss, and theft.

D.2. Core Characteristics for Independent Verification Systems

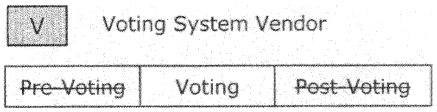
This section contains a preliminary set of characteristics for IDV systems. These characteristics are fundamental in nature and apply to all categories of IDV systems. They will form the basis for future requirements for independent verification systems.

2.1 An Independent Dual Verification Voting System Produces Two Distinct Sets of Records of Ballot Choices Via Interactions With the Voter Such That One Set of Records Can Be Compared Against the Other To Check Their Equality of Content



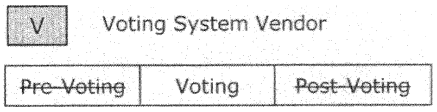
Discussion: This is the fundamental core definition for IDV systems. The records can be checked against one another to determine whether or not the voter's choices were correctly recorded.

2.1.1 The Voter Verifies the Content of Each Record and Either (a) Verifies at Least One of the Records Directly or (b) Verifies Both Records Indirectly if the Records Are Each Under the Control of Independent Processes



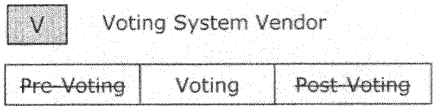
Discussion: Direct Verification involves using human senses, e.g., directly verifying a paper record via one's eyesight. Indirect Verification involves using an intermediary to perform the verification, e.g., verifying an electronic ballot image at the voting system.

2.1.2 The Creation, Storage, and Handling of the Records Are Sufficiently Separate Such That the Failure or Compromise of One Record Does Not Cause the Failure or Compromise of Another



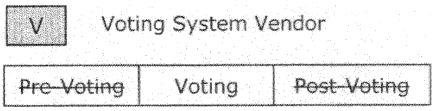
Discussion: The records must be stored on different media and handled independently of each other, so that no one process could compromise all records. If an attack can alter one record, it should still be very difficult to alter the other record.

2.1.2.1 At Least One Record Is Highly Resistant to Damage or Alteration and Should Be Capable of Long-Term Storage



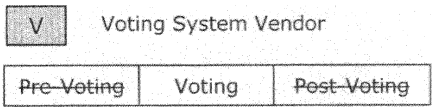
Discussion: At least one of the records should be difficult to alter or damage so that it could be used in case the counted records are damaged or lost.

2.1.3 The Processes of Verification for the Multiple Records Do Not All Depend for Their Integrity on the Same Device, Software Module, or System, and Are Sufficiently Separate Such That Each Record Provides Evidence of the Voter's Choices Independently of Its Other Corresponding Record



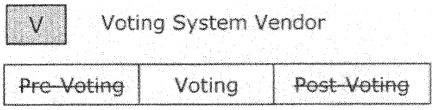
Discussion: For example, the verification of an electronic record on a DRE is not sufficiently separate from the verification of an electronic record located on a token but performed by the same DRE as the verification for the first record. Verification of a paper record by one's senses is sufficiently separate in this case.

2.1.4 The Records Can Be Used in Checks of One Another, Such That if One Set of Records Can Be Used in an Efficient Counting Process, the Other Set of Records Can Be Used for Checking Its Agreement With the First Set of Records



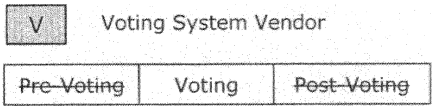
Discussion: For example, an electronic record can be used in an efficient counting process. A second paper record can be used to verify the accuracy of the electronic record; however its suitability for efficient counting is less clear. If a paper record can be used in an automated scan process, it may be more suitable.

2.1.5 The Records Within a Set Are Linked to Their Corresponding Records in the Other Set By Including a Unique Identifier Within Each Record That Can Be Used to Identify the Record's Corresponding Record in the Other Set



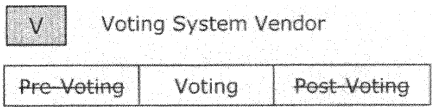
Discussion: The identifier should serve the purpose of uniquely identify the record so as to identify duplicates and/or for cross-checking two record types.

2.1.6 Each Record Includes an Identification of the Voting Site/Precinct

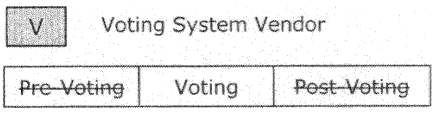


Discussion: If the voting site and precinct are different, both should be included.

2.1.7 The Records Include Information Identifying Whether the Balloting Is Provisional, Early, or on Election Day, and Information That Identifies the Ballot Style in Use

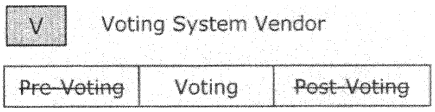


2.1.8 The Records Include a Voting Session Identifier That Is Generated When the Voting Station Is Placed in Voting Mode and That Can Be Used To Identify the Records as Being Created During That Voting Session



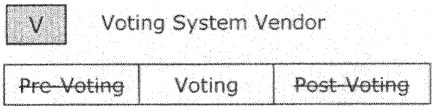
Discussion: If there are several voting sessions on the same voting station on the same day, the voting session identifiers must be different. They should be generated from a random number generator.

2.1.9 The Records Include an Identifier of the Voting System That Is Unique to That Style of Voting Systems



Discussion: The identifier could be a serial number or other unique ID.

2.1.10 The Cryptographic Software in Independent Verification Voting Systems Is Approved by the U.S. Government's Cryptographic Module Validation Program (CMVP) as Applicable



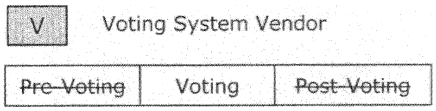
Discussion: The voting systems may use cryptographic software for a number of different purposes, including calculating checksums, encrypting records, authentication, generating random numbers, and for digital signatures. This software should be reviewed and approved by the Cryptographic Module Validation Program. There may be cryptographic voting schemes where the cryptographic algorithms used are necessarily different from any algorithms that have approved CMVP implementations, thus CMVP approved software shall be used where feasible. The CMVP Web site is *http://csrc.nist.gov/cryptval*.

D.3. Split Process IDV Systems

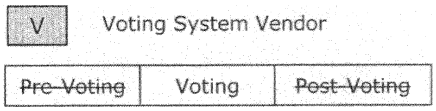
This section contains characteristics specific to split process IDV systems. The characteristics build on and are in addition to the core characteristics for IDV systems. Split process systems consist of separate vote capture and verification stations, i.e., two physical devices. A voter inserts an object called a token into the capture station to make ballot selections and then takes the token object to the verification station to review and store his or her votes. Two records of the vote are created: one on the token object and one by the verification station.

3.1 Capture and Verification Stations

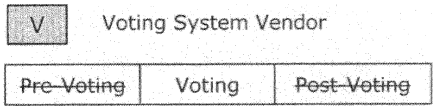
3.1.1 The Verification Station Is Able To Add Information to the Token Object But Cannot Change Prior Recorded Information



3.1.2 The Capture and Verification Stations Do Not Permit any Communications Between Them Except Via the Token Object

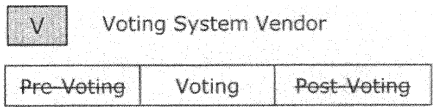


3.1.3 The Verification Station Log All Rejected Votes, Including the Precise Contents of the Votes and the Identifier of the Token Object



Discussion: The voter could reject and essentially spoil his or her ballot. This is to prevent the verification station from recording ballot choices that are different from what was entered at the capture station.

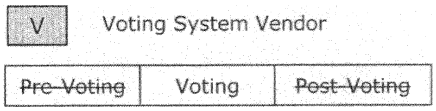
3.1.4 The Capture and Verification Stations Could Be Purchased From Different Manufacturers and Could Use Different Operating Systems



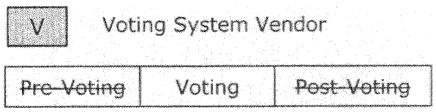
Discussion: The greater the diversity between the systems, the less likely they could be compromised by the same threats, e.g., software viruses, or by a single conspiracy.

3.2 Data Formats for Token Objects

3.2.1 The Format for Data Written to the Token Object Is Specified and Publicly Available for Use Without Licensing Fees

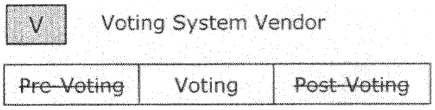


3.2.2 The Verification Station Verifies the Correctness of the Data on the Token Object and Provides an Indication of any Errors to the Voter

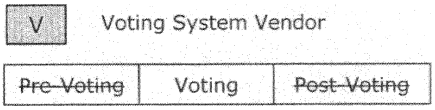


Discussion: The verification station needs to verify, in essence, that the data written to the token object was formatted properly according to the rules of the format's specification and reject ill-formatted data. It also checks that the votes are consistent with the voting instructions, e.g., ''vote for one, vote for two.''

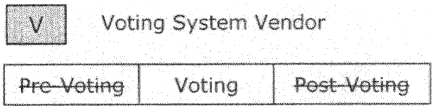
3.2.3 The Record on the Token Object Is Digitally Signed Using a Private Key Known Only to the Vote Capture Station and Whose Public Key Is Distributed in an Authenticated Way To Auditing Systems



3.2.4 The Record Created by the Verification Station Is Digitally Signed Using a Private Key Known Only to the Verification Station and Whose Public Key Is Distributed in an Authenticated Way To Auditing Systems

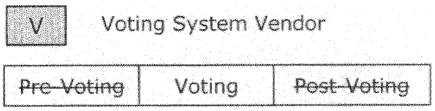


3.2.5 The Capture Station Associates With Each Record of Voter Choices a Unique Identifier That Is Capable of Being Used To Identify the Record Uniquely and To Identify Its Corresponding Record Created by the Verification Station

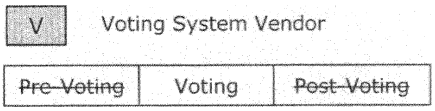


Discussion: The identifier serves the purpose of uniquely identifying the record to identify duplicates and/or for cross-checking two record types.

3.2.6 The Records From the Verification Station Are Randomly Shuffled in Memory and When Exported, so That the Order of the Records Cannot Be Used To Identify Any Voter

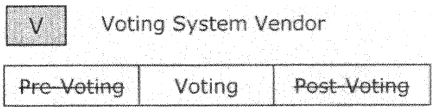


3.2.7 Rejected Token Objects Are Stored Separately From Accepted Memory Devices for Later Auditing



3.3 Storage and Communications of Records

3.3.1 The Verification Station Exports Its Records of Voter Choices Accompanied by a Digital Signature on the Entire Set of Electronic Records and Their Associated Digital Signatures



Discussion: This is necessary to determine if records are missing or substituted.

3.3.2 The Token Objects Are Carried in a Physically Secure Way, Using Chain-of-Custody Mechanisms To Ensure Their Integrity

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

3.3.3 The Records From Each Station Are Randomly Shuffled, so That an Attacker Learning the Contents of Those Records at Any Point in the Voting Process Can Learn Nothing About the Order of Votes Cast

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

D.4. Witness IDV Systems

This section contains preliminary characteristics for Witness IDV systems. They are consistent with the definition of IDV systems from Section 6.0 and build on the core characteristics for IDV systems.

Witness IDV systems are composed of two physically separate devices: the vote capture station that captures and stores records of voters' choices, and the witness device that captures voter verifications of the records at the vote capture station. Because there are two devices, a number of the definitions for split verification systems apply equally well to witness systems. Because the vote capture station is in essence a DRE (with or without VVPAT capability), a number of the definitions for VVPAT that are specific to DRE systems also apply to vote capture stations. A witness system fits somewhat loosely in the independent verification category because the voter performs only an indirect verification of ballot choices at the DRE. It is important that the witness device be tested extensively for accuracy and reliability and that malfunctions in the device be made immediately obvious to voters and poll workers.

4.1 A Witness Device Records Only a Voter's Verification at a Voting Station and Stores the Record so That It Can Be Used for Audit and Recounts as Applicable

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

4.2 A Witness Device Acts as a Passive Device That Cannot Perform any Operation With Respect to the Voting Station Other Than To Capture the Voter's Ballot Choices as the Voter Verifies Them

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: The witness device is synchronized with the voter verification of the ballot choices.

4.3 A Witness Device, if Attached to the Voting Station, Is Attached Such That it Can Capture Only the Voter's Verification of Ballot Choices

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: For example, the witness device could be connected only to the display unit and not the vote capture station's memory or disk drive.

4.4 The Voting Station Is Not Able To Detect in Its Function Whether a Witness Device Is Electrically Connected or in Operation

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: If the witness device is connected to or attached electrically to the vote capture station, the capture station is not able to determine or be aware in its function that a witness device is attached.

4.5 The Witness Device Operates Properly With Most if Not All Electronic Voting Systems Functioning as Voting Stations

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This is desirable but may require some degree of openness in witness device specifications to enable the desired compatibility.

4.6 The Witness Device Is Not Designed or Built or Manufactured by the Same Manufacturer of the Voting Station to Which it Is Attached

T Testing Authority

~~Pre-Voting~~	Voting	~~Post-Voting~~

4.7 Because Voters Must Trust That the Witness Device Records Their Verifications Accurately, Assessments of Its Software and Functionality Are Straightforward, Readily Performed, and Include Extensive Evaluation and Penetration Testing Above and Beyond What May Be Performed on Voting Systems That Do Not Contain Witness Devices

T Testing Authority

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: Witness device manufacturers will need to document their systems extensively and subject them to highly stringent testing.

4.8 Because Voters Must Trust That the Witness Device Records Their Verifications Accurately, the Results of Witness System Assessments Are Made Publicly Available

T Testing Authority

~~Pre-Voting~~	Voting	~~Post-Voting~~

4.9 A Voter Should Be Able To Inspect the Record of the Voter's Verification Upon the Voter's Request

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: It is desirable that a voter have some capability to verify that the witness device is operating as specified.

4.10 The Witness Device Clearly Indicates Any Malfunction in a Way That Is Obvious to Poll Workers and Voters

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

Discussion: This serves to ensure that voting cannot continue if the witness device is not operating or is malfunctioning.

4.11 The Records Captured by the Witness Device Are Able To Be Used in Highly Accurate Verifications of the Voting Records of the Voting Station

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

4.12 The Records Contain Unique Identifiers That Correspond to Records Stored by the Voting Station

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

4.13 The Records Are Digitally Signed by the Witness Device so That the Integrity and Authenticity of Its Records Can Be Verified

V Voting System Vendor

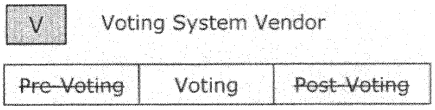
~~Pre-Voting~~	Voting	~~Post-Voting~~

4.14 A Witness Device Is Able To Export Its Records in an Open, Nonproprietary Format Such That the Records Can Be Used in Automated Audits

V Voting System Vendor

~~Pre-Voting~~	Voting	~~Post-Voting~~

4.15 The Records Are Stored in the Witness Device and Exported Such That Voter Privacy Is Protected, e.g., by Making the Order of the Records Randomly Determined



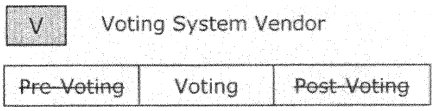
D.5. End to End (Cryptographic) IDV Systems

This section contains very preliminary definitions for End to End (or cryptographic-based) IDV systems. They are consistent with the characteristics of IDV systems and build on the core characteristics of IDV systems.

End to end voting systems use cryptographic mechanisms as a substitute for some of the physical, computer-security, or procedural mechanisms used to secure other voting systems. Some auditing procedures normally performed by voting officials at the tabulation center can be done by voters or their designated representatives, using receipts issued by the voting system that work in conjunction with the cryptographic mechanisms. Typically, multiple individuals, known as designated trustees, hold key information that is combined to form encryption and decryption keys; thus, no one person is able to encrypt or decrypt. Several types of cryptographic voting approaches have been proposed or implemented, with varying properties. There are many cryptographic techniques (such as secure multiparty computation and homomorphic) that could be applied in novel ways in future voting systems.

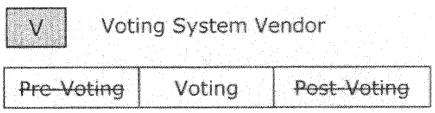
End to end systems use cryptographic mechanisms as a substitute for some of the physical, computer security, and procedural mechanisms used to secure voting systems. These cryptographic mechanisms can be used by a voter to verify that ballot choices were recorded correctly and counted in the election.

5.1 End to End Systems Use Cryptographic Mechanisms as a Substitute for Some of the Physical, Computer Security, and Procedural Mechanisms Used To Secure Voting Systems. These Cryptographic Mechanisms Can Be Used by a Voter To Verify That Ballot Choices Were Recorded Correctly and Counted in the Election



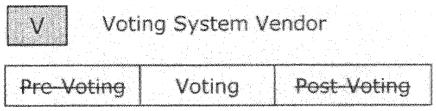
Discussion: There are potentially many types of end to end systems that could perform a variety of different functions.

5.2 End to End Systems Record Voters Ballot Choices at an Electronic Voting System and Encrypt the Records of Votes for Later Counting by Designated Trustees



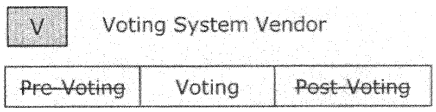
Discussion: The voting station would operate much as a DRE.

5.3 End to End Systems Produce a Receipt That Can Be Used by the Voter in Some Process Made Available by Voting Officials That Would Enable the Voter to Verify That the Voter's Ballot Choices Were Recorded Correctly and Counted in the Election



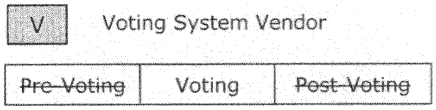
Discussion: The receipt could have a variety of different forms but likely would be printed on paper for the voter's ease of handling.

5.4 No One Designated Trustee Is Able to Decrypt the Records; Decryption of the Records Is Performed by a Process That Involves Multiple Designated Trustees

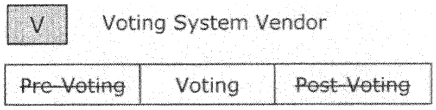


Discussion: For example, multiple keys could be combined to decrypt the records.

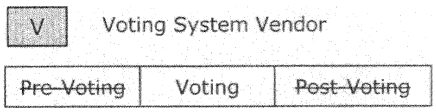
5.5 The Receipt Preserves Voter Privacy by Not Containing any Information That Can Be Used To Show the Voter's Choices



5.6 The Process Used To Verify That Ballot Choices Were Recorded Correctly or Counted in the Election Preserves Voter Privacy by not Revealing any Information That Can Be Used to Show the Voter's Choices

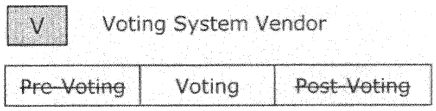


5.7 End to End Systems Store Backup Records of Voter's Ballot Choices That Can Be Used in Contingencies Such as Damage to or Loss of Its Counted Records

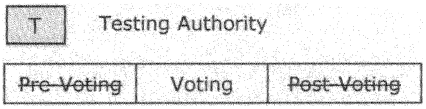


Discussion: This is necessary because the handling of the encrypted records requires the same chain of custody procedures as records produced by other voting systems and are thus subject to loss or damage. This could be paper for example.

5.8 The Backup Records Contain Unique Identifiers That Correspond to Unique Identifiers in Its Counted Records, and the Backup Records Are Digitally Signed so That They Can Be Verified for Their Authenticity and Integrity In Audits

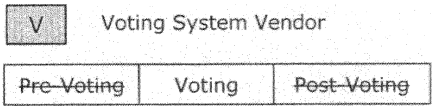


5.9 Cryptographic Software in End to End Systems Is Documented Thoroughly and Subject To Extensive Verification Testing for Correctness. The Documentation Includes Extensive Discussion of How Cryptographic Keys Are To Be Generated, Distributed, Managed, Used, Certified, and Destroyed

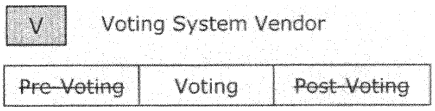


Discussion: The correctness of the system depends on the correctness of the cryptographic algorithms and their implementations. Thus, rigorous testing is necessary.

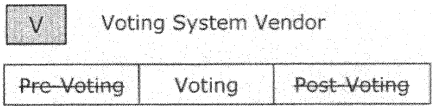
5.10 Vote Capture Stations Used in End to End Systems Meet All Security, Usability, and Accessibility Requirements for Similar Stations in Other Voting Systems



5.11 Reliability, Usability, and Accessibility Requirements for Printers in Other Voting Systems Apply As Well to Receipt Printers Used in End to End Systems

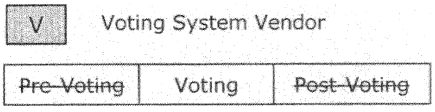


5.12 Trustee Systems Are Subject to the Same Evaluations and Assessments as Other Voting Systems



Discussion: Trustee systems include systems to perform cryptographic functions such as encrypting or decrypting votes.

5.13 Systems for Verifying That Voters' Ballots Were Recorded Properly and Counted in the Election Are Implemented in a Robust Secure Manner



Discussion: Many of the cryptographic approaches have a ''public append-only bulletin board'' as a component; this is an important part of the system and needs to be implemented in a robust secure manner.

Volume II, Section 1

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1.2 General Contents of Volume II
1.3 Qualification Testing Focus
1.4 Qualification Testing Sequence
1.5 Evolution of Testing

1.6 Outline of Contents

1 Introduction

1.1 Objectives and Usage of Volume II of the Voting Systems Standards

Volume II, Voting System Qualification Testing Standards, is a complementary document to Volume I, Voting System Performance Standards. While Section 9 of Volume I provides an overview of the qualification testing process performed by the Independent Test Authorities (ITAs), Volume II provides specific detail about the process that is necessary for ITAs, vendors, and election officials participating in the qualification process. The Standards envision a diverse set of users for Volume II, including:

- Vendors: Voting system vendors will use Volume II to guide the design, construction, documentation, internal testing, and maintenance of voting systems to ensure conformance with the Standards. Vendors will also use Volume II to help define the obligations of organizations that support the vendor's system, such as suppliers, testers, and consultants.
- Independent Testing Authorities: Testing authorities certified to qualify systems will use Volume II to guide the testing of voting systems and preparation of test reports. Laboratories and other parties interested in becoming ITAs can use Volume II to understand the requirements and obligations placed on the ITAs involved in the process.
- Election officials: Voting officials in many jurisdictions will use Volume II to guide system certification, procurement and acceptance requirements and processes, which may include additional requirements and adjustments to those requirements included in the Standards.

1.2 General Contents of Volume II

To support these primary users of the Standards, Volume II provides:

a. A discussion of the general sequencing of tests performed by the ITAs: Volume II identifies the tests where sequencing is important and provides such required sequences. Volume II also indicates other tests that may be conducted in parallel.

b. A detailed description of the information required to be submitted by voting system vendors in the Technical Data Package (TDP): The TDP is a comprehensive set of documents that describe system design specifications, operating procedures, system testing information, facility and resource requirements for system operations, system maintenance instructions for jurisdictions, and vendor practices for quality assurance and configuration management that underlie the development and update of the system. The TDP focuses predominantly on the required documentation contents, providing flexibility to vendors to determine the best format for meeting the content requirements.

c. Delineation of specific system tests to be conducted by the ITAs: Volume II identifies specific tests that are to be conducted relating to system components and to the integrated system as a whole. Tests are defined for system functionality, hardware, software, telecommunications, and security that address the performance standards delineated in Volume I.

d. Delineation of specific examinations of other information provided by the vendor: Volume II identifies the criteria to be used by the ITAs in conducting examinations of the information submitted in the TDP. These criteria address the documentation provided in the TDP, including documentation of the system and related operational procedures as well as vendor practices for quality assurance and configuration management.

e. Description of process for handling failures: A system may fail to pass one or more of the tests and examinations performed by the ITAs. Volume II describes the practices to be used by the ITAs when the system or its documentation fails a test or examination, including the nature and depth of re-testing required for corrections submitted by the vendor.

f. Outline of Qualification Test Report. Volume II provides an outline of the report issued by the ITAs at the conclusion of testing, providing the specific requirements for this report.

1.3 Qualification Testing Focus

Qualification tests focus on multiple aspects of the voting system and the process for development and maintenance. Although multiple ITAs may conduct qualification testing, with each ITA conducting tests in its areas of expertise, the focus of their combined activities remains the same. Overall, qualification testing focuses on:

a. The functional capabilities of the system to support specific election activities performed by system users, including election officials and voters, as defined in Volume I, Section 2 of the Standards;

b. The performance capabilities of the system that ensure accuracy, integrity, and reliability of system operations and the election activities that rely on them, as defined in Volume I, Sections 3, 4, 5 and 6 of the Standards;

c. The system development and maintenance processes and related quality assurance activities performed by the vendor to ensure system quality, as addressed in Volume I, Section 7 of the Standards;

d. The configuration management activities used to control the development and modification of the system and its individual components, and maintain accurate information about the version and status of the system and its components throughout the system life cycle, as addressed in Volume I, Section 8 of the Standards; and

e. The documentation developed and maintained by the vendor to support system development, testing, installation, maintenance and operation, as addressed by the TDP described in Volume II, Section 2.

1.4 Qualification Testing Sequence

The overall qualification test process progresses through several stages involving pre-testing, testing, and post-testing activities as described in Volume I, Section 9 of the Standards. Whereas Volume I describes the flow of the overall process, Volume II focuses on the details of activities conducted by the ITA and activities conducted by the vendor to facilitate testing and respond to errors, anomalies, and other findings of concern during the test process.

Qualification testing involves a series of physical tests and other examinations that are conducted in a particular sequence. This sequence is intended to maximize overall testing effectiveness, as well as conduct testing in as efficient a manner as possible. The ITA follows the general sequence of activities indicated below. Note that test errors and anomalies are communicated to the vendor throughout the process.

a. Initial examination of the system and TDP provided by the vendor to ensure that all components and documentation needed to conduct testing have been submitted, and to help determine the scope and level of effort of testing needed;

b. Development of a detailed system test plan that reflects the scope and complexity of the system, and the status of system qualification (i.e., initial qualification or re-qualification);

c. Operational testing of hardware components, including environmental tests, to ensure that operational performance requirements are achieved;

d. Functional and performance testing of hardware components;

e. Examination of the vendor's Quality Assurance Program and Configuration Management Plan;

f. Code review for selected software components;

g. Functional and performance testing of software components;

h. System installation testing and testing of related documentation for system installation and diagnostic testing;

i. Functional and performance testing of the integrated system, including testing of the full scope of system functionality, performance tests for telecommunications and security; and examination and testing of the System Operations Manual;

j. Examination of the System Maintenance Manual;

k. Witnessing of a system 'build' conducted by the vendor to conclusively establish the system version and components being tested; and

l. Preparation of the Qualification Test Report.

1.5 Evolution of Testing

The ITA will conduct extensive tests on a voting system to evaluate it against the requirements of the Standards. Taking advantage of the experience gained in examining other voting systems, ITAs will design tests specifically for the system design, configuration, and documentation provided by the vendor. Additionally, new threats may be identified that are not directly addressed by the Standards or the system. As new threats to a voting system are discovered, either during the system's operation or during the operation of other computer-based systems that use technologies comparable to those of another voting system, ITAs shall expand the tests used for system security to address the threats that are applicable to a particular design of voting system.

1.6 Outline of Contents

Volume II of the Voting Systems Standards is organized as follows:

• Section 2 describes the requirements for the Technical Data Package;
• Section 3 describes functionality testing;
• Sections 4 and 5 describe specific testing standards for hardware and software;
• Section 6 describes standards for testing the fully integrated system, including telecommunications and security capabilities, and the documentation used to operate the system;
• Section 7 describes the standards for examining the documentation of vendor practices for quality assurance and configuration management;
• Appendix A provides an outline for the Qualification Test Plan;
• Appendix B provides an outline for the Qualification Test Report; and
• Appendix C describes the guiding principles used to design the voting system qualification testing process performed by ITAs.

Volume II, Section 2

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2 Technical Data Package

2.1 Scope

This section contains a description of vendor documentation relating to the voting system that shall be submitted with the system as a precondition of qualification testing. These items are necessary to define the product and its method of operation; to provide technical and test data supporting the vendor's claims of the system's functional capabilities and performance levels; and to document instructions and procedures governing system operation and field maintenance. Other items relevant to the system evaluation shall be submitted along with this documentation (such as disks, tapes, source code, object code, and sample output report formats).

Both formal documentation and notes of the vendor's system development process shall be submitted for qualification tests. Documentation outlining system development permits assessment of the vendor's systematic efforts to test the system and correct defects. Inspection of this process also enables the design of a more precise qualification test plan. If the vendor's developmental test data is incomplete, the test agency shall design and conduct the appropriate tests.

2.1.1 Content and Format

The content of the Technical Data Package (TDP) is intended to collect clear, complete descriptions of the following information about the system:
• Overall system design, including subsystems, modules and the interfaces among them;
• Specific functional capabilities provided by the system;
• Performance and design specifications;
• Design constraints, applicable standards, and compatibility requirements;
• Personnel, equipment, and facility requirements for system operation, maintenance, and logistical support;
• Vendor practices for assuring system quality during the system's development and subsequent maintenance; and
• Vendor practices for managing the configuration of the system during development and for modifications to the system throughout its life cycle.

The vendor shall list all documents controlling the design, construction, operation, and maintenance of the system. Documents shall be listed in order of precedence.

2.1.1.1 Required Content for Initial Qualification

At minimum, the TDP shall contain the following documentation:
a. System configuration overview;
b. System functionality description;
c. System hardware specifications;
d. Software design and specifications;
e. System test and verification specifications;
f. System security specifications;
g. User/system operations procedures;
h. System maintenance procedures;
i. Personnel deployment and training requirements;
j. Configuration management plan;
k. Quality assurance program; and
l. System change notes.

2.1.1.2 Required Content for System Changes and Re-qualification

For systems seeking re-qualification, vendors shall submit System Change Notes as described in section 2.13, as well as current versions of all documents that have been updated to reflect system changes.

Systems in existence at the time the revised standards are released may not

have all required developmental documentation. When such a system is subject to evaluation as a result of system modification, the vendor shall provide what information they can.

Vendors may also submit other information relevant to the evaluation of the system, such as documentation of tests performed by other independent test authorities and records of the system's performance history, if any.

2.1.1.3 Format

The requirements for formatting the TDP are general in nature; specific format details are of the vendor's choosing. Other items submitted by the vendor, such as documentation of tests conducted by other test authorities, performance history, failure analysis, and corrective action may be provided in a format of the vendor's choosing.

The TDP shall include a detailed table of contents for the required documents, an abstract of each document and a listing of each of the informational sections and appendices presented. A cross-index shall be provided indicating the portions of the documents that are responsive to documentation requirements for any item presented using the vendor's format.

2.1.2 Other Uses for Documentation

Although all of the TDP documentation is required for qualification testing, some of these same items may also be required during the state certification process and local level acceptance testing. Therefore, it is recommended that the technical documentation required for certification and acceptance testing be deposited in escrow.

2.1.3 Protection of Proprietary Information

The vendor shall identify all documents, or portions of documents, containing proprietary information not approved for public release. Any person or test agency receiving proprietary information shall agree to use it solely for the purpose of analyzing and testing the system, and shall agree to refrain from otherwise using the proprietary information or disclosing it to any other person or agency without the prior written consent of the vendor, unless disclosure is legally compelled.

2.2 System Overview

In the system overview, the vendor shall provide information that enables the test authority to identify the functional and physical components of the system, how the components are structured, and the interfaces between them.

2.2.1 System Description

The system description shall include written descriptions, drawings and diagrams that present:

a. A description of the functional components (or subsystems) as defined by the vendor (e.g., environment, election management and control, vote recording, vote conversion, reporting, and their interconnection);

b. A description of the operational environment of the system that provides an overview of the hardware, software, and communications structure;

c. A theory of operation that explains each system function, and how the function is achieved in the design;

d. Descriptions of the functional and physical interfaces between subsystems and components;

e. Identification of all COTS hardware and software products and communications services used in the development and/or operation of the voting system, identifying the name, vendor and version used for each such component, including:

(1) Operating systems;

(2) Database software;

(3) Communications routers;

(4) Modem drivers; and

(5) Dial-up networking software;

f. Interfaces among internal components, and interfaces with external systems. For components that interface with other components for which multiple products may be used, the TDP shall provide an identification of:

(1) File specifications, data objects, or other means used for information exchange; and

(2) The public standard used for such file specifications, data objects, or other means; and

g. Benchmark directory listings for all software (including firmware elements) and associated documentation included in the vendor's release in order of how each piece of software would normally be installed upon setup and installation.

2.2.2 System Performance

The vendor shall provide system performance information that includes descriptions of:

a. The performance characteristics of each operating mode and function in terms of expected and maximum speed, throughput capacity, maximum volume (maximum number of voting positions and maximum number of ballot styles supported), and processing frequency;

b. Quality attributes such as reliability, maintainability, availability, usability, and portability;

c. Provisions for safety, security, privacy, and continuity of operation; and

d. Design constraints, applicable standards, and compatibility requirements.

2.3 System Functionality Description

The vendor shall declare the scope of the system's functional capabilities, thereby establishing the performance, design, test, manufacture, and acceptance context for the system.

The vendor shall provide a listing of the system's functional processing capabilities, encompassing capabilities required by the Standards and any additional capabilities provided by the system. This listing shall provide a simple description of each capability. Detailed specifications shall be provided in other documentation required for the TDP as indicated by the standards for that documentation.

a. The vendor shall organize the presentation of required capabilities in a manner that corresponds to the structure and sequence of functional capabilities indicated in Volume I, Section 2 of the Standards. The contents of Volume I Section 2 may be used as the basis for a checklist whereby the vendor indicates the specific functions provided and those not provided by the system;

b. Additional capabilities shall be clearly indicated. They may be presented using the same structure as that used for required capabilities (i.e., overall system capabilities, pre-voting functions, voting functions, post-voting functions), or may be presented in another format of the vendor's choosing;

c. Required capabilities that may be bypassed or deactivated during installation or operation by the user shall be clearly indicated;

d. Additional capabilities that function only when activated during installation or operation by the user shall be clearly indicated; and

e. Additional capabilities that normally are active but may be bypassed or deactivated during installation or operation by the user shall be clearly indicated.

2.4 System Hardware Specification

The vendor shall expand on the system overview by providing detailed specifications of the hardware components of the system, including specifications of hardware used to support the telecommunications capabilities of the system, if applicable.

2.4.1 System Hardware Characteristics

The vendor shall provide a detailed discussion of the characteristics of the system, indicating how the hardware meets individual requirements defined

in Volume I, Sections 3, 4, 5 and 6 of the Standards, including:

a. Performance characteristics: This discussion addresses basic system performance attributes and operational scenarios that describe the manner in which system functions are invoked, describe environmental capabilities, describe life expectancy, and describe any other essential aspects of system performance;

b. Physical characteristics: This discussion addresses suitability for intended use, requirements for transportation and storage, health and safety criteria, security criteria, and vulnerability to adverse environmental factors;

c. Reliability: This discussion addresses system and component reliability stated in terms of the systems operating functions, and identification of items that require special handling or operation to sustain system reliability;

d. Maintainability: Maintainability represents the ease with which maintenance actions can be performed based on the design characteristics of equipment and software and the processes the vendor and election officials have in place for preventing failures and for reacting to failures. Maintainability includes the ability of equipment and software to self-diagnose problems and make non-technical election workers aware of a problem. Maintainability also addresses a range of scheduled and unscheduled events; and

e. Environmental conditions: This discussion addresses the ability of the system to withstand natural environments, and operational constraints in normal and test environments, including all requirements and restrictions regarding electrical service, telecommunications services, environmental protection, and any additional facilities or resources required to install and operate the system.

2.4.2 Design and Construction

The vendor shall provide sufficient data, or references to data, to identify unequivocally the details of the system configuration submitted for qualification testing. The vendor shall provide a list of materials and components used in the system and a description of their assembly into major system components and the system as a whole. Paragraphs and diagrams shall be provided that describe:

a. Materials, processes, and parts used in the system, their assembly, and the configuration control measures to ensure compliance with the system specification;

b. The electromagnetic environment generated by the system;

c. Operator and voter safety considerations, and any constraints on system operations or the use environment;

d. Human engineering considerations, including provisions for access by disabled voters.

2.5 Software Design and Specification

The vendor shall expand on the system overview by providing detailed specifications of the software components of the system, including software used to support the telecommunications capabilities of the system, if applicable.

2.5.1 Purpose and Scope

The vendor shall describe the function or functions that are performed by the software programs that comprise the system, including software used to support the telecommunications capabilities of the system, if applicable.

2.5.2 Applicable Documents

The vendor shall list all documents controlling the development of the software and its specifications. Documents shall be listed in order of precedence.

2.5.3 Software Overview

The vendor shall provide an overview of the software that includes the following items:

a. A description of the software system concept, including specific software design objectives, and the logic structure and algorithms used to accomplish these objectives;

b. The general design, operational considerations, and constraints influencing the design of the software;

c. Identification of all software items, indicating items that were:

(1) Written in-house;

(2) Procured and not modified; and

(3) Procured and modified including descriptions of the modifications to the software and to the default configuration options;

d. Additional information for each item that includes:

(1) Item identification;

(2) General description;

(3) Software requirements performed by the item;

(4) Identification of interfaces with other items that provide data to, or receive data from, the item; and

(5) Concept of execution for the item;

The vendor shall also include a certification that procured software items were obtained directly from the manufacturer or a licensed dealer or distributor.

2.5.4 Software Standards and Conventions

The vendor shall provide information that can be used by an ITA or state certification board to support software analysis and test design. The information shall address standards and conventions developed internally by the vendor as well as published industry standards that have been applied by the vendor. The vendor shall provide information that addresses the following standards and conventions:

a. System development methodology;

b. Software design standards, including internal vendor procedures;

c. Software specification standards, including internal vendor procedures;

d. Software coding standards, including internal vendor procedures;

e. Software testing and verification standards, including internal vendor procedures, that can assist in determining the program's correctness and ACCEPT/REJECT criteria; and

f. Quality assurance standards or other documents that can be used by the ITA to examine and test the software. These documents include standards for program flow and control charts, program documentation, test planning, and for test data acquisition and reporting.

2.5.5 Software Operating Environment

This section shall describe or make reference to all operating environment factors that influence the software design.

2.5.5.1 Hardware Environment and Constraints

The vendor shall identify and describe the hardware characteristics that influence the design of the software, such as:

a. The logic and arithmetic capability of the processor;

b. Memory read-write characteristics;

c. External memory device characteristics;

d. Peripheral device interface hardware;

e. Data input/output device protocols; and

f. Operator controls, indicators, and displays.

2.5.5.2 Software Environment

The vendor shall identify the compilers or assemblers used in the generation of executable code, and describe the operating system or system monitor.

2.5.6 Software Functional Specification

The vendor shall provide a description of the operating modes of

the system and of software capabilities to perform specific functions.

2.5.6.1 Configurations and Operating Modes

The vendor shall describe all software configurations and operating modes of the system, such as ballot preparation, election programming, preparation for opening the polling place, recording votes and/or counting ballots, closing the polling place, and generating reports. For each software function or operating mode, the vendor shall provide:

a. A definition of the inputs to the function or mode (with characteristics, tolerances or acceptable ranges, as applicable);

b. An explanation of how the inputs are processed; and

c. A definition of the outputs produced (again, with characteristics, tolerances, or acceptable ranges as applicable).

2.5.6.2 Software Functions

The vendor shall describe the software's capabilities or methods for detecting or handling:

a. Exception conditions;

b. System failures;

c. Data input/output errors;

d. Error logging for audit record generation;

e. Production of statistical ballot data;

f. Data quality assessment; and

g. Security monitoring and control.

2.5.7 Programming Specifications

The vendor shall provide in this section an overview of the software design, its structure, and implementation algorithms and detailed specifications for individual software modules.

2.5.7.1 Programming Specifications Overview

This overview shall include such items as flowcharts, HIPOs, data flow diagrams, and other graphical techniques that facilitate understanding of the programming specifications. This section shall be prepared to facilitate understanding of the internal functioning of the individual software modules. Implementation of the functions shall be described in terms of the software architecture, algorithms, and data structures.

2.5.7.2 Programming Specifications Details

The programming specifications shall describe individual software modules and their component units, if applicable. For each module and unit, the vendor shall provide the following information:

a. Module and unit design decisions, if any, such as algorithms used;

b. Any constraints, limitations, or unusual features in the design of the software module or unit;

c. The programming language to be used and rationale for its use if other than the specified module or unit language;

d. If the software module or unit consists of or contains procedural commands (such as menu selections in a database management system (DBMS) for defining forms and reports, on-line DBMS queries for database access and manipulation, input to a graphical user interface (GUI) builder for automated code generation, commands to the operating system, or shell scripts), a list of the procedural commands and reference to user manuals or other documents that explain them;

e. If the software module or unit contains, receives, or outputs data, a description of its inputs, outputs, and other data elements as applicable. (Section 2.5.9 describes the requirements for documenting system interfaces.) Data local to the software module or unit shall be described separately from data input to or output from the software module or unit;

f. If the software module or unit contains logic, the logic to be used by the software unit, including, as applicable:

(1) Conditions in effect within the software module or unit when its execution is initiated;

(2) Conditions under which control is passed to other software modules or units;

(3) Response and response time to each input, including data conversion, renaming, and data transfer operations;

(4) Sequence of operations and dynamically controlled sequencing during the software module's or unit's operation, including:

(i) The method for sequence control;

(ii) The logic and input conditions of that method, such as timing variations, priority assignments;

(iii) Data transfer in and out of memory; and

(iv) The sensing of discrete input signals, and timing relationships between interrupt operations within the software module or unit; and

(5) Exception and error handling; and

g. If the software module is a database, provide the information described in Volume II, Section 2.5.8.

2.5.8 System Database

The vendor shall identify and provide a diagram and narrative description of the system's databases, and any external files used for data input or output. The information provided shall include for each database or external file:

a. The number of levels of design and the names of those levels (such as conceptual, internal, logical, and physical);

b. Design conventions and standards (which may be incorporated by references) needed to understand the design;

c. Identification and description of all database entities and how they are implemented physically (e.g., tables, files, etc.);

d. Entity relationship diagram and description of relationships; and

e. Details of table, record or file contents (as applicable) to include individual data elements and their specifications, including:

(1) Names/identifiers;

(2) Data type (alphanumeric, integer, etc.);

(3) Size and format (such as length and punctuation of a character string);

(4) Units of measurement (such as meters, dollars, nanoseconds);

(5) Range or enumeration of possible values (such as 0–99);

(6) Accuracy (how correct) and precision (number of significant digits);

(7) Priority, timing, frequency, volume, sequencing, and other constraints, such as whether the data element may be updated and whether business rules apply;

(8) Security and privacy constraints; and

(9) Sources (setting/sending entities) and recipients (using/receiving entities); and

f. For external files, a description of the procedures for file maintenance, management of access privileges, and security.

2.5.9 Interfaces

The vendor shall identify and provide a complete description of all internal and external interfaces, using a combination of text and diagrams.

2.5.9.1 Interface Identification

For each interface identified in the system overview, the vendor shall:

a. Provide a unique identifier assigned to the interface;

b. Identify the interfacing entities (systems, configuration items, users, etc.) by name, number, version, and documentation references, as applicable; and

c. Identify which entities have fixed interface characteristics (and therefore impose interface requirements on interfacing entities) and which are being developed or modified (thus having interface requirements imposed on them).

2.5.9.2 Interface Description

For each interface identified in the system overview, the vendor shall provide information that describes:

a. The type of interface (such as real-time data transfer, storage-and-retrieval of data, etc.) to be implemented;

b. Characteristics of individual data elements that the interfacing entity(ies) will provide, store, send, access, receive, etc., such as:

(1) Names/identifiers;

(2) Data type (alphanumeric, integer, etc.);

(3) Size and format (such as length and punctuation of a character string);

(4) Units of measurement (such as meters, dollars, nanoseconds);

(5) Range or enumeration of possible values (such as 0–99);

(6) Accuracy (how correct) and precision (number of significant digits);

(7) Priority, timing, frequency, volume, sequencing, and other constraints, such as whether the data element may be updated and whether business rules apply;

(8) Security and privacy constraints; and

(9) Sources (setting/sending entities) and recipients (using/receiving entities);

c. Characteristics of communication methods that the interfacing entity(ies) will use for the interface, such as:

(1) Communication links/bands/frequencies/media and their characteristics;

(2) Message formatting;

(3) Flow control (such as sequence numbering and buffer allocation);

(4) Data transfer rate, whether periodic/aperiodic, and interval between transfers;

(5) Routing, addressing, and naming conventions;

(6) Transmission services, including priority and grade; and

(7) Safety/security/privacy considerations, such as encryption, user authentication, compartmentalization, and auditing;

d. Characteristics of protocols the interfacing entity(ies) will use for the interface, such as:

(1) Priority/layer of the protocol;

(2) Packeting, including fragmentation and reassembly, routing, and addressing;

(3) Packeting, including fragmentation and reassembly, routing, and addressing;

(4) Legality checks, error control, and recovery procedures;

(5) Synchronization, including connection establishment, maintenance, termination; and

(6) Status, identification, and any other reporting features; and

e. Other characteristics, such as physical compatibility of the interfacing entity(ies) (dimensions, tolerances, loads, voltages, plug compatibility, etc.).

2.5.10 Appendices

The vendor may provide descriptive material and data supplementing the various sections of the body of the Software Specifications. The content and arrangement of appendices shall be at the discretion of the vendor. Topics recommended for amplification or treatment in appendix form include:

a. Glossary: A listing and brief definition of all software module names and variable names, with reference to their locations in the software structure. Abbreviations, acronyms, and terms should be included, if they are either uncommon in data processing and software development or are used in an unorthodox semantic;

b. References: A list of references to all related vendor documents, data, standards, and technical sources used in software development and testing; and

c. Program Analysis: The results of software configuration analysis algorithm analysis and selection, timing studies, and hardware interface studies that are reflected in the final software design and coding.

2.6 System Security Specification

Vendors shall submit a system security specification that addresses the security requirements of Volume I, Section 6 of the Standards. This specification shall describe the level of security provided by the system in terms of the specific security risks addressed by the system, the means by which each risk is addressed, the process used to test and verify the effective operation of security capabilities and, for systems that use public telecommunications networks as defined in Volume I, Section 5, the means used to keep the security capabilities of the system current to respond to the evolving threats against these systems.

Information provided by the vendor in this section of the TDP may be duplicative of information required by other sections. Vendors may cross reference to information provided in other sections provided that the means used provides a clear mapping to the requirements of this section.

Information submitted by the vendor shall be used by the test authority to assist in developing and executing the system qualification test plan. The Security Specification shall contain the sections identified below.

2.6.1 Access Control Policy

The vendor shall specify the features and capabilities of the access control policy recommended to purchasing jurisdictions to provide effective voting system security to meet the specific requirements of Volume I, Section 6.2.1. The access control policy shall address the general features and capabilities and individual access privileges indicated in Volume I, Section 6.2.1.

2.6.2 Access Control Measures

The vendor shall provide a detailed description of all system access control measures and mandatory procedures designed to permit access to system states in accordance with the access policy, and to prevent all other types of access to meet the specific requirements of Volume I, Section 6.2.2.

The vendor also shall define and provide a detailed description of the methods used to preclude unauthorized access to the access control capabilities of the system itself.

2.6.3 Equipment and Data Security

The vendor shall provide a detailed description of system capabilities and mandatory procedures for purchasing jurisdictions to prevent disruption of the voting process and corruption of voting data to meet the specific requirements of Volume I, Section 6.3 of the Standards. This information shall address measures for polling place security and central count location security.

2.6.4 Software Installation

The vendor shall provide a detailed description of the system capabilities and mandatory procedures for purchasing jurisdictions to ensure secure software (including firmware) installation to meet the specific requirements of Volume I, Section 6.4 of the Standards. This information shall address software installation for all system components.

2.6.5 Telecommunications and Data Transmission Security

The vendor shall provide a detailed description of the system capabilities and mandatory procedures for purchasing jurisdictions to ensure secure data transmission to meet the specific requirements of Volume I, Section 6.5:

a. For all systems, this information shall address access control, and prevention of data interception; and

b. For systems that use public communications networks as defined in Volume I Section 5, this information shall also include:

(1) Capabilities used to provide protection against threats to third party products and services;

(2) Policies and processes used by the vendor to ensure that such protection is updated to remain effective over time;

(3) Policies and procedures used by the vendor to ensure that current versions of such capabilities are distributed to user jurisdictions and are installed effectively by the jurisdiction;

(4) A detailed description of the system capabilities and procedures to be employed by the jurisdiction to diagnose the occurrence of a denial of service attack, to use an alternate method of voting, to determine when it is appropriate to resume voting over the network, and to consolidate votes cast using the alternate method;

(5) A detailed description of all activities to be performed in setting up the system for operation that are mandatory to ensure effective system security, including testing of security before an election; and

(6) A detailed description of all activities that should be prohibited during system setup and during the timeframe for voting operations, including both the hours when polls are open and when polls are closed.

2.6.6 Other Elements of an Effective Security Program

The vendor shall provide a detailed description of the following additional procedures required for use by the purchasing jurisdiction:

a. Administrative and management controls for the voting system and election management, including access controls;

b. Internal security procedures, including operating procedures for maintaining the security of the software for each system function and operating mode;

c. Adherence to, and enforcement of, operational procedures (e.g., effective password management);

d. Physical facilities and arrangements; and

e. Organizational responsibilities and personnel screening.

This documentation shall be prepared such that these requirements can be integrated by the jurisdiction into local administrative and operating procedures.

2.7 System Test and Verification Specification

The vendor shall provide test and verification specifications for:

a. Development test specifications; and

b. Qualification test specifications.

2.7.1 Development Test Specifications

The vendor shall describe the plans, procedures, and data used during software development and system integration to verify system logic correctness, data quality, and security. This description shall include:

a. Test identification and design, including:

(1) Test structure;

(2) Test sequence or progression; and

(3) Test conditions;

a. Standard test procedures, including any assumptions or constraints;

b. Special purpose test procedures including any assumptions or constraints;

c. Test data; including the data source, whether it is real or simulated, and how test data is controlled;

d. Expected test results; and

e. Criteria for evaluating test results.

Additional details for these requirements are provided by MIL–STD–498, Software Test Plan (STP) and Software Test Description (STD). In the event that test data is not available, the ITA shall design test cases and procedures equivalent to those ordinarily used during product verification.

2.7.2 Qualification Test Specifications

The vendor shall provide specifications for verification and validation of overall software performance. These specifications shall cover:

a. Control and data input/output;

b. Acceptance criteria;

c. Processing accuracy;

d. Data quality assessment and maintenance;

e. Ballot interpretation logic;

f. Exception handling;

g. Security; and

h. Production of audit trails and statistical data.

The specifications shall identify procedures for assessing and demonstrating the suitability of the software for elections use.

2.8 System Operations Procedures

This documentation shall provide all information necessary for system use by all personnel who support pre-election and election preparation, polling place activities and central counting activities, as applicable, with regard to all system functions and operations identified in Section 2.3 above. The nature of the instructions for operating personnel will depend upon the overall system design and required skill level of system operations support personnel.

The system operations procedures shall contain all information that is required for the preparation of detailed system operating procedures, and for operator training, including the sections listed below:

2.8.1 Introduction

The vendor shall provide a summary of system operating functions and modes, in sufficient detail to permit understanding of the system's capabilities and constraints. The roles of operating personnel shall be identified and related to the operating modes of the system. Decision criteria and conditional operator functions (such as error and failure recovery actions) shall be described.

The vendor shall also list all reference and supporting documents pertaining to the use of the system during elections operations.

2.8.2 Operational Environment

The vendor shall describe the system environment, and the interface between the user or operator and the system. The vendor shall identify all facilities, furnishings, fixtures, and utilities that will be required for equipment operations, including equipment that operates at the:

a. Polling place;

b. Central count facility; and

c. Other locations.

2.8.3 System Installation and Test Specification

The vendor shall provide specifications for validation of system installation, acceptance, and readiness. These specifications shall address all components of the system and all locations of installation (e.g., polling place central count facility), and shall address all elements of system functionality and operations identified in Section 2.3 above, including:

a. Pre-voting functions;

b. Voting functions;

c. Post-voting functions; and

d. General capabilities.

These specifications also serve to provide guidance to the procuring agency in developing its acceptance test plan and procedure according to the agency's contract provisions, and the election laws of the state.

2.8.4 Operational Features

The vendor shall provide documentation of system operating features that meets the following requirements:

a. Provides a detailed description of all input, output, control, and display features accessible to the operator or voter;

b. Provide examples of simulated interactions in order to facilitate

understanding of the system and its capabilities;

c. Provide sample data formats and output reports; and

d. Illustrate and describe all status indicators and information messages.

2.8.5 Operating Procedures

The vendor shall provide documentation of system operating procedures that meets the following requirements:

a. Provides a detailed description of procedures required to initiate, control, and verify proper system operation;

b. Provides procedures that clearly enable the operator to assess the correct flow of system functions (as evidenced by system-generated status and information messages);

c. Provides procedures that clearly enable the operator to intervene the system operations to recover from an abnormal system state;

d. Defines and illustrates the procedures and system prompts for situations where operator intervention is required to load, initialize, and start the system;

e. Define and illustrate procedures to enable and control the external interface to the system operating environment if supporting hardware and software are involved (such information shall be provided for the interaction of the system with other data processing systems or data interchange protocols as well);

f. Provide administrative procedures and off-line operator duties (if any) if they relate to the initiation or termination of system operations, to the assessment of system status, or to the development of an audit trail;

g. To support successful ballot and program installation and control by election officials, provide a detailed work plan or other form of documentation providing a schedule and steps for the software and ballot installation, which includes a table outlining the key dates, events and deliverables; and

h. To support diagnostic testing, specify diagnostic tests that may be employed to identify problems in the system, verify the correction of maintenance problems; and isolate and diagnose faults from various systems states.

2.8.6 Operations Support

The vendor shall provide documentation of system operating procedures that meets the following requirements:

a. Defines the procedures required to support system acquisition, installation, and readiness testing (these procedures may be provided by reference, if they are contained either in the system hardware specifications, or in other vendor documentation provided to the ITA and to system users); and

b. Describe procedures for providing technical support, system maintenance and correction of defects, and for incorporating hardware upgrades and new software releases.

2.8.7 Appendices

The vendor may provide descriptive material and data supplementing the various sections of the body of the System Operations Manual. The content and arrangement of appendices shall be at the discretion of the vendor. Topics recommended for discussion include:

a. *Glossary:* A listing and brief definition of all terms that may be unfamiliar to persons not trained in either voting systems or computer operations;

b. *References:* A list of references to all vendor documents and to other sources related to operation of the system;

c. *Detailed Examples:* Detailed scenarios that outline correct system responses to faulty operator input. Alternative procedures may be specified depending on the system state; and

d. *Manufacturer's Recommended Security Procedures:* This appendix shall contain the security procedures that are to be executed by the system operator.

2.9 System Maintenance Procedures

The system maintenance procedures shall provide information in sufficient detail to support election workers, data personnel, or maintenance personnel in the adjustment or removal and replacement of components or modules in the field. Technical documentation needed solely to support the repair of defective components or modules ordinarily done by the manufacturer or software developer is not required.

Recommended service actions to correct malfunctions or problems shall be discussed, along with personnel and expertise required to repair and maintain the system; and equipment, materials, and facilities needed for proper maintenance. This manual shall include the sections listed below.

2.9.1 Introduction

The vendor shall describe the structure and function of the equipment (and related software) for election preparation, programming, vote recording, tabulation, and reporting in sufficient detail to provide an overview of the system for maintenance, and for identification of faulty hardware or software. The description shall include a theory of operation that fully describes such items as:

a. The electrical and mechanical functions of the equipment;

b. How the processes of ballot handling and reading are performed (paper-based systems);

c. How vote selection and casting of the ballot are performed (DRE systems);

d. How transmission of data over a network are performed (DRE systems, where applicable);

e. How data are handled in the processor and memory units;

f. How data output is initiated and controlled;

g. How power is converted or conditioned; and

h. How test and diagnostic information is acquired and used.

2.9.2 Maintenance Procedures

The vendor shall describe preventive and corrective maintenance procedures for hardware and software.

2.9.2.1 Preventive Maintenance Procedures

The vendor shall identify and describe:

a. All required and recommended preventive maintenance tasks, including software tasks such as software backup, database performance analysis, and database tuning;

b. Number and skill levels of personnel required for each task;

c. Parts, supplies, special maintenance equipment, software tools, or other resources needed for maintenance; and

d. Any maintenance tasks that must be coordinated with the vendor or a third party (such as coordination that may be needed for off-the-shelf items used in the system).

2.9.2.2 Corrective Maintenance Procedures

The vendor shall provide fault detection, fault isolation, correction procedures, and logic diagrams for all operational abnormalities identified by design analysis and operating experience.

The vendor shall identify specific procedures to be used in diagnosing and correcting problems in the system hardware (or user-controlled software). Descriptions shall include:

a. Steps to replace failed or deficient equipment;

b. Steps to correct deficiencies or faulty operations in software;

c. Modifications that are necessary to coordinate any modified or upgraded software with other software modules;

d. The number and skill levels of personnel needed to accomplish each procedure;

e. Special maintenance equipment, parts, supplies, or other resources needed to accomplish each procedure; and

f. Any coordination required with the vendor, or other party for off the shelf items.

2.9.3 Maintenance Equipment

The vendor shall identify and describe any special purpose tests or maintenance equipment recommended for fault isolation and diagnostic purposes.

2.9.4 Parts and Materials

Vendors shall provide detailed documentation of parts and materials needed to operate and maintain the system. Additional requirements apply for paper-based systems.

2.9.4.1 Common Standards

The vendor shall provide a complete list of approved parts and materials needed for maintenance. This list shall contain sufficient descriptive information to identify all parts by:

a. Type;

b. Size;

c. Value or range;

d. Manufacturer's designation;

e. Individual quantities needed; and

f. Sources from which they may be obtained.

2.9.4.2 Paper-Based Systems

For marking devices manufactured by multiple external sources, the vendor shall provide a listing of sources and model numbers that are compatible with the system.

The TDP shall specify the required paper stock, size, shape, opacity, color, watermarks, field layout, orientation, size and style of printing, size and location of punch or mark fields used for vote response fields and to identify unique ballot formats, placement of alignment marks, ink for printing, and folding and bleed-through limitations for preparation of ballots that are compatible with the system.

2.9.5 Maintenance Facilities and Support

The vendor shall identify all facilities, furnishings, fixtures, and utilities that will be required for equipment maintenance. In addition, vendors shall specify the assumptions made with regard to any parameters that impact the mean time to repair. These factors shall include at a minimum:

a. Recommended number and locations of spare devices or components to be kept on hand for repair purposes during periods of system operation;

b. Recommended number and locations of qualified maintenance personnel who need to be available to support repair calls during system operation; and

c. Organizational affiliation (i.e., jurisdiction, vendor) of qualified maintenance personnel.

2.9.6 Appendices

The vendor may provide descriptive material and data supplementing the various sections of the body of the System Maintenance Manual. The content and arrangement of appendices shall be at the discretion of the vendor. Topics recommended for amplification or treatment in appendix include:

a. *Glossary:* A listing and brief definition of all terms that may be unfamiliar to persons not trained in either voting systems or computer maintenance;

b. *References:* A list of references to all vendor documents and other sources related to maintenance of the system;

c. *Detailed Examples:* Detailed scenarios that outline correct system responses to every conceivable faulty operator input. Alternative procedures may be specified depending on the system state; and

d. *Maintenance and Security Procedures:* This appendix shall contain technical illustrations and schematic representations of electronic circuits unique to the system.

2.10 Personnel Deployment and Training Requirements

The vendor shall describe the personnel resources and training required for a jurisdiction to operate and maintain the system.

2.10.1 Personnel

The vendor shall specify the number of personnel and skill level required to perform each of the following functions:

a. Pre-election or election preparation functions (e.g., entering an election, race and candidate information; designing a ballot; generating pre-election reports;

b. System operations for voting system functions performed at the polling place;

c. System operations for voting system functions performed at the central count facility;

d. Preventive maintenance tasks;

e. Diagnosis of faulty hardware or software;

f. Corrective maintenance tasks; and

g. Testing to verify the correction of problems.

A description shall be presented of which functions may be carried out by user personnel, and those that must be performed by vendor personnel.

2.10.2 Training

The vendor shall specify requirements for the orientation and training of the following personnel:

a. Poll workers supporting polling place operations;

b. System support personnel involved in election programming;

c. User system maintenance technicians;

d. Network/system administration personnel (if a network is used);

e. Data personnel; and

f. Vendor personnel.

2.11 Configuration Management Plan

Vendors shall submit a Configuration Management Plan that addresses the configuration management requirements of Volume I, Section 8 of the Standards.

This plan shall describe all policies, processes and procedures employed by the vendor to carry out these requirements. Information submitted by the vendor shall be used by the test authority to assist in developing and executing the system qualification test plan. This information is particularly important to support the design of test plans for system modifications. A well-organized, robust and detailed Configuration Management Plan will enable the test authority to more readily determine the nature and scope of tests needed to fully test the modifications. The Configuration Management Plan shall contain the sections identified below.

2.11.1 Configuration Management Policy

The vendor shall provide a description of its organizational policies for configuration management, addressing the specific requirements of Volume I, Section 8.3 of the Standards. These requirements pertain to:

a. Scope and nature of configuration management program activities; and

b. Breadth of application of vendor's policy and practices to the voting system.

2.11.2 Configuration Identification

The vendor shall provide a description of the procedures and naming conventions used to address the specific requirements of Volume I, Section 8.4. These requirements pertain to:

a. Classifying configuration items into categories and subcategories;

b. Uniquely numbering or otherwise identifying configuration items; and

c. Naming configuration items.

2.11.3 Baseline, Promotion, and Demotion Procedures

The vendor shall provide a description of the procedures and naming conventions used to address the specific requirements of Volume I, Section 8.5 of the Standards. These requirements pertain to:

a. Establishing a particular instance of a system component as the starting baseline;

b. Promoting subsequent instances of a component to baseline throughout the system development process for the first complete version of the system submitted for qualification testing; and

c. Promoting subsequent instances of a component to baseline status as the component is maintained throughout its life cycle.

2.11.4 Configuration Control Procedures

The vendor shall provide a description of the procedures used by the vendor to approve and implement changes to a configuration item to prevent unauthorized additions, changes, or deletions to address the specific requirements of Volume I, Section 8.6 of the Standards. These requirements pertain to:

a. Developing and maintaining internally developed items;

b. Developing and maintaining third-party items;

c. Resolve internally identified defects; and

d. Resolve externally identified and reported defects.

2.11.5 Release Process

The vendor shall provide a description of the contents of a system release, and the procedures and related conventions by which the vendor installs, transfers, or migrates the system to ITAs and customers to address the specific requirements of Volume I, Section 8.7 of the Standards. These requirements pertain to:

a. A first release of the system to an ITA;

b. A subsequent maintenance or upgrade release of a system, or particular components, to an ITA;

c. The initial delivery and installation of the system to a customer; and

d. A subsequent maintenance or upgrade release of a system, or particular components, to a customer.

2.11.6 Configuration Audits

The vendor shall provide a description of the procedures and related conventions for the two audits required by Volume I, Section 8.8 of the Standards. These requirements pertain to:

a. Physical configuration audit that verifies the voting system components submitted for qualification to the vendor's technical documentation; and

b. Functional configuration audit that verifies the system performs all the functions described in the system documentation.

2.11.7 Configuration Management Resources

The vendor shall provide a description of the procedures and related conventions for maintaining information about configuration management tools required by Volume I, Section 8.9 of the Standards. These requirements pertain to information regarding:

a. Specific tools used, current version, and operating environment;

b. Physical location of the tools, including designation of computer directories and files; and

c. Procedures and training materials for using the tools.

2.12 Quality Assurance Program

Vendors shall submit a Quality Assurance Program that addresses the quality assurance requirements of Volume I, Section 7. This plan shall describe all policies, processes and procedures employed by the vendor to ensure the overall quality of the system for its initial development and release and for subsequent modifications and releases. This information is particularly important to support the design of test plans by the test authority. A well-organized, robust and detailed Quality Assurance Program will enable the test authority to more readily determine the nature and scope of tests needed to test the system appropriately. The Quality Assurance Program shall, at a minimum, address the topics indicated below.

2.12.1 Quality Assurance Policy

The vendor shall provide a description of its organizational policies for quality assurance, including:

a. Scope and nature of QA activities; and

b. Breadth of application of vendor's policy and practices to the voting system.

2.12.2 Parts and Materials Special Tests and Examinations

The vendor shall provide a description of its practices for parts and materials tests and examinations that meet the requirements of Volume I, Section 7.3 of the Standards.

2.12.3 Quality Conformance Inspections

The vendor shall provide a description of its practices for quality conformance inspections that meet the requirements of Volume I, Section 7.4 of the Standards. For each test performed, the record of tests provided shall include:

a. Test location;

b. Test date;

c. Individual who conducted the test; and

d. Test outcomes.

2.12.4 Documentation

The vendor shall provide a description of its practices for documentation of the system and system development process that meet the requirements of Volume I, Section 7.5 of the Standards.

2.13 System Change Notes

Vendors submitting a system for testing that has been tested previously by the test authority and issued a qualification number shall submit system change notes. These will be used by the test authority to assist in developing and executing the test plan for the modified system. The system change notes shall include the following information:

a. Summary description of the nature and scope of the changes, and reasons for each changes;

b. A listing of the specific changes made, citing the specific system configuration items changed and providing detailed references to the sections of documentation changed;

c. The specific sections of the documentation that are changed (or complete revised documents, if more suitable to address a large number of changes);

d. Documentation of the test plan and procedures executed by the vendor for testing the individual changes and the system as a whole, and records of test results.

Volume II, Section 3

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3 Functionality Testing

3.1 Scope

This section contains a description of the testing to be performed by the ITAs to confirm the functional capabilities of a voting system submitted for qualification. It describes the scope and basis for functionality testing, outlines the general sequence of tests within the overall test process, and provides guidance on testing for accessibility.

3.2 Breadth of Functionality Testing

In order to best compliment the diversity of the voting systems industry, the qualification testing process is not rigidly defined. Although there are basic functionality testing requirements, additions or variations in testing are appropriate in order to complement the system's use of specific technologies and configurations, the system capabilities, and the outcomes of previous testing.

3.2.1 Basic Functionality Testing Requirements

ITAs shall design and perform procedures to test a voting system against the functional requirements outlined in Volume I, Section 2. Tests procedures shall be designed and performed by the ITA that address:

a. Overall system capabilities;
b. Pre-voting functions;
c. Voting functions;
d. Post-voting functions;
e. System maintenance; and
f. Transportation and storage.

The specific procedures to be used shall be identified in the Qualification Test Plan prepared by the ITA. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for functionality testing performed by the ITA.

Recognizing variations in system design and the technologies employed by different vendors, the ITAs shall design test procedures that account for such variations and reflect the system-specific functional capabilities in Volume I, Section 2.

3.2.2 Variation of System Functionality Testing to Reflect Voting System Technologies and Configurations

Voting systems are not designed according to a standard design template. Instead, system design reflects the vendor's selections from a variety of technologies and design configurations. Such variation is recognized in the definitions of voting systems in Volume I, Section 1, and serves as the basis for delineating various functional capability requirements.

Functional capabilities will vary according to the relative complexity of a system and the manner in which the system integrates various technologies. Therefore, the testing procedure designed and performed by the ITA for a particular system shall reflect the specific technologies and design configurations used by that system.

3.2.3 Variation of System Functionality Testing to Reflect Additional Voting System Capabilities

The requirements for voting system functionality provided by Volume I, Section 2 reflect a minimum set of capabilities. Vendors may, and often do, provide additional capabilities in systems that are submitted for qualification testing in order to respond to the requirements of individual states. These additional capabilities shall be identified by the vendor within the TDP as described in Volume II, Section 2. Based on this information, ITAs shall design and perform system functionality testing for additional functional capabilities as well as the capabilities required by Volume I, Section 2 of the Standards.

3.2.4 Variation of System Functionality Testing to Reflect Voting Systems That Incorporate Previously Tested Functionality

The required functional capabilities of voting systems defined in Volume I, Section 2 reflect a broad range of system functionality needed to support the full life cycle of an election, including post election activities. Many systems submitted for qualification testing are designed to address this scope, and are tested accordingly.

However, some new systems seek qualification using a combination of new subsystems or system components interfaced with the components of a previously qualified system. For example, a vendor can submit a voting system for qualification testing that has a new DRE voting device, but that integrates the election management component from a previously qualified system.

In this situation, the vendor is strongly encouraged to identify in its TDP the functional capabilities supported by new subsystems/components and those supported by subsystems/components taken from a previously qualified system. The vendor is also encouraged to indicate in its system design documentation and configuration management records the scope and nature of any modifications made to the reused subsystems or components. Following these suggestions will assist the ITA in developing efficient test procedures that rely in part on the results of testing of the previously qualified subsystems or components.

In this situation the ITA may design and perform a test procedure that draws on the results of testing performed previously on reused subsystems or components. However, the scope of testing shall include, irrespective of previous testing, certain functionality tests:

a. All functionality performed by new subsystems/modules;
b. All functionality performed by modified subsystems/modules;
c. Functionality that is accomplished using any interfaces to new modules, or that shares inputs or outputs from new modules;
d. All functionality related to vote tabulation and election results reporting; and
e. All functionality related to audit trail maintenance.

3.3 General Test Sequence

There is no required sequence for performing the system qualification tests. For a system not previously qualified, the ITA may perform tests using generic test ballots, and schedule the tests in a convenient order, provided that prerequisite conditions for each test have been satisfied before the test is initiated.

Regardless of the sequence of testing used, the full qualification testing process shall include functionality testing for all system functions of a voting system, minus the exceptions noted in Section 3.2. Generally, in depth functionality testing will follow testing of the systems hardware and the source code review of the system's software. ITAs will usually conduct functionality testing as an integral element of system level integration testing described in Volume II, Section 6.

Some functionality tests for the voting functions defined in Volume I, Section 2.4 and 2.5 may be performed as an integral part of hardware testing, enabling a more efficient testing process. Ballots processed and counted during hardware operating tests for precinct count and central count systems may serve to satisfy part of the functionality testing provided that the ballots were cast using a test procedure

that is equivalent to the procedures indicated below.

3.3.1 Functionality Testing in Parallel With Hardware Testing for Precinct Count Systems

For testing voting functions defined in Volume I, Sections 2.4 and 2.5, the following procedures shall be performed during the functionality tests of voting equipment and precinct counting equipment.

a. The procedure to prepare election programs shall:

(1) Verify resident firmware, if any;

(2) Prepare software (including firmware) to simulate all ballot format and logic options for which the system will be used;

(3) Verify program memory device content; and

(4) Obtain and design test ballots with formats and voting patterns sufficient to verify performance of the test election programs.

b. The procedures to program precinct ballot counters shall:

(1) Install program and data memory devices, or verify presence if resident; and

(2) Verify operational status of hardware as in Volume II, Section 4.

c. The procedures to simulate opening of the polls shall:

(1) Perform procedures required to prepare hardware for election operations;

(2) Obtain ''zero'' printout or other evidence that data memory has been cleared;

(3) Verify audit record of pre-election operations; and

(4) Perform procedure required to open the polling place and enable ballot counting.

d. The procedure to simulate counting ballots shall cast test ballots in a number sufficient to demonstrate proper processing, error handling, and generation of audit data as specified in Volume I, Sections 2 and 4.

e. The procedure to simulate closing of polls shall:

(1) Perform hardware operations required to disable ballot counting and close the polls;

(2) Obtain data reports and verify correctness; and

(3) Obtain audit log and verify correctness.

They need not be performed in the sequence listed, provided the necessary precondition of each procedure has been met.

3.3.2 Functionality Testing in Parallel With Hardware Testing for Central Count Systems

For testing voting functions defined in Volume I, Sections 2.4 and 2.5, the following procedures shall be performed during the functional tests.

a. The procedure to prepare election programs shall:

(1) Verify resident firmware, if any;

(2) Prepare software (including firmware) to simulate all ballot format and logic options for which the system will be used, and to enable simulation of counting ballots from at least 10 polling places or precincts;

(3) Verify program memory device content; and

(4) Procure test ballots with formats, voting patterns, and format identifications sufficient to verify performance of the test election programs;

b. The procedure to simulate counting ballots shall count test ballots in a number sufficient to demonstrate proper processing, error handling, and generation of audit data as specified in Volume I, Sections 2 and 4; and

c. The procedure to simulate election reports shall:

(1) Obtain reports at polling places or precinct level;

(2) Obtain consolidated reports;

(3) Provide query access, if this is a feature of the system;

(4) Verify correctness of all reports and queries; and

(5) Obtain audit log and verify correctness.

They need not be performed in the sequence listed, provided the necessary preconditions of each procedure have been met.

3.4 Functionality Testing for Accessibility

As indicated in Volume I, Section 2.2.7, voting systems shall provide accessibility to individuals with disabilities, meeting the specific requirements of this Section. ITAs shall design and perform test procedures that verify conformance with each of these requirements.

3.5 Functionality Testing for Systems That Operate on Personal Computers

For systems intended to use non-standard voting devices, such as a personal computer, provided by the local jurisdiction, ITAs shall conduct functionality tests using hardware provided by the vendor that meets the minimum configuration specifications defined by the vendor.

Volume II, Section 4, provides additional information on hardware to be used to conduct functionality testing of such voting devices, as well as hardware to be used to conduct security testing and other forms of testing.

Volume II, Section 4

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4 Hardware Testing

4.1 Scope

This section contains a description of the testing to be performed by the ITAs to confirm the proper functioning of the hardware components of a voting system submitted for qualification testing. It describes the scope and basis for functionality testing, required test conditions for conducting hardware testing, guidance for the use of test fixtures, test log data requirements, and test practices for specific non-operating and operating environmental tests.

4.2 Basis of Hardware Testing

This section addresses the focus and applicability of hardware testing, and specifies the vendor's obligations to produce hardware to conduct such tests.

4.2.1 Testing Focus and Applicability

ITAs shall design and perform procedures that test the voting system hardware requirements identified in Volume I, Section 3. Test procedures shall be designed and performed by the ITA for both operating and non-operating environmental tests:

- Operating environmental tests apply to the entire system, including hardware components that are used as part of the voting system telecommunications capability; and
- Non-operating tests apply to those elements of the system that are intended for use at poll site voting locations, such as voting machines and precinct counters. These tests address environmental conditions that may be encountered by the voting system hardware at the voting location itself, or while in storage or transit to or from the poll site.

Additionally, compatibility of this equipment with the voting system environment shall be determined through functional tests integrating the standard product with the remainder of the system.

All hardware components custom-designed for election use shall be tested in accordance with the applicable procedures contained in this section. Unmodified COTS hardware will not be subject to all tests. Generally such equipment has been designed to rigorous industrial standards and has been in wide use, permitting an evaluation of its performance history. To enable reduced testing of such equipment, vendors shall provide the manufacturers specifications and evidence that the equipment has been tested to the equivalent of the Standards.

The specific testing procedures to be used shall be identified in the Qualification Test Plan prepared by the ITA. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for hardware testing performed by the ITA.

4.2.2 Hardware Provided by Vendor

The hardware submitted for qualification testing shall be equivalent, in form and function, to the actual production versions of the hardware units. Engineering or developmental prototypes are not acceptable unless the vendor can show that the equipment to be tested is equivalent to standard production units in both performance and construction.

4.3 Test Conditions

Qualification tests may be performed in any facility capable of supporting the test environment. Preparation for testing, arrangement of equipment, verification of equipment status, and the execution of procedures shall be witnessed by at least one independent, qualified observer who shall certify that all test and data acquisition requirements have been satisfied.

When a test is to be performed at ''standard'' or ''ambient'' conditions, this requirement shall refer to a nominal laboratory environment at prevailing atmospheric pressure and relative humidity.

Otherwise, all tests shall be performed at the required temperature and electrical supply voltage, regulated within the following tolerances:

a. Temperature of +/−4 degrees F; and

b. Electrical supply voltage +/−2 VAC.

4.4 Test Log Data Requirements

The ITA shall maintain a test log of the procedure employed. This log shall identify the system and equipment by model and serial number. Test environment conditions shall be noted.

In the event that the ITA deems it necessary to deviate from requirements pertaining to the test environment, the equipment arrangement and method of operation, the specified test procedure, or the provision of test instrumentation and facilities, the deviation shall be recorded in the test log. A discussion of the reasons for the deviation and the effect of the deviation on the validity of the test procedure shall also be provided.

4.5 Test Fixtures

The use of test fixtures or ancillary devices to facilitate hardware qualification testing is encouraged. These fixtures and devices may include arrangements for automating the operation of voting devices and the acquisition of test data.

The use of a fixture to ensure correctness in casting ballots by hand is recommended. Such a fixture may consist of a template, with apertures in the desired location, so that selections may be made rapidly. Such a template will eliminate or greatly minimize errors in activating test ballot patterns, while reducing the amount of time required to cast a test ballot.

For systems that use a light source as a means of detecting voter selections, the generation of a suitable optical signal by an external device is acceptable. For systems that rely on the physical activation of a switch, a mechanical fixture with suitable motion generators is acceptable.

To speed up the process of testing and to eliminate human error in casting test ballots the tests may use a simulation device with appropriate software. Such simulation is recommended if it covers all voting data detection and control paths that are used in casting an actual ballot. In the event that only partial simulation is achieved, then an independent method and test procedure must be used to validate the proper operation of those portions of the system not tested by the simulator.

If the vendor provides a means of simulating the casting of ballots, the simulation device is subject to the same performance, reliability, and quality requirements that apply to the voting device itself so as not to contribute errors to the test processes.

4.6 Non-Operating Environmental Tests

This section addresses a range of tests for voting machines and precinct counters, as such devices are stored between elections and are transported between the storage facility and polling site.

4.6.1 General

Environmental tests of non-operating equipment are intended to simulate exposure to physical shock and vibration associated with handling and transportation of voting equipment and precinct counters between a jurisdiction's storage facility and precinct polling site. These tests additionally simulate the temperature and humidity conditions that may be encountered during storage in an uncontrolled warehouse environment or precinct environment. The procedures and conditions of these tests correspond generally to those of MIL–STD–810D, ''Environmental Test Methods and Engineering Guidelines,'' 19 July 1983. In most cases, the severity of the test conditions has been reduced to reflect commercial, rather than military, practice.

Systems exclusively designed with system-level COTS hardware whose configuration has not been modified in any manner and are not subjected to this segment of hardware testing. Systems made up of individual COTS components such as hard drives, motherboards, and monitors that have been packaged to build a voting machine or other device will be required to undergo the hardware testing.

Prior to each test, the equipment shall be shown to be operational by means of

the procedure contained in Subsection 4.6.1.5. The equipment may then be prepared as if for actual transportation or storage, and subjected to appropriate test procedures outlined. After each procedure has been completed, the equipment status will again be verified as in Subsection 4.6.1.5.

The following requirements for equipment preparation, functional tests, and inspections shall apply to each of the non-operating test procedures.

4.6.1.1 Pretest Data

The test technician shall verify that the equipment is capable of normal operation. Equipment identification, environmental conditions, equipment configuration, test instrumentation, operator tasks, time-of-day or test time, and test results shall be recorded.

4.6.1.2 Preparation for Test

The equipment shall be prepared as for the expected non-operating use, as noted below. When preparation for transport between the storage site and the polling place is required, the equipment shall be prepared with any protective enclosures or internal restraints that the vendor specifies for such transport. When preparation for storage is required, the equipment shall be prepared using any protective enclosures or internal restraints that the vendor specifies for storage.

4.6.1.3 Mechanical Inspection and Repair

After the test has been completed, the devices shall be removed from their containers, and any internal restraints shall be removed. The exterior and interior of the devices shall be inspected for evidence of mechanical damage, failure, or dislocation of internal components. Devices shall be adjusted or repaired, if necessary.

4.6.1.4 Electrical Inspection and Adjustment

After completion of the mechanical inspection and repair, routine electrical maintenance and adjustment may be performed, according to the manufacturer's standard procedure.

4.6.1.5 Operational Status Check

When all tests, inspections, repairs, and adjustments have been completed, normal operation shall be verified by conducting an operational status check.

During this process, all equipment shall be operated in a manner and environmental conditions that simulate election use to verify the functional status of the system. Prior to the conduct of each of the environmental hardware non-operating tests, a supplemental test shall be made to determine that the operational state of the equipment is within acceptable performance limits.

The following procedures shall be followed to verify the equipment status:

Step 1: Arrange the system for normal operation.

Step 2: Turn on power, and allow the system to reach recommended operating temperature.

Step 3: Perform any servicing, and make any adjustments necessary, to achieve operational status.

Step 4: Operate the equipment in all modes, demonstrating all functions and features that would be used during election operations.

Step 5: Verify that all system functions have been correctly executed.

4.6.1.6 Failure Criteria

Upon completion of each non-operating test, the system hardware shall be subject to functional testing to verify continued operability. If any portion of the voting machine or precinct counter hardware fails to remain fully functional, the testing will be suspended until the failure is identified and corrected by the vendor. The system will then be subject to a retest.

4.6.2 Bench Handling Test

The bench handling test simulates stresses faced during maintenance and repair of voting machines and ballot counters.

4.6.2.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL–STD–810D, Method 516.3, Procedure VI.

4.6.2.2 Procedure

Step 1: Place each piece of equipment on a level floor or table, as for normal operation or servicing.

Step 2: Make provision, if necessary, to restrain lateral movement of the equipment or its supports at one edge of the device. Vertical rotation about that edge shall not be restrained.

Step 3: Using that edge as a pivot, raise the opposite edge to an angle of 45 degrees, to a height of four inches above the surface, or until the point of balance has been reached, whichever occurs first.

Step 4: Release the elevated edge so that it may drop to the test surface without restraint.

Step 5: Repeat steps 3 and 4 for a total of six events.

Step 6: Repeat steps 2, 3, and 4 for the other base edges, for a total of 24 drops for each device.

4.6.3 Vibration Test

The vibration test simulates stresses faced during transport of voting machines and ballot counters between storage locations and polling places.

4.6.3.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL–STD–810D, Method 514.3, Category 1—Basic Transportation, Common Carrier.

4.6.3.2 Procedure

Step 1: Install the test item in its transit or combination case as prepared for transport.

Step 2: Attach instrumentation as required to measure the applied excitation.

Step 3: Mount the equipment on a vibration table with the axis of excitation along the vertical axis of the equipment.

Step 4: Apply excitation as shown in MIL-STD–810D, Method 514.3–1, ''Basic transportation, common carrier, vertical axis'', with low frequency excitation cutoff at 10 Hz, for a period of 30 minutes.

Step 5: Repeat steps 2 and 3 for the transverse and longitudinal axes of the equipment with the excitation profiles shown in Figures 514.3–2 and 514.3–3, respectively. (Note: The total excitation period equals 90 minutes, with 30 minutes excitation along each axis.)

Step 6: Remove the test item from its transit or combination case and verify its continued operability.

4.6.4 Low Temperature Test

The low temperature test simulates stresses faced during storage of voting machines and ballot counters.

4.6.4.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL–STD–810D, Method 502.2, Procedure I–Storage. The minimum temperature shall be −4 degrees F.

4.6.4.2 Procedure

Step 1: Arrange the equipment as for storage. Install it in the test chamber.

Step 2: Lower the internal temperature of the chamber at any convenient rate, but not so rapidly as to cause condensation in the chamber, and in any case no more rapidly than 10 degrees F per minute, until an internal temperature of −4 degrees F has been reached.

Step 3: Allow the chamber temperature to stabilize. Maintain this

temperature for a period of 4 hours after stabilization.

Step 4: Allow the internal temperature of the chamber to return to standard laboratory conditions, at a rate not exceeding 10 degrees F per minute

Step 5: Allow the internal temperature of the equipment to stabilize at laboratory conditions before removing it from the chamber.

Step 6: Remove the equipment from the chamber and from its containers, and inspect the equipment for evidence of damage.

Step 7: Verify continued operability of the equipment.

4.6.5 High Temperature Test

The high temperature test simulates stresses faced during storage of voting machines and ballot counters.

4.6.5.1 Applicability

All systems and components, regardless of type, shall meet the requirements of this test. This test is equivalent to the procedure of MIL–STD–810D, Method 501.2, Procedure I–Storage. The maximum temperature shall be 140 degrees F.

4.6.5.2 Procedure

Step 1: Arrange the equipment as for storage. Install it in the test chamber.

Step 2: Raise the internal temperature of the chamber at any convenient rate, but in any case no more rapidly than 10 degrees F per minute, until an internal temperature of 140 degrees F has been reached.

Step 3: Allow the chamber temperature to stabilize. Maintain this temperature for a period of 4 hours after stabilization.

Step 4: Allow the internal temperature of the chamber to return to standard laboratory conditions, at a rate not exceeding 10 degrees F per minute.

Step 5: Allow the internal temperature of the equipment to stabilize at laboratory conditions before removing it from the chamber.

Step 6: Remove the equipment from the chamber and from its containers, and inspect the equipment for evidence of damage.

Step 7: Verify continued operability of the equipment.

4.6.6 Humidity Test

The humidity test simulates stresses faced during storage of voting machines and ballot counters.

4.6.6.1 Applicability

All systems and components regardless of type shall meet the requirements of this test. This test is similar to the procedure of MIL–STD–810D, Method 507.2, Procedure I–Natural Hot-Humid. It is intended to evaluate the ability of the equipment to survive exposure to an uncontrolled temperature and humidity environment during storage. This test lasts for ten days.

4.6.6.2 Procedure

Step 1: Arrange the equipment as for storage. Install it in the test chamber.

Step 2 Adjust the chamber conditions to those given in MIL–STD–810D Table 507.2–I, for the time 0000 of the HotHumid cycle (Cycle 1).

Step 3: Perform a 24-hour cycle with the time and temperature-humidity values specified in Figure 507.2–1, Cycle 1.

Step 4: Repeat Step 2 until 5, 24-hour cycles have been completed.

Step 5: Continue with the test commencing with the conditions specified for time = 0000 hours.

Step 6: At any convenient time in the interval between time = 120 hours and time = 124 hours, place the equipment in an operational configuration, and perform a complete operational status check as defined in Subsection 4.6.1.5

Step 7: If the equipment satisfactorily completes the status check, continue with the sixth 24-hour cycle.

Step 8: Perform 4 additional 24-hour cycles, terminating the test at time = 240 hours

Step 9: Remove the equipment from the test chamber and inspect it for any evidence of damage.

Step 10: Verify continued operability of the equipment.

4.7 Environmental Tests, Operating

This section addresses a range of tests for all voting system equipment, including equipment for both precinct count and central count systems.

4.7.1 Temperature and Power Variation Tests

This test is similar to the low temperature and high temperature tests of MIL–STD810D, Method 502.2 and Method 501.2, with test conditions that correspond to the requirements of the performance standards. This procedure tests system operation under various environmental conditions for at least 163 hours. During 48 hours of this operating time, the device shall be in a test chamber. For the remaining hours, the equipment shall be operated at room temperature. The system shall be powered for the entire period of this test; the power may be disconnected only if necessary for removal of the system from the test chamber.

Operation shall consist of ballot-counting cycles, which vary with system type. An output report need not be generated after each counting cycle; the interval between reports, however, should be no more than 4 hours to keep to a practical minimum the time between the occurrence of a failure or data error and its detection.

Test Ballots per Counting Cycle

Precinct count systems—100 ballots/hour

Central count systems—300 ballots/hour

The recommended pattern of votes is one chosen to facilitate visual recognition of the reported totals; this pattern shall exercise all possible voting locations. System features such as data quality tests, error logging, and audit reports shall be enabled during the test.

Each operating cycle shall consist of processing the number of ballots indicated in the preceding chart.

Step 1: Arrange the equipment in the test chamber. Connect as required and provide for power, control and data service through enclosure wall.

Step 2: Set the supply voltage at 117 vac.

Step 3: Power the equipment, and perform an operational status check as in Section 4.6.1.5.

Step 4: Set the chamber temperature to 50 degrees F observing precautions against thermal shock and condensation.

Step 5: Begin 24 hour cycle.

Step 6: At T=4 hrs, lower the supply voltage to 105 vac.

Step 7: At T=8 hrs, raise the supply voltage to 129 vac.

Step 8: At T=11:30 hrs, return the supply voltage to 117 vac and return the chamber temperature to lab ambient, observing precautions against thermal shock and condensation.

Step 9: At T=12:00 hrs, raise the chamber temperature to 95 degrees Fahrenheit.

Step 10: Repeat Steps 5 through 8, with temperature at 95 degrees Fahrenheit, complete at T=24 hrs.

Step 11: Set the chamber temperature at 50 degrees Fahrenheit as in Step 4.

Step 12: Repeat the 24 hour cycle as in Steps 5–10, complete at T=48 hrs.

Step 13: After completing the second 24 hour cycle, disconnect power from the system and remove it from the chamber if needed.

Step 14: Reconnect the system as in Step 2, and continue testing for the remaining period of operating time required until the ACCEPT/REJECT criteria of Subsection 4.7.11 have been met.

4.7.1.1 Data Accuracy

As indicated in Volume I, Section 3, data accuracy is defined in terms of

ballot position error rate. This rate applies to the voting functions and supporting equipment that capture, record, store, consolidate and report the specific selections, and absence of selections, made by the voter for each ballot position. Volume I, Section 3.2.1 identifies the specific functions to be tested.

For each processing function, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions. This error rate includes errors from any source while testing a specific processing function and it related equipment.

This error rate is used to determine the vote position processing volume used to test system accuracy for each function:

- If the system makes one error before counting 26,997 consecutive ballot positions correctly, it will be rejected. The vendor is then required to improve the system.
- If the system reads at least 1,549,703 consecutive ballot positions correctly, it will be accepted.
- If the system correctly reads more than 26,997 ballot positions but less than 1,549,703 when the first error occurs, the testing will have to be continued until another 1,576,701 consecutive ballot positions are counted without error (a total of 3,126,404 with one error).

Volume II, Appendix C, Section C.5 provides further details of the calculation for this testing volume.

4.7.2 Maintainability Test

The ITA shall test for maintainability based on the provisions of Volume I, Section 3 for maintainability, including both physical attributes and additional attributes regarding the ease of performing maintenance activities. These tests include:

a. Examine the physical attributes of the system to determine whether significant impediments exist for the performance of those maintenance activities that are to be performed by the jurisdiction. These activities shall be identified by the vendor in the system maintenance procedures (part of the TDP).

b. Performing activities designated as maintenance activities for the jurisdiction in the TDP, in accordance with the instructions provided by the vendor in the system maintenance procedures, noting any difficulties encountered.

Should significant impediments or difficulties be encountered that are not remedied by the vendor, the ITA shall include such findings in the qualification test results of the qualification test report.

4.7.3 Reliability Test

The ITA shall test for reliability based on the provisions of Volume I, Section 3 for the acceptable mean time between failure (MBTF). The MBTF shall be measured during the conduct of other system performance tests specified in this section, and shall be at least 163 hours. Volume II, Appendix C, Section C.4 provides further details of the calculation for this testing period.

4.7.4 Availability Test

The ITA shall assess the adequacy of system availability based on the provisions of Volume I, Section 3. As described in this section, availability of voting system equipment is determined as a function of reliability, and the mean time to repair the system in the event of failure.

Availability cannot be tested directly before the voting system is deployed in jurisdictions, but can be modeled mathematically to predict availability for a defined system configuration. This model shall be prepared by the vendor, and shall be validated by the ITA.

The model shall reflect the equipment used for a typical system configuration to perform the following system functions:

a. For all paper-based systems:

(1) Recording voter selections (such as by ballot marking or punch);

(2) Scanning the punches or marks on paper ballots and converting them into digital data;

b. For all DRE systems:

(1) Recording and storing the voter's ballot selections.

c. For precinct-count systems (paper-based and DRE):

(1) Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data; and

d. For central-count systems (paper-based and DRE):

(1) Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.

The model shall demonstrate the predicted availability of the equipment that supports each function. This demonstration shall reflect the equipment reliability, mean time to repair and assumptions concerning equipment availability and deployment of maintenance personnel stated by the vendor in the TDP.

4.8 Other Environmental Tests

4.8.1 Power Disturbance

The test for power disturbance disruption shall be conducted in compliance with the test specified in in IEC 61000–4–11 (1994–06).

4.8.2 Electromagnetic Radiation

The test for electromagnetic radiation shall be conducted in compliance with the FCC Part 15 Class B requirements by testing per ANSI C63.4.

4.8.3 Electrostatic Disruption

The test for electrostatic disruption shall be conducted in compliance with the test specified in IEC 61000–4–2 (1995–01).

4.8.4 Electromagnetic Susceptibility

The test for electromagnetic susceptibility shall be conducted in compliance with the test specified in IEC 61000–4–3 (1996).

4.8.5 Electrical Fast Transient

The test for electrical fast transient protection shall be conducted in compliance with the test specified in IEC 61000–4–4 (1995–01).

4.8.6 Lightning Surge

The test for lightning surge protection shall be conducted in compliance with the test specified in IEC 61000–4–5 (1995–02).

4.8.7 Conducted RF Immunity

The test for conducted RF immunity shall be conducted in compliance with the test specified in IEC 61000–4–6 (1996–04).

4.8.8 Magnetic Fields Immunity

The test for AC magnetic fields RF immunity shall be conducted in compliance with the test specified in IEC 61000–4–8 (1993–06).

Volume II, Section 5

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5 Software Testing

5.1 Scope

This section contains a description of the testing to be performed by the ITA to confirm the proper functioning of the software components of a voting system submitted for qualification testing. It

describes the scope and basis for software testing, the initial review of documentation to support software testing, and the review of the voting system source code. Further testing of the voting system software is addressed in the following sections:

a. Volume II, Section 3, for specific tests of voting system functionality; and

b. Volume II, Section 6, for testing voting system security and for testing the operation of the voting system software together with other voting system components.

5.2 Basis of Software Testing

ITAs shall design and perform procedures that test the voting system software requirements identified in Volume I. All software components designed or modified for election use shall be tested in accordance with the applicable procedures contained in this section.

Unmodified, general purpose COTS non-voting software (e.g., operating systems, programming language compilers, data base management systems, and Web browsers) is not subject to the detailed examinations specified in this section. However, the ITA shall examine such software to confirm the specific version of software being used against the design specification to confirm that the software has not been modified. Portions of COTS software that have been modified by the vendor in any manner are subject to review.

Unmodified COTS software is not subject to code examination. However, source code generated by a COTS package and embedded in software modules for compilation or interpretation shall be provided in human readable form to the ITA.

The ITA may inspect COTS source code units to determine testing requirements or to verify the code is unmodified.

The ITA may inspect the COTS generated software source code in preparation of test plans and to provide some minimal scanning or sampling to check for embedded code or unauthorized changes. Otherwise, the COTS source code is not subject to the full code review and testing. For purposes of code analysis, the COTS units shall be treated as unexpanded macros.

Compatibility of the voting system software components or subsystems with one another, and with other components of the voting system environment, shall be determined through functional tests integrating the voting system software with the remainder of the system.

The specific procedures to be used shall be identified in the Qualification Test Plan prepared by the ITA. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for software testing performed by the ITA.

Recognizing variations in system design and the technologies employed by different vendors, the ITAs shall design test procedures that account for these variations.

5.3 Initial Review of Documentation

Prior to initiating the software review, the ITA shall verify that the documentation submitted by the vendor in the TDP is sufficient to enable:

a. Review of the source code; and

b. Design and conducting of tests at every level of the software structure to verify that the software meets the vendor's design specifications and the requirements of the performance standards.

5.4 Source Code Review

The ITA shall compare the source code to the vendor's software design documentation to ascertain how completely the software conforms to the vendor's specifications. Source code inspection shall also assess the extent to which the code adheres to the requirements in Volume I, Section 4.

5.4.1 Control Constructs

Voting system software shall use the control constructs identified in this section as follows:

a. If the programming language used does not provide these control constructs, the vendor shall provide them (that is, comparable control structure logic). The constructs shall be used consistently throughout the code. No other constructs shall be used to control program logic and execution;

b. While some programming languages do not create programs as linear processes, stepping from an initial condition, through changes, to a conclusion, the program components nonetheless contain procedures (such as ''methods'' in object-oriented languages). Even in these programming languages, the procedures must execute through these control constructs (or their equivalents, as defined and provided by the vendor); and

c. Operator intervention or logic that evaluates received or stored data shall not re-direct program control within a program routine. Program control may be re-directed within a routine by calling subroutines, procedures, and functions, and by interrupt service routines and exception handlers (due to abnormal error conditions). Do-While (False) constructs and intentional exceptions (used as GoTos) are prohibited.

Illustrations of control construct techniques are provided in Figures 4–1 through 4–6.

- Fig. 4–1 Sequence
- Fig. 4–2 If-Then-Else
- Fig. 4–3 Do-While
- Fig. 4–4 Do-Until
- Fig. 4–5 Case
- Fig. 4–6 General loop, including the special case FOR loop

5.4.1.1 Replacement Rule

In the constructs shown, any 'process' may be replaced by a simple statement, a subroutine or function call, or any of the control constructs. In Fig 4–1 for example, ''Process A'' may be a simple statement and ''Process B'' another Sequence construct.

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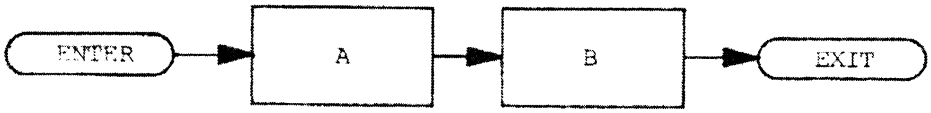
5.4.1.2 Figures



Control flows from "Process A" to the next in sequence, "Process B."

Figure 4-1, "SEQUENCE"

Using the replacement rule to replace one or both of the processes in the Sequence construct with other Sequence constructs, a large block of sequential code may be formed. The entire chain is recognized as a Sequence construct and is sometimes called a BLOCK construct. In many languages, a Sequence may need to be marked with special symbols or punctuation to delimit where it starts and where it ends. For example, a "BEGIN" and "END" may be used. This allows the scope of a Sequence used as "Process C" in the IF-THEN-ELSE (Fig 4-2) to be recognized as completing the IF-THEN-ELSE rather than part of a higher level Sequence that included the IF-THEN-ELSE as a component.

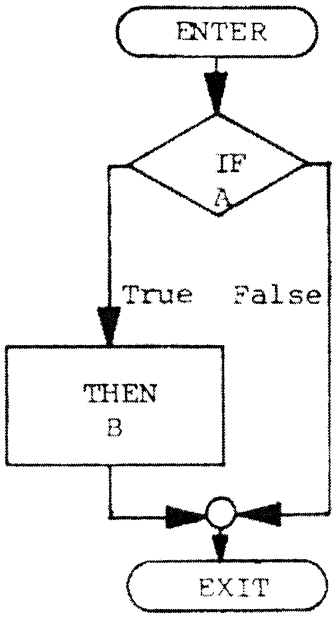


Figure 4-2, "IF-THEN-ELSE"

*In Figure 4-2, Flow of control will skip a process pending the condition of "A."

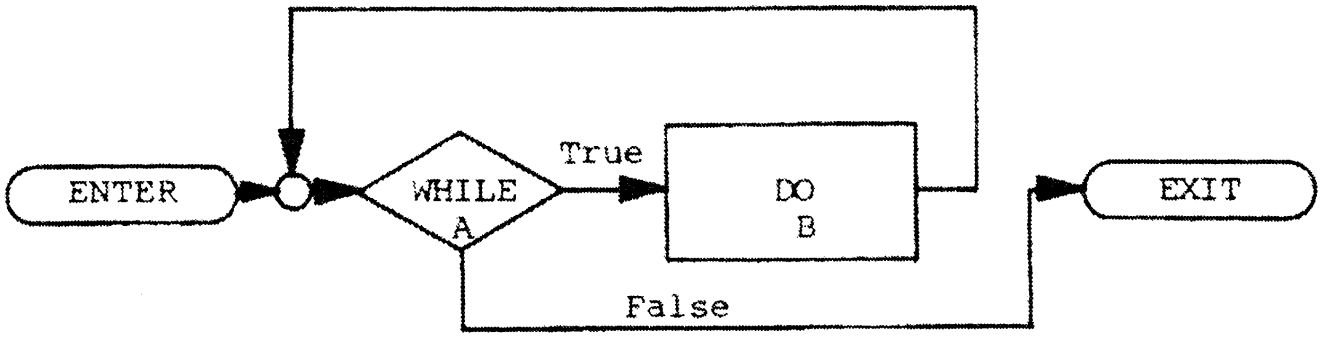


Figure 4-3, "DO-WHILE"

In Figure 4-3,condition "A" is evaluated. If found to be true, then control is passed to Process "B" and condition "A" is reevaluated. If condition "A" is found to be false, then control is passed out of the loop. Note that, if B is a BLOCK, the "DO" may be recognized as the opening symbol. A terminating symbol is needed from the language used.

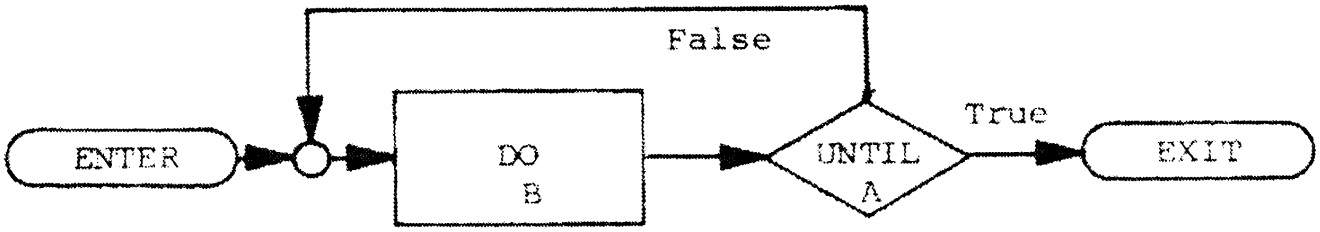


Figure 4-4, "DO-UNTIL"

Figure 4-4 is similar to a DO-WHILE, except that the test of condition A is performed after "Process B" has executed and the DO is performed upon a false "A" condition.. If condition "A" is true, control is passed out of the loop.

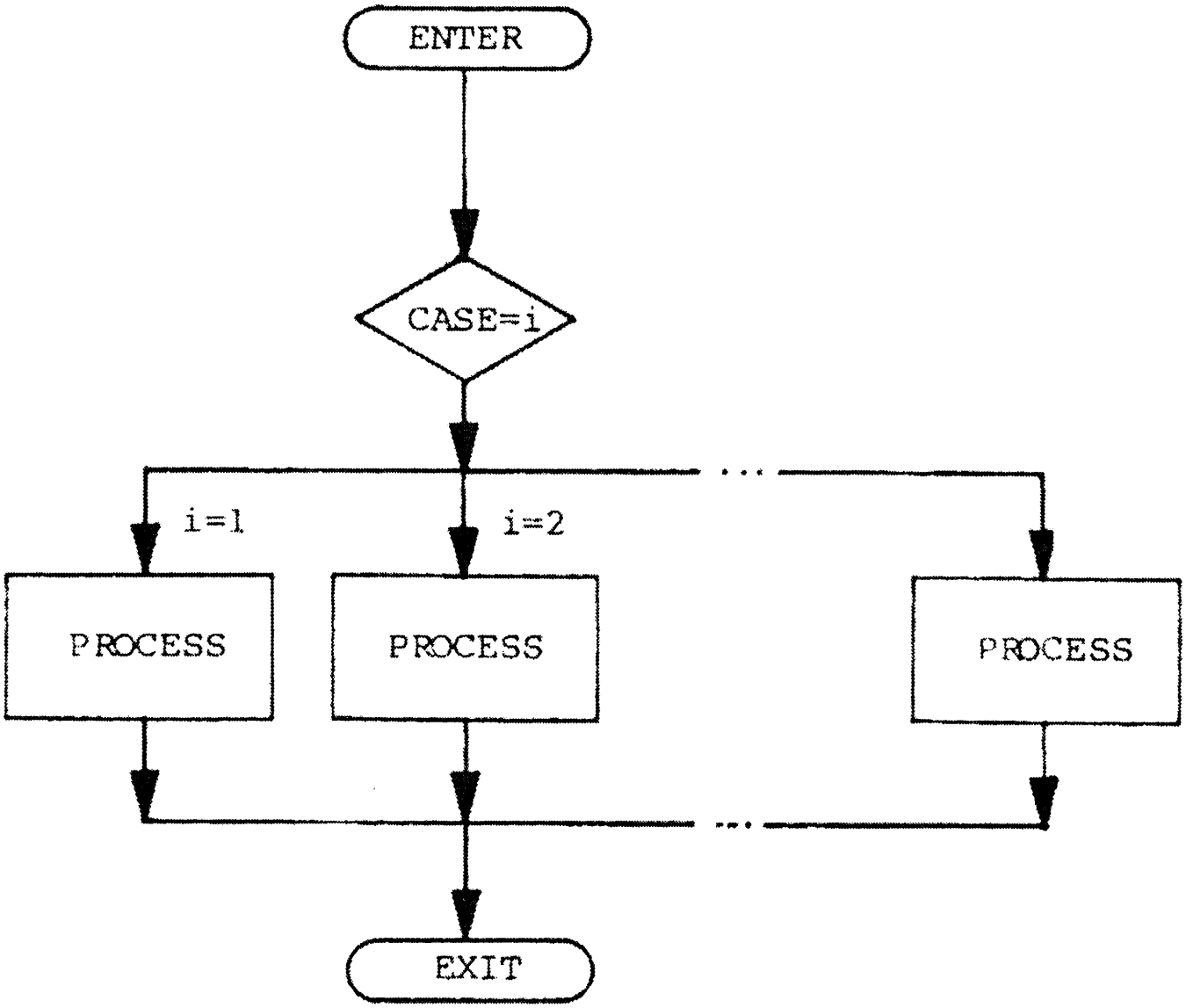


Figure 4-5, "CASE"

Control is passed to a Process based on the value of i.

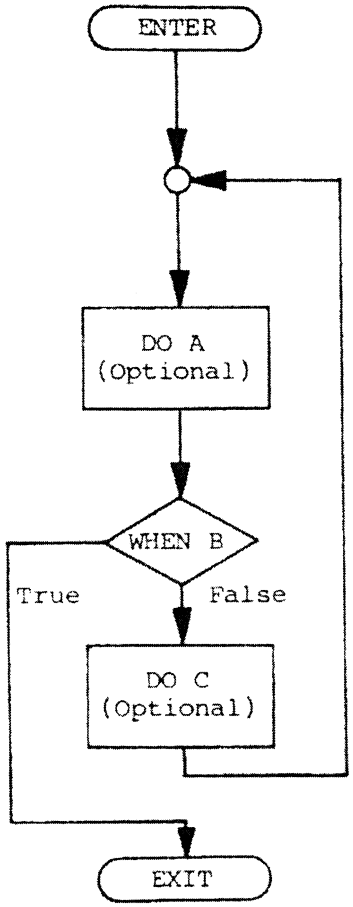


Figure 4-6, "General LOOP"

Optional process A is executed. Condition B is then evaluated. If found to be false, optional process C is executed and control is passed to process A. Condition B is then evaluated again. If condition B is true, then control is passed out of the loop.

A special case of the GENERAL LOOP is the FOR loop. The FOR is not strictly essential as it can be programmed as a DO-WHILE loop. The FOR loop executes on a counter. The control FOR statement defines a counter variable or variables, a test for ending the loop, and a standard method of changing the variable(s) on each pass such as incrementing or decrementing. For example,

"FOR c = 0; c < 10; c + 1

DO Process A;"

The counter is initialized to zero, if the counter test is false, the DO process is executed and the counter is incremented (or decremented). Once the counter test is true, control exits from the loop without incrementing the counter. The implementation of the FOR loop in many languages, however, can be error prone. The use of the FOR loop shall include strictly enforced coding conventions to avoid the common errors such as a loop that never ends.

The GENERAL LOOP should not be used where one of the other loop structures will serve. It too is error prone and may not be supported in many languages without using GOTOs type redirections. However, if defined in the language, it may be useful in defining some loops where the exit needs to occur in the middle. Also, in other languages the GENERAL LOOP logic can be used to simulate the other control constructs. Like the special case, the use of the GENERAL LOOP shall require the strict enforcement of coding conventions to avoid problems.

5.4.2 Assessment of Coding Conventions

The ITA shall test for compliance with the coding conventions specified by the vendor. If the vendor does not identify an appropriate set of coding conventions in accordance with the provisions of Volume I, section 4.2.6.a, the ITA shall review the code to ensure that it:

a. Uses uniform calling sequences. All parameters shall either be validated for type and range on entry into each unit or the unit comments shall explicitly identify the type and range for the reference of the programmer and tester. Validation may be performed implicitly by the compiler or explicitly by the programmer;

b. For C based language and others to which this applies, has the return explicitly defined for callable units such as functions or procedures (do not drop through by default) and, in the case of functions, have the return value explicitly assigned. Where the return is only expected to return a successful value, the C convention of returning zero shall be used or the use of another code justified in the comments. If an uncorrected error occurs so the unit must return without correctly completing its objective, a non-zero return value shall be given even if there is no expectation of testing the return. An exception may be made where the return value of the function has a data range including zero;

c. Does not use macros that contain returns or pass control beyond the next statement;

d. For those languages with unbound arrays, provides controls to prevent writing beyond the array, string, or buffer boundaries;

e. For those languages with pointers or which provide for specifying absolute memory locations, provides controls that prevent the pointer or address from being used to overwrite executable instructions or to access inappropriate areas where vote counts or audit records are stored;

f. For those languages supporting case statements, has a default choice explicitly defined to catch values not included in the case list;

g. Provides controls to prevent any vote counter from overflowing. Assuming the counter size is large enough such that the value will never be reached is not adequate;

h. Is indented consistently and clearly to indicate logical levels;

i. Excluding code generated by commercial code generators, is written in small and easily identifiable modules, with no more than 50% of all modules exceeding 60 lines in length, no more than 5% of all modules exceeding 120 lines in length, and no modules exceeding 240 lines in length. ''Lines'' in this context, are defined as executable statements or flow control statements with suitable formatting and comments. The reviewer should consider the use of formatting, such as blocking into readable units, which supports the intent of this requirement where the module itself exceeds the limits. The vendor shall justify any module lengths exceeding this standard;

j. Where code generators are used, the source file segments provided by the code generators should be marked as such with comments defining the logic invoked and, if possible, a copy of the source code provided to the ITA with the generated source code replaced with an unexpanded macro call or its equivalent;

k. Has no line of code exceeding 80 columns in width (including comments and tab expansions) without justification;

l. Contains no more than one executable statement and no more than one flow control statement for each line of source code;

m. In languages where embedded executable statements are permitted in conditional expressions, the single embedded statement may be considered a part of the conditional expression. Any additional executable statements should be split out to other lines;

n. Avoids mixed-mode operations. If mixed mode usage is necessary, then all uses shall be identified and clearly explained by comments;

o. Upon exit() at any point, presents a message to the user indicating the reason for the exit().

p. Uses separate and consistent formats to distinguish between normal status and error or exception messages. All messages shall be self-explanatory and shall not require the operator to perform any look-up to interpret them, except for error messages that require resolution by a trained technician.

q. References variables by fewer than five levels of indirection (i.e. a.b.c.d or a[b].c->d).

r. Has functions with fewer than six levels of indented scope, counted as follows:

int function()

```
{
        if (a = true)
1       {
                if ( b = true )
2               {
                if ( c = true )
3                       {
                        if ( d = true )
4                               {
                                        while(e > 0 )
5                                       {
                                        code
                                        }
                        }
                }
        }
}
}
```

s. Initializes every variable upon declaration where permitted

t. Specifies explicit comparisons in all if() and while() conditions. For instance,

i. if(flag)

is prohibited, and shall be written in the format

ii. if (flag == TRUE)

for both single and multiple conditions.

u. Has all constants other than 0 and 1 defined or enumerated, or shall have a comment which clearly explains what each constant means in the context of its use. Where ''0'' and ''1'' have multiple meanings in the code unit, even they should be identified. Example: ''0'' may be used as FALSE, initializing a counter to zero, or as a special flag in a non-binary category.

v. Only contains the minimum implementation of the ''a = b ? c : d'' syntax. Expansions such as ''j=a?(b?c:d):e;'' are prohibited.

w. Has all assert() statements coded such that they are absent from a production compilation. Such coding may be implemented by ifdef()s that remove them from or include them in the compilation. If implemented, the initial program identification in setup should identify that assert() is enable and active as a test version.

Volume II, Section 6

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6 System Level Integration Testing

6.1 Scope

This section contains a description of the testing to be performed by the ITAs to confirm the proper functioning of the fully integrated components of a voting system submitted for qualification testing. It describes the scope and basis

for integration testing, testing of internal and external system interfaces, testing of security capabilities, and the configuration audits, including the testing of system documentation.

System-level qualification tests address the integrated operation of both hardware and software, along with any telecommunications capabilities. The system-level qualification tests shall include the tests (functionality, volume, stress, usability, security, performance, and recovery) indicated in the ITAs' Qualification Test Plan, described in Appendix A. These tests assess the system's response to a range of both normal and abnormal conditions initiated in an attempt to compromise the system. These tests may be part of the audit of the system's functional attributes, or may be conducted separately.

The system integration tests include two audits: A Physical Configuration Audit that focuses on physical attributes of the system, and a Functional Configuration Audit that focuses on the system's functional attributes, including attributes that go beyond the specific requirements of the Standards.

6.2 Basis of Integration Testing

This subsection addresses the basis for integration testing, the system baseline for testing, and data volumes for testing.

6.2.1 Testing Breadth

ITAs shall design and perform procedures that test the voting system capabilities for the system as a whole. These procedures follow the testing of the systems hardware and software, and address voting system requirements defined in Volume I, Sections 2, 5, 6 and 8.

These procedures shall also address the requirements for testing system functionality provided in Volume II, Section 3. Where practical, the ITA will perform coverage reporting of the software branches executed in the functional testing. The selection of the baseline test cases will follow an operational profile of the common procedures, sequencing, and options among the shared state requirements and those that are specifically recognized and supported by the vendor. The ITA will use the coverage report to identify any portions of the source code that were not covered and determine:

a. The additional functional tests that are needed;

b. Where more detailed source code review is needed; or

c. Both of the above.

The specific procedures to be used shall be identified in the Qualification Test Plan prepared by the ITA. These procedures may replicate testing performed by the vendor and documented in the vendor's TDP, but shall not rely on vendor testing as a substitute for testing performed by the ITA.

Recognizing variations in system design and the technologies employed by different vendors, the ITAs shall design test procedures that account for these variations.

6.2.2 System Baseline for Testing

The system level qualification tests are conducted using the version of the system as it is intended to be sold by the vendor and delivered to jurisdictions. To ensure that the system version tested is the correct version, the ITA shall witness the build of the executable version of the system immediately prior to or as part of the physical configuration audit. Additionally, should components of the system be modified or replaced during the qualification testing process, the ITA shall require the vendor conduct a new ''build'' of the system to ensure that the qualified executable release of the system is built from tested components.

6.2.3 Testing Volume

For all systems, the total number of ballots to be processed by each precinct counting device during these tests shall reflect the maximum number of active voting positions and the maximum number of ballot styles that the TDP claims the system can support.

6.3 Testing Interfaces of System Components

The ITA shall design and perform test procedures that test the interfaces of all system modules and subsystems with each other against the vendor's specifications. These tests shall be documented in the ITA's Qualification Test Plan, and shall include the full range of system functionality provided by the vendor's specifications, including functionality that exceeds the specific requirements of the Standards.

Some voting systems may use components or subsystems from previously tested and qualified systems, such as ballot preparation. For these scenarios, the ITA shall, at a minimum,

a. Confirm that the version of previously approved components and subsystems are unchanged; and

b. Test all interfaces between previously approved modules/subsystems and all other system modules and subsystems. Where a component is expected to interface with several different products, especially from different manufacturers, the vendor shall provide a public data specification of files or data objects used to exchange information.

Some systems use telecommunications capabilities as defined in Section 5. For those systems that do use such capabilities, components that are located at the poll site or separate vote counting site shall be tested for effective interface, accurate vote transmission, failure detection, and failure recovery. For voting systems that use telecommunications lines or networks that are not under the control of the vendor (e.g., public telephone networks), the ITA shall test the interface of vendor-supplied components with these external components for effective interface, vote transmission, failure detection, and failure recovery.

6.4 Security Testing

The ITA shall design and perform test procedures that test the security capabilities of the voting system against the requirements defined in Volume I, Section 6. These procedures shall focus on the ability of the system to detect, prevent, log, and recover from a broad range of security risks as identified in Section 6 and system capabilities and safeguards, claimed by the vendor in its TDP that go beyond the risks and threats identified in Volume I, Section 6.

The range of risks tested is determined by the design of the system and potential exposure to risk. Regardless of system design and risk profile, all systems are tested for effective access control and physical data security.

For systems that use public telecommunications networks, including the Internet, to transmit election management data or official election results (such as ballots or tabulated results), the ITAs shall conduct tests to ensure that the system provides the necessary identity-proofing, confidentiality, and integrity of transmitted data. These tests shall be designed to confirm that the system is capable of detecting, logging, preventing, and recovering from types of attacks known at the time the system is submitted for qualification.

The ITA may meet these testing requirements by confirming proper implementation of proven commercial security software. In this case, the vendor must provide the published standards and methods used by the U.S. Government to test and accept this software, or it may provide references to free, publicly available publications of

these standards and methods, such as government web sites.

At its discretion, the ITA may conduct or simulate attacks on the system to confirm the effectiveness of the system's security capabilities, employing test procedures approved by the NASED Voting Systems Board.

6.4.1 Access Control

The ITA shall conduct tests of system capabilities and review the access control policies and procedures and submitted by the vendor to identify and verify the access control features implemented as a function of the system. For those access control features built in as components of the voting system, the ITA shall design tests to confirm that these security elements work as specified.

Specific activities to be conducted by the ITA shall include:

a. A review of the vendor's access control policies, procedures and system capabilities to confirm that all requirements of Volume I, Section 6.2 have been addressed completely; and

b. Specific tests designed by the ITA to verify the correct operation of all documented access control procedures and capabilities, including tests designed to circumvent controls provided by the vendor. These tests shall include:

(1) Performing the activities that the jurisdiction will perform in specific accordance with the vendor's access control policy and procedures to create a secure system, including procedures for software (including firmware) installation (as described in Volume I, Section 6.4); and

(2) Performing tests intended to bypass or otherwise defeat the resulting security environment. These tests shall include simulation of attempts to physically destroy components of the voting system in order to validate the correct operation of system redundancy and backup capabilities.

This review applies to the full scope of system functionality. It includes functionality for defining the ballot and other pre-voting functions, as well as functions for casting and storing votes, vote canvassing, vote reporting, and maintenance of the system's audit trail.

6.4.2 Data Interception and Disruption

For systems that use telecommunications to transmit official voting data, the ITA shall review, and conduct tests of, the data interception and prevention safeguards specified by the vendor in its TDP. The ITA shall evaluate safeguards provided by the vendor to ensure their proper operation, including the proper response to the detection of efforts to monitor data or otherwise compromise the system.

For systems that use public communications networks the ITA shall also review the vendor's documented procedures for maintaining protection against newly discovered external threats to the telecommunications network. This review shall assess the adequacy of such procedures in terms of:

a. Identification of new threats and their impact;

b. Development or acquisition of effective countermeasures;

c. System testing to ensure the effectiveness of the countermeasures;

d. Notification of client jurisdictions that use the system of the threat and the actions that should be taken;

e. Distribution of new system releases or updates to current system users; and

f. Confirmation of proper installation of new system releases.

6.5 Accessibility Testing

The ITA shall design and perform procedures that test the capability of the voting system to assist voters with disabilities. ITA test procedures shall confirm that:

a. Voting machines intended for use by voters with disabilities provide the capabilities required by Volume I, Section 2.2.7;

b. Voting machines intended for use by voters with disabilities operate consistent with vendor specifications and documentation; and

c. Voting machines intended for use by voters with disabilities meet all other functional requirements required by Volume I, Section 2.

6.6 Physical Configuration Audit

The Physical Configuration Audit compares the voting system components submitted for qualification to the vendor's technical documentation, and shall include the following activities:

a. The audit shall establish a configuration baseline of the software and hardware to be tested. It shall also confirm whether the vendor's documentation is sufficient for the user to install, validate, operate, and maintain the voting system. MIL–STD–1521 can be used as a guide when conducting this audit;

b. The test agency shall examine the vendor's source code against the submitted documentation during the Physical Configuration Audit to verify that the software conforms to the vendor's specifications. This review shall include an inspection of all records of the vendor's release control system. If changes have been made to the baseline version, the test agency shall verify that the vendor's engineering and test data are for the software version submitted for qualification;

c. If the software is to be run on any equipment other than a COTS mainframe data processing system, minicomputer, or microcomputer, the Physical Configuration Audit shall also include a review of all drawings, specifications, technical data, and test data associated with the system hardware. This examination shall establish the system hardware baseline associated with the software baseline;

d. To assess the adequacy of user acceptance test procedures and data, vendor documents containing this information shall be reviewed against the system's functional specifications. Any discrepancy or inadequacy in the vendor's plan or data shall be resolved prior to beginning the system-level functional and performance tests; and

e. All subsequent changes to the baseline software configuration made during the course of qualification testing shall be subject to reexamination. All changes to the system hardware that may produce a change in software operation shall also be subject to reexamination.

The vendor shall provide a list of all documentation and data to be audited, cross-referenced to the contents of the TDP. Vendor technical personnel shall be available to assist in the performance of the Physical Configuration Audit.

6.7 Functional Configuration Audit

The Functional Configuration Audit encompasses an examination of vendor tests, and the conduct of additional tests, to verify that the system hardware and software perform all the functions described in the vendor's documentation submitted for the TDP. It includes a test of system operations in the sequence in which they would normally be performed, and shall include the following activities (MIL-STD–1521 may be used as a guide when conducting this audit.):

a. The test agency shall review the vendor's test procedures and test results to determine if the vendor's specified functional requirements have been adequately tested. This examination shall include an assessment of the adequacy of the vendor's test cases and input data to exercise all system functions, and to detect program logic and data processing errors, if such be present; and

b. The test agency shall perform or supervise the performance of additional tests to verify nominal system performance in all operating modes, and to verify on a sampling basis the

vendor's test data reports. If vendor developmental test data is incomplete, the ITA shall design and conduct all appropriate module and integrated functional tests. The functional configuration audit may be performed in the facility either of the test agency or of the vendor, and shall use and verify the accuracy and completeness of the System Operations, Maintenance, and Diagnostic Testing Manuals.

The vendor shall provide a list of all documentation and data to be audited, cross-referenced to the contents of the TDP. Vendor technical personnel shall be available to assist in the performance of the Functional Configuration Audit.

Volume II, Section 7

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7 Examination of Vendor Practices for Configuration Management and Quality Assurance

7.1 Scope

This section contains a description of the examination performed by the ITAs to confirm conformance with the requirements for configuration management and quality assurance of voting systems. It describes the scope and basis for the examinations, the general sequence of the examinations within the overall test process, and provides guidance on the substantive focus of the examinations.

7.2 Basis of Examinations

ITAs shall design and perform procedures that examine documented vendor practices for quality assurance and configuration management as addressed by Volume I, Sections 7 and 8, and complemented by Volume II, Section 2.

Examination procedures shall be designed and performed by the ITA that address:

a. Conformance with the requirements to provide information on vendor practices required by the Standards;

b. Conformance of system documentation and other information provided by the vendor with the documented practices for quality assurance and configuration management.

The Standards do not require on-site examination of the vendor's quality assurance and configuration management practices during the system development process. However, the ITAs conduct several activities while at the vendor site to witness the system build that enable assessment of the vendor's quality assurance and configuration management practices and conformance with them. These include surveys, interviews with individuals at all levels of the development team, and examination of selected internal work products such as system change requests and problem tracking logs.

It is recognized that examinations of vendor practices, and determinations of conformance, entail a significant degree of professional judgement. These standards for vendor practices identify specific areas of focus for the ITAs, while at the same time relying on their expertise and professional judgement, as evaluated in the certification of the ITAs.

The specific procedures used by the ITA shall be identified in the Qualification Test Plan. Recognizing variations in vendors' quality assurance and configuration management practices and procedures, the ITAs shall design examination procedures that account for these variations.

7.3 General Examinations Sequence

There is no required sequence for performing the examinations of quality assurance and configuration management practices. No other testing within the overall qualification testing process is dependent on the performance and results of these examinations. However, examinations pertaining to configuration management, in particular those pertaining to configuration identification, will generally be useful in understanding the conventions used to define and document the components of the system and will assist other elements of the qualification test process.

7.3.1 Examination of Vendor Practices in Parallel With Other Qualification Testing

While not required, ITAs are encouraged to initiate the examinations of quality assurance and configuration management practices early in the overall qualification testing sequence, and conduct them in parallel with other testing of the voting system. Conducting these examinations in parallel is recommended to minimize the overall duration of the qualification process,

7.3.2 Performance of Functional Configuration Audit as an Element of Integrated System Testing

As described in Volume I, Section 8, the functional configuration audit verifies that the voting system performs all the functions described in the system documentation.

To help ensure an efficient test process, this audit shall be conducted by ITAs as an element of integrated system testing that confirms the proper functioning of the system as a whole. Integrated system testing is described in more detail in Volume II, Section 6.

7.4 Examination of Configuration Management Practices

The examination of configuration management practices shall address the full scope of requirements described in Volume I, Section 8, and the documentation requirements described in Volume II, Section 2. In addition to confirming that all required information has been submitted, the ITAs shall determine the vendor's conformance with the documented configuration management practices.

7.4.1 Configuration Management Policy

The ITAs shall examine the vendor's documented configuration management policy to confirm that it:

a. Addresses the full scope of the system, including components provided by external suppliers; and

b. Addresses the full breadth of system documentation;

7.4.2 Configuration Identification

The ITAs shall examine the vendor's documented configuration identification practices policy to confirm that they:

a. Describe clearly the basis for classifying configuration items into categories and subcategories, for numbering of configuration items; and for naming of configuration items; and

b. Describe clearly the conventions used to identify the version of the system as a whole and the versions of any lower level elements (e.g., subsystems, individual elements) if

such lower level version designations are used.

7.4.3 Baseline, Promotion, and Demotion Procedures

The ITA shall examine the vendor's documented baseline, promotion and demotion procedures to confirm that they:

a. Provide a clear, controlled process that promotes components to baseline status when specific criteria defined by the vendor are met; and

b. Provide a clear controlled process for demoting a component from baseline status when specific criteria defined by the vendor are met;

7.4.4 Configuration Control Procedures

The ITA shall examine the vendor's configuration control procedures to confirm that they:

a. Are capable of providing effective control of internally developed system components; and

b. Are capable of providing effective control of components developed or supplied by third parties.

7.4.5 Release Process

The ITA shall examine the vendor's release process to confirm that it:

a. Provides clear accountability for moving forward with the release of the initial system version and subsequent releases;

b. Provides the means for clear identification of the system version being replaced;

c. Confirms that all required internal vendor tests and audits prior to release have been completed successfully;

d. Confirms that each system version released to customers has been qualified by a the appropriate ITA prior to release;

e. Confirms that each system release has been received by the customer; and

f. Confirms that each system release has been installed successfully by the customer;

7.4.6 Configuration Audits

The ITA shall examine the vendor's configuration audit procedures to confirm that they:

a. Are sufficiently broad in scope to address the entire system, including system documentation;

b. Are conducted with appropriate timing to enable effective control of system versions; and

c. Are sufficiently rigorous to confirm that all system documentation prepared and maintained by the vendor indeed matches the actual system functionality, design, operation and maintenance requirements.

7.4.7 Configuration Management Resources

The ITA shall examine the configuration management resource information submitted by the vendor to determine whether sufficient information has been provided to enable another organization to clearly identify the resources used and acquire them for use. This examination is intended to ensure that in the event the vendor concludes business operations, sufficient information has been provided to enable an in-depth audit of the system should such an audit be required by election officials and/or a law enforcement organization.

7.5 Examination of Quality Assurance Practices

The examination of quality assurance practices shall address the full scope of requirements described in Volume I, Section 7, and the documentation requirements described in Volume II, Section 2. The ITA shall confirm that all required information has been submitted, and assess whether the vendor's quality assurance program provides for:

a. Clearly measurable quality standards;

b. An effective testing program throughout the system development life cycle;

c. Application of the quality assurance program to external providers of system components and supplies;

d. Comprehensive monitoring of system performance in the field and diagnosis of system failures;

e. Effective record keeping of system failures to support analysis of failure patterns and potential causes; and

f. Effective processes for notifying customers of system failures and corrective measures that need to be taken, and for confirming that such measures are taken.

In addition to the general examinations described above, the ITA shall focus on the specific elements of the vendor's quality assurance program indicated below.

7.5.1 Quality Assurance Policy

The ITA shall examine the vendor's quality assurance policy to confirm that it:

a. Addresses the full scope of the voting system;

b. Clearly designates a senior level individual accountable for implementation and oversight of quality assurance activities;

c. Clearly designates the individuals, by position within the vendor's organization, who are to conduct each quality assurance activity; and

d. Provides procedures that determine compliance with, and correct deviations from, the quality assurance program at a minimum annually.

7.5.2 Parts & Materials Special Tests and Examinations

The ITA shall examine the vendor's parts and materials special tests and examinations to confirm that they:

a. Identify appropriate criteria that are used to determine the specific system components for which special tests are required to confirm their suitability for use in a voting system;

b. Are designed in a manner appropriate to determine suitability; and

c. Have been conducted and documented for all applicable parts and materials.

7.5.3 Quality Conformance Inspections

The ITAs shall examine the vendor's quality conformance plans, procedures and inspection results to confirm that:

a. All components have been tested according to the test requirements defined by the vendor;

b. All components have passed the requisite tests; and

c. For each test, the test documentation identifies:

(1) Test location;

(2) Test date;

(3) Individual who conducted the test; and

(4) Test outcome.

7.5.4 Documentation

The ITAs shall examine the vendor's voting system documentation to confirm that it meets the content requirements of Volume I, Section 7.5, and Volume I Section 2, and is written in a manner suitable for use by purchasing jurisdictions.

Volume II, Appendix A

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A Qualification Test Plan

A.1 Scope

This Appendix contains a recommended outline for the Qualification Test Plan, which is to be prepared by the test agency. The primary purpose of the test plan is to document the test agency's development of the complete or partial qualification test. A sample outline of a Qualification Test Plan is illustrated in Figure A–1 at the end of this Appendix.

It is intended that the test agency use this Appendix as a guide in preparing a detailed test plan, and that the scope and detail of the requirements for qualification be tailored to the type of hardware, and the design and complexity of the software being tested. Required hardware tests are defined in Section 4, whereas software and system-level tests must be developed based on the vendor prequalification tests and information available on the specific software's physical and functional configuration.

Prior to development of any test plan, the test agency must obtain the Technical Data Package (TDP) from the vendor submitting the voting system for qualification. The TDP contains information necessary to the development of a Qualification Test Plan, such as the vendor's Hardware Specifications, Software Specifications, System Operating Manual and System Maintenance Manual.

It is foreseen that vendors may submit some voting systems in use at the time the standards are issued to partial qualification tests. It is also specified by the standards that voting systems incorporating the vendor's software and COTS hardware need only be submitted for software and system-level tests. Requalification of systems with modified software or hardware is also anticipated. The test agency shall alter the test plan outline as required by these situations.

The following sections describe the individual sections of the recommended Qualification Test Plan.

The test agency shall include the identification, and a brief description of, the hardware and software to be tested, and any special considerations that affect the test design and procedure.

A.1.1 References

The test agency shall list all documents that contain material used in preparing the test plan. This list shall include specific reference to applicable portions of the standards, and to the vendor's TDP.

A.1.2 Terms and Abbreviations

The test agency shall list and define all terms and phrases relevant to the hardware, the software, or the test plan.

A.2 Prequalification Tests

The test agency shall evaluate vendor tests, or other agency tests in determining the scope of testing required for system qualification. Prequalification test activities may be particularly useful in designing software functional test cases and tests of system security.

The ITA shall summarize prequalification test results that support the discussion of the preceding section.

A.3 Materials Required for Testing

The following materials must presented to the ITA in order to facilitate testing of the voting system:

- Software;
- Equipment;
- Test materials;
- Deliverable materials; and
- Proprietary Data.

A.3.1 Software

The ITA shall list all software required for the performance of hardware, software, telecommunications, security and integrated system tests. If the test environment requires supporting software such as operating systems, compilers, assemblers, or database managers, then this software shall also be listed.

A.3.2 Equipment

The ITA shall list all equipment required for the performance of the hardware, software, telecommunications, security and integrated system tests. This list shall include system hardware, general purpose data processing and communications equipment, and test instrumentation, as required.

A.3.3 Test Materials

The ITA shall list all test materials required in the performance of the test including, as applicable, test ballot layout and generation materials, test ballot sheets, test ballot cards and control cards, standard and optional output data report formats, and any other materials used to simulate preparation for and conduct of elections.

A.3.4 Deliverable Materials

The ITA shall list all documents and materials to be delivered as a part of the system, such as:

- Hardware specification;
- Software specification;
- Voter, operator, and hardware and software maintenance manuals;
- Program listings, facsimile ballots, tapes; and
- Sample output report formats.

A.3.5 Proprietary Data

The ITA shall list and describe all documentation and data that are the private property of the vendor, and hence are subject to restrictions with respect to ITA use, release, or disclosure.

A.4 Test Specifications

The ITA shall cite the pertinent hardware qualitative examinations and quantitative tests that follow from Volume I, Sections 3 and 9. The ITA shall also describe the specific test requirements that follow from the design of the software and telecommunications capabilities under test.

The qualification test shall include ITA consideration of hardware, software and telecommunications, design; and ITA development and conduct of all tests to demonstrate satisfactory performance. Environmental, non-operating tests shall be performed in the categories of simulated environmental conditions specified by the vendor or user requesting the tests. Environmental operating tests shall be performed under varying temperatures. Other functional tests shall be conducted in an environment that simulates, as nearly as possible, the intended use environment.

Test hardware and software shall be identical to that designed to be used together in the voting system, except that software intended for use with general-purpose off-the-shelf hardware may be tested using any equivalent equipment capable of supporting its operation and functions.

A.4.1 Hardware Configuration and Design

The ITA shall document the hardware configuration and design in detail sufficient to identify the specific equipment being tested. This document shall provide a basis for the specific test design and include a brief description of the intended use of the hardware.

A.4.2 Software System Functions

The ITA shall describe the software functions in sufficient detail to provide a foundation for selecting the test case designs and conditions contained in Subsections A.4.4.3, A.4.4.4, and A.4.4.5, below. On the basis of this test case design, the ITA shall prepare a table delineating software functions and how each shall be tested.

A.4.3 Test Case Design

The ITA shall examine the test case design of the following aspects of the voting system:

- Hardware Qualitative Examination Design;
- Hardware Environmental Test Case Design;
- Software Module Test Case Design and Data;
- Software Functional Test Case Design; and
- System-level Test Case Design.

A.4.3.1 Hardware Qualitative Examination Design

The ITA shall review the results, submitted by the vendor, of any previous examinations of the equipment to be tested. The results of these examinations shall be compared to the performance characteristics specified by Section 2 of the standards concerning the requirements for:

- Overall system capabilities;
- Pre-voting functions;
- Voting functions; and
- Post-voting functions.

In the event that a review of the results of previous examinations indicates problem areas, the test agency shall provide a description of further examinations required prior to conducting the environmental and system-level tests. If no previous examinations have been performed, or records of these tests are not available, the test agency shall specify the appropriate tests to be used in the examination.

A.4.3.2 Hardware Environmental Test Case Design

The ITA shall review the documentation, submitted by the vendor, of the results and design of any previous environmental tests of the equipment submitted for testing. The test design and results shall be compared to the qualification tests described in Volume I, Section 9 of the standards. The test agency shall cite any additional tests required, based on this review and those tests requested by the vendor or the state. The test agency shall also cite any environmental tests of Section 9 that are not to be conducted, and note the reasons why.

For complete qualification, environmental tests shall include the following tests, depending upon the design and intended use of the hardware.

a. Non-operating tests, including the:
(1) Bench handling test;
(2) Vibration test;
(3) Low temperature test;
(4) High temperature test; and
(5) Humidity test; and

b. Operating tests involving a series of procedures that test system reliability and accuracy under various temperatures and voltages relevant to election use.

A.4.3.3 Software Module Test Case Design and Data

The test agency shall review the vendor's program analysis, documentation, and, if available, module test case design. The test agency shall evaluate the test cases for each module, with respect to flow control parameters and data on both entry and exit. All discrepancies between the Software Specifications and the test case design shall be corrected by the vendor prior to initiation of the qualification test.

If the vendor's module test case design does not provide conclusive coverage of all program paths, then the test agency shall perform an independent analysis to assess the frequency and consequence of error of the untested paths. The ITA shall design additional module test cases, as required, to provide coverage of all modules containing untested paths with potential for untrapped errors.

The test agency shall also review the vendor's module test data in order to verify that the requirements of the Software Specifications have been demonstrated by the data.

In the event that the vendor's module test data are insufficient, the test agency shall provide a description of additional module tests, prerequisite to the initiation of functional tests.

A.4.3.4 Software Functional Test Case Design

The test agency shall review the vendor's test plans and data to verify that the individual performance requirements described in Volume II, Section 2, Subsection 2.5.3.5, are reflected in the software.

As a part of this process, the test agency shall review the vendor's functional test case designs. The test agency shall prepare a detailed matrix of system functions and the test cases that exercise them. The test agency shall also prepare a test procedure describing all test ballots, operator procedures, and the data content of output reports. Abnormal input data and operator actions shall be defined. Test cases shall also be designed to verify that the system is able to handle and recover from these abnormal conditions.

The vendor's test case design may be evaluated by any standard or special method appropriate; however, emphasis shall be placed on those functions where the vendor data on module development reflects significant debugging problems, and on functional tests that resulted in disproportionately high error rates.

The test agency shall define ACCEPT/REJECT criteria for qualification using the Software Specifications and, if the software runs on special hardware, the associated Hardware Specifications to determine acceptable ranges of performance.

The test agency shall describe the functional tests to be performed. Depending upon the design and intended use of the voting system, all or part of the functions listed below shall be tested.

a. Ballot preparation subsystem;

b. Test operations performed prior to, during, and after processing of ballots, including:
(1) Logic tests to verify interpretation of ballot styles, and recognition of precincts to be processed;
(2) Accuracy tests to verify ballot reading accuracy;
(3) Status tests to verify equipment statement and memory contents;
(4) Report generation to produce test output data; and
(5) Report generation to produce audit data records;

c. Procedures applicable to equipment used in the polling place for:
(1) Opening the polling place and enabling the acceptance of ballots; (b) maintaining a count of processed ballots;
(2) Monitoring equipment status;
(3) Verifying equipment response to operator input commands;
(4) Generating real-time audit messages;
(5) Closing the polling place and disabling the acceptance of ballots;
(6) Generating election data reports;
(7) Transfer of ballot counting equipment, or a detachable memory module, to a central counting location; and
(8) Electronic transmission of election data to a central counting location; and

d. Procedures applicable to equipment used in a central counting place:
(1) Initiating the processing of a ballot deck or PMD for one or more precincts;
(2) Monitoring equipment status;

(3) Verifying equipment response to operator input commands;

(4) Verifying interaction with peripheral equipment, or other data processing systems;

(5) Generating real-time audit messages;

(6) Generating precinct-level election data reports;

(7) Generating summary election data reports;

(8) Transfer of a detachable memory module to other processing equipment;

(9) Electronic transmission of data to other processing equipment; and

(10) Producing output data for interrogation by external display devices.

A.4.3.5 System-Level Test Case Design

The test agency shall provide a description of system tests of both the software and hardware. For software, these tests shall be designed according the stated design objective without consideration of its functional specification. The test agency shall independently prepare the system test cases to assess the response of the hardware and software to a range of conditions, such as:

- *Volume tests:* These tests investigate the system's response to processing more than the expected number of ballots/voters per precinct, to processing more than the expected number of precincts, or to any other similar conditions that tend to overload the system's capacity to process, store, and report data;
- *Stress tests:* These tests investigate the system's response to transient overload conditions. Polling place devices shall be subjected to ballot processing at the high volume rates at which the equipment can be operated to evaluate software response to hardware-generated interrupts and wait states. Central counting systems shall be subjected to similar overloads, including, for systems that support more than one card reader, continuous processing through all readers simultaneously;
- *Usability tests:* These tests are designed to exercise characteristics of the software such as response to input control or text syntax errors, error message content, audit message content, and other features contained in the software design objectives but not directly related to a functional specification;
- *Accessibility tests:* These tests are designed to exercise system capabilities and features intended for use by voters with disabilities in accordance with Volume I, Section 2.2.5;
- *Security tests:* These tests are designed to defeat the security provisions of the system including modification or disruption of pre-voting, voting, and post voting processing; unauthorized access to, deletion, or modification of data, including audit trail data; and modification or elimination of security mechanisms;
- *Performance tests:* These tests verify accuracy, processing rate, ballot format handling capability, and other performance attributes claimed by the vendor; and
- *Recovery tests:* These tests verify the ability of the system to recover from hardware and data errors.

A.5 Test Data

A.5.1 Data Recording

The test agency shall identify all data recording requirements (e.g.; what is to be measured, how tests and results are to be recorded). The test agency shall also design or approve the design of forms or other recording media to be employed. The test agency shall supply any special instrumentation (pulse measuring device) needed to satisfy the data requirements.

A.5.2 Test Data Criteria

The test agency shall describe the criteria against which test results will be evaluated, such as the following:

- *Tolerances:* These criteria define the acceptable range for system performance. These tolerances shall be derived from the applicable hardware performance requirements contained in Volume I, Section 3, Hardware Standards.
- *Samples:* These criteria define the minimum number of combinations or alternatives of input and output conditions that can be exercised to constitute an acceptable test of the parameters involved.
- *Events:* These criteria define the maximum number of interrupts, halts or other system breaks that may occur due to nontest conditions. This count shall not include events from which recovery occurs automatically or where a relevant status message is displayed.

A.5.3 Test Data Reduction

The test agency shall describe the techniques to be used for processing test data. These techniques may include manual, semi-automatic, or fully automatic reduction procedures. However, semi-automatic and automatic procedures shall have been shown to be capable of handling the test data accurately and properly. They shall also produce an item-by-item comparison of the data and the embedded acceptance criteria as output.

A.6 Test Procedure and Conditions

The test agency shall describe the test conditions and procedures for performing the tests. If tests are not to be performed in random order, this section shall contain the rationale for the required sequence, and the criteria that must be met, before the sequence can be continued. This section shall also describe the procedure for setting up the equipment in which the software will be tested, for system initialization, and for performing the tests. Each of the following sections that contain a description of a test procedure shall also contain a statement of the criteria by which readiness and successful completion shall be indicated and measured.

A.6.1 Facility Requirements

The test agency shall describe the space, equipment, instrumentation, utilities, manpower, and other resources required to support the test program.

A.6.2 Test Set-up

The test agency shall describe the procedure for arranging and connecting the system hardware with the supporting hardware and telecommunications equipment, if applicable. It shall also describe the procedure required to initialize the system, and to verify that it is ready to be tested.

A.6.3 Test Sequence

The test agency shall state any restrictions on the grouping or sequence of tests in this section.

A.6.4 Test Operations Procedures

The test agency shall provide the step-by-step procedures for each test case to be conducted. Each step shall be assigned a test step number and this number, along with critical test data and test procedures information, shall be tabulated onto a test report form for test control and the recording of test results.

In this section, the test agency shall also identify all test operations personnel, and their respective duties. In the event that the operator procedure is not defined in the vendor's operations or user manual, the test agency shall also provide a description of the procedures to be followed by the test personnel.

Figure A–1

Test Plan Outline

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2 Prequalification Tests

2.1 Prequalification Test Activity

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B Qualification Test Report

B.1 Scope

This Appendix contains a recommended outline for the Qualification Test Report to be prepared by the test agency. The test report shall be organized so as to facilitate the presentation of conclusions and recommendations regarding system acceptability, a summary of the test operations, a summary of the test results, the test data records, and the analyses that support the conclusions and recommendations. The content of the report may vary based on the scope of review conducted.

B.1.1 New Voting System Qualification Test Report

A full report is prepared for the initial qualification testing of a voting system. This document consists of five main sections: Introduction, Qualification Test Background, System Identification, System Overview, and Qualification Test Results.

Detailed information about the test operations and findings, and test data, are included as appendices to the report.

Sections B.2 through B.8 describe the contents of the individual sections of this report.

B.1.2 Changes to Previously Qualified Voting System Qualification Test Report

This report addresses a wide range of scenarios. After a preliminary review of the submitted changes, the test agency may determined that:

a. A review of all change documentation against the baseline materials was sufficient for recommendation for qualification; or

b. All changes must be retested against the previously qualified baseline; or

c. The scope of the changes are substantial enough such that a complete retest of the software is required.

The format of this report varies, based on the type of review that was performed. If only a review of change documentation against the baseline materials was performed the report is quite simple. It consists of an Introduction, a Version Description, the Testing Approach, and a Results Summary. A more extensive report is prepared, for changes that have extensive impact on the system design and/or operations.

B.2 Qualification Test Background

This section contains the following information:

a. General information about the qualification test process; and

b. A list and definition of all terms and nomenclature peculiar to the hardware, the software, or the test report;

B.3 System Identification

This section gives information about the tested software and supporting hardware, including:

a. System name and major subsystems (or equivalent);

b. System Version;

c. Test Support Hardware; and

d. Specific documentation provided in the vendor's TDP used to support testing.

B.4 System Overview

This section describes the voting system in terms of its overall design structure, technologies used, processing capacity claimed by the vendor for system components (such as ballot counters, voting machines, vote consolidation equipment) and mode of operation. It may also identify other products that interface with the voting system.

B.5 Qualification Test Results and Recommendation

This section provides a summary of the results of the testing process, and indicates any special considerations that affect the conclusions derived from the test results. This summary includes:

a. The acceptability of the system design and construction based on the performance of the system hardware, software and communications, and on the source code inspection;

b. The degree to which the hardware and software meet the vendor's specifications and the standards, and the acceptability of the vendor's technical and user documentation;

c. General findings on the maintainability of the system including, where applicable, notation of specific maintenance activities that are determined to be difficult to perform;

d. Identification and description of any deficiencies that remain uncorrected after completion of the qualification test and that has caused or is judged to be capable of causing the loss or corruption of voting data, providing sufficient detail to support a recommendation to reject the system being tested. (Similarly, any deficiency in compliance with the security, accuracy, data retention, and audit requirements are fully described); and

e. A specific recommendation to the NASED ITA Committee for approval or rejection.

Of note, any uncorrected deficiency that does not involve the loss or corruption of voting data shall not necessarily be cause for rejection. Deficiencies of this type may include failure to fully achieve the levels of performance specified in Volume I, Sections 3 and 4 of the Standards, or failure to fully implement formal programs for quality assurance and configuration management described in Volume I, Sections 7 and 8. The nature of the deficiency is described in detail sufficient to support the recommendation either to accept or to reject the system, and the recommendation is based on consideration of the probable effect the deficiency will have on safe and efficient system operation during all phases of election use.

B.6 Appendix—Test Operations and Findings

This appendix provides additional detail about the test results to enable the understanding of test results and recommendation. This information is organized in a manner that reflects the Qualification Test Plan. Summaries of the results of hardware examinations, operating and non-operating hardware tests, software module tests, software function tests, and system-level tests (including security and telecommunications tests, and the results of the Physical and Functional Configuration Audits) are provided.

B.7 Appendix—Test Data Analysis

This appendix provides summary records of the test data and the details of the analysis. The analysis includes a comparison of the vendor's hardware and software specifications to the test data, together with any mathematical or statistical procedure used for data reduction and processing.

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C Appendix C: Qualification Test Design Criteria

C.1 Scope

This appendix describes the guiding principles used to design the voting system qualification testing process conducted by ITAs.

Qualification tests are designed to demonstrate that the system meets or exceeds the requirements of the Standards. The tests are also used to demonstrate compliance with other levels of performance claimed by the manufacturer.

Qualification tests must satisfy two separate and possibly conflicting sets of considerations. The first is the need to produce enough test data to provide confidence in the validity of the test and its apparent outcome. The second is the need to achieve a meaningful test at a reasonable cost, and cost varies with the difficulty of simulating expected real-world operating conditions and with test duration. It is the test designer's job to achieve an acceptable balance of these constraints.

The rationale and statistical methods of the test designs contained in the Standards are discussed below. Technical descriptions of their design can be found in any of several books on testing and statistical analysis.

C.2 Approach To Test Design

The qualification tests specified in the Standards are primarily concerned with assessing the magnitude of random errors. They are also, however, capable of detecting bias errors that would result in the rejection of the system.

Test data typically produce two results. The first is an estimate of the true value of some system attribute such as speed, error rate, etc. The second is the degree of certainty that the estimate is a correct one. The estimate of an attribute's value may or may not be greatly affected by the duration of the test. Test duration, however, is very important to the degree of certainty; as the length of the test increases, the level of uncertainty decreases. An efficient test design will produce enough data over a sufficient period of time to enable an estimate at the desired level of confidence.

There are several ways to design tests. One approach involves the preselection of some test parameter, such as the number of failures or other detectable factor. The essential element of this type of design is that the number of observations is independent of their results. The test may be designed to terminate after 1,000 hours or 10 days, or when 5 failures have been observed. The number of failures is important because the confidence interval (uncertainty band) decreases rapidly as the number of failures increases. However, if the system is highly reliable or very accurate, the length of time required to produce a predetermined number of failures or errors using this method may be unachievably long.

Another approach is to determine that the actual value of some attribute need not be learned by testing, provided that the value can be shown to be better than some level. The test would not be designed to produce an estimate of the true value of the attribute but instead to show, for example, that reliability is at least 123 hours or the error rate is no greater than one in ten million characters.

The latter design approach, which was chosen for the Standards, uses what is called Sequential Analysis. Instead of the test duration being fixed, it varies depending on the outcome of a series of observations. The test is terminated as soon as a statistically valid decision can be reached that the factor being tested is at least as good as or no worse than the predetermined target value. A sequential analysis test design called the ''Wald Probability Ratio Test'' is used for reliability and accuracy testing.

C.3 Probability Ratio Sequential Test (PRST)

The design of a Probability Ratio Sequential Test (PRST) requires that four parameters be specified:

H0, the null hypothesis
H1, the alternate hypothesis
a, the Producer's risk
b, the Consumer's risk

The Standards anticipate using the PRST for testing both time-based and event-based failures.

This test design provides decision criteria for accepting or rejecting one of two test hypotheses: the null hypothesis, which is the Nominal Specification Value (NSV), or the alternate hypothesis, which is the MAV. The MAV could be either the Minimum Acceptable Value or the Maximum Acceptable Value depending upon what is being tested. (Performance may be specified by means of a single value or by two values. When a single value is specified, it shall be interpreted as an upper or lower single-sided 90 percent confidence limit. If two values, these shall be interpreted as a two-sided 90 percent confidence interval, consisting of the NSV and MAV.)

In the case of Mean Time Between Failure (MTBF), for example, the null hypothesis is that the true MTBF is at least as great as the desired value (NSV), while the alternate hypothesis is that the true value of the MTBF is less than some lower value (Minimum Acceptable Value). In the case of error rate, the null hypothesis is that the true error rate is less than some very small desired value (NSV), while the alternate hypothesis is that the true error rate is greater than some larger value that is the upper limit for acceptable error (Maximum Acceptable Value).

C.4 Time-based Failure Testing Criteria

An equivalence between a number of events and a time period can be established when the operating scenarios of a system can be determined with precision. Some of the performance test criteria of Volume II, Section 4, Hardware Testing, use this equivalence.

System acceptance or rejection can be determined by observing the number of relevant failures that occur during equipment operation. The probability ratio for this test is derived from the Exponential probability distribution. This distribution implies a constant hazard rate for equipment failure that is not dependent on the time of testing or

the previous failures. In that case, two or more systems may be tested simultaneously to accumulate the required number of test hours, and the validity of the data is not affected by the number of operating hours on a particular unit of equipment. However, for environmental operating hardware tests, no unit shall be subjected to less than two complete 24-hour test cycles in a test chamber as required by Volume II, Subsection 4.7.1 of the Standards.

In this case, the null hypothesis is that the Mean Time Between Failure (MTBF), as defined in Volume I, Subsection 3.4.3 of the Standards, is at least as great as some value, here the Nominal Specification Value. The alternate hypothesis is that the MTBF is no better than some value, here the Minimum Acceptable Value.

For example, a typical system operations scenario for environmental operating hardware tests will consist of approximately 45 hours of equipment operation. Broken down, this time allotment involves 30 hours of equipment setup and readiness testing and 15 hours of elections operations. If the Minimum Acceptable Value is defined as 45 hours, and a test discrimination ratio of 3 is used (in order to produce an acceptably short expected time of decision), then the Nominal Specification Value equals 135 hours.

With a value of decision risk equal to 10 percent, there is no more than a 10 percent chance that a system would be rejected when, in fact, with a true MTBF of at least 135 hours, the system would be acceptable. It also means that there is no more than a 10 percent chance that a system would be accepted with a true MTBF lower than 45 hours when it should have been rejected.

Therefore,

H0: MTBF = 135 hours

H1: MTBF = 45 hours

a = 0.10

b = 0.10.

Under this PRST design, the test is terminated and an ACCEPT decision is reached when the cumulative number of equipment hours in the second column of the following table has been reached, and the number of failures is equal to or less than the number shown in the first column. The test is terminated and a REJECT decision is reached when the number of failures occurs in less than the number of hours specified in the third column. Here, the minimum time to accept (on zero failures) is 169 hours. In the event that no decision has been reached by the times shown in the last table entries, the test is terminated, and the decision is declared as indicated. Any time that 7 or more failures occur, the test is terminated and the equipment rejected. If after 466 hours of operation the cumulative failure score is less than 7.0, then the equipment is accepted.

Number of failures	Accept if time greater than	Reject if time less than
0	169	Continue test
1	243	Continue test
2	317	26
3	392	100
4	466	175
5	466	249
6	466	323
7	N/A	(1)

[1] Terminate and REJECT

This test is based on the table of test times of the truncated PRST design V–D in the Military Handbook MIL–HDBK–781A that is designated for discrimination ratio 3 and a nominal value of 0.10 for both a and b. The Handbook states that the true producer risk is 0.111 and the true consumer risk is 0.109. Using the theoretical formulas for either the untruncated or Truncated truncated tests will lead to different numbers.

The test design will change if given a different set of parameters. Some jurisdictions may find the Minimum Acceptable Value of 45 hours unacceptable for their needs. In addition, it may be appropriate to use a different discrimination ratio, or different Consumer's and Producer's risk. Also, before using tests based on the MTBF, it should be determined whether time-based testing is appropriate rather than event-based or another form of testing. If MTBF-based procedures are chosen, then the appropriateness of the assumption of a constant hazard rate with exponential failures should in turn be assessed.

C.5 Accuracy Testing Criteria

Some voting system performance attributes are tested by inducing an event or series of events, and the relative or absolute time intervals between repetitions of the event has no significance. Although an equivalence between a number of events and a time period can be established when the operating scenarios of a system can be determined with precision, another type of test is required when such equivalence cannot be established. It uses event-based failure frequencies to arrive at ACCEPT/REJECT criteria. This test may be performed simultaneously with time-based tests.

For example, the failure of a device is usually dependent on the processing volume that it is required to perform. The elapsed time over which a certain number of actuation cycles occur is, under most circumstances, not important. Another example of such an attribute is the frequency of errors in reading, recording, and processing vote data.

The error frequency, called ''ballot position error rate,'' applies to such functions as process of detecting the presence or absence of a voting punch or mark, or to the closure of a switch corresponding to the selection of a candidate.

Qualification and acceptance test procedures that accommodate event-based failures are, therefore, based on a discrete, rather than a continuous probability distribution. A Probability Ratio Sequential Test using the binomial distribution is recommended. In the case of ballot position error rate, the calculation for a specific device (and the processing function that relies on that device) is based on:

HO: Desired error rate = 1 in 10,000,000

H1: Maximum acceptable error rate = 1 in 500,000

a = 0.05

b = 0.05

and the minimum error-free sample size to accept for qualification tests is 1,549,703 votes.

The nature of the problem may be illustrated by the following example, using the criteria contained in the Standards for system error rate. A target for the desired accuracy is established at

a very low error rate. A threshold for the worst error rate that can be accepted is then fixed at a somewhat higher error rate. Next, the decision risk is chosen, that is, the risk that the test results may not be a true indicator of either the system's acceptability or unacceptability. The process is as follows:

- The desired accuracy of the voting system, whatever its true error rate (which may be far better), is established as no more than one error in every ten million characters (including the null character).
- If it can be shown that the system's true error rate does not exceed one in every five hundred thousand votes counted, it will be considered acceptable. (This is more than accurate enough to declare the winner correctly in almost every election.)
- A decision risk of 5 percent is chosen, to be 95 percent sure that the test data will not indicate that the system is bad when it is good or good when it is bad.

This results in the following decision criteria:

- If the system makes one error before counting 26,997 consecutive ballot positions correctly, it will be rejected. The vendor is then required to improve the system;
- If the system reads at least 1,549,703 consecutive ballot positions correctly, it will be accepted; and
- If the system correctly reads more than 26,997 ballot positions but less than 1,549,703 when the first error occurs, the testing will have to be continued until another 1,576,701 consecutive ballot positions are counted without error (a total of 3,126,404 with one error).

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Federal Register

Wednesday,
April 12, 2006

Part IV

Federal Trade Commission

16 CFR Part 437

Business Opportunity Rule; Notice of Proposed Rulemaking

FEDERAL TRADE COMMISSION

16 CFR Part 437

Business Opportunity Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is commencing a rulemaking to promulgate a trade regulation rule entitled ''The Business Opportunity Rule'' (or ''the Rule''), based upon the comments received in response to an Advance Notice of Proposed Rulemaking (''ANPR'') and other information discussed in this notice. The proposed Business Opportunity Rule would prohibit business opportunity sellers from failing to furnish prospective purchasers with material information needed to combat fraud and would prohibit other acts or practices that are unfair or deceptive within the meaning of section 5 of the Federal Trade Commission Act (''FTC Act'').

DATES: Written comments must be received on or before June 16, 2006. Rebuttal comments must be received on or before July 7, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Business Opportunity Rule, R511993'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex W), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftc-bizopNPR/* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-bizopNPR/* weblink. If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/opa/2006/04/newbizopprule.htm* to read the Notice of Proposed Rulemaking and the news release describing this proposed Rule.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff (202) 326–3135, or Craig Tregillus (202) 326–2970, Division of Marketing Practices, Room 238, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission invites interested parties to submit data, views, and arguments on the proposed Business Opportunity Rule and, specifically, on the questions set forth in Section K of this notice. The comment period will remain open until June 16, 2006. To the extent practicable, all comments will be available on the public record and placed on the Commission's Web site: *http://www.ftc.gov/os/publiccomments.htm.* After the close of the comment period, the record will remain open until July 7, 2006, for rebuttal comments. If necessary, the Commission also will hold hearings with cross-examination and post-hearing rebuttal submissions, as specified in section 18(c) of the FTC Act, 15 U.S.C. 57a(c). Parties who request a hearing must file a comment in response to this notice and a statement explaining why they believe a hearing is warranted, how they would participate in a hearing, and a summary of their expected testimony, on or before June 16, 2006. Parties testifying at a hearing may be subject to cross-examination. For cross-examination or rebuttal to be permitted, interested parties must also file a comment and request to cross-examine or rebut a witness, designating specific facts in dispute and a summary of their expected testimony, on or before July 7, 2006. In lieu of a hearing, the Commission will also consider requests to hold one or more informal public workshop conferences to discuss the issues raised in this notice and comments.

Section A. Background

The Commission is publishing this Notice of Proposed Rulemaking (''NPR'') pursuant to section 18 of the FTC Act, 15 U.S.C. 57a *et seq.*, and part 1, subpart B, of the Commission's Rules of Practice. 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section (5)(a)(1) of the FTC Act. 15 U.S.C. 45(a)(1).

1. FTC Regulation of Franchising and Business Opportunity Ventures

In the 1970s, the Commission promulgated a trade regulation rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures' (the ''Franchise Rule'') to address deceptive and unfair practices in the sale of franchises and business

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

opportunity ventures.[2] Based upon the original rulemaking record, the Commission found that franchise and business opportunity fraud was widespread, causing serious economic harm to consumers. To prevent fraudulent practices in the sale of franchises and business opportunities, the Commission adopted a pre-sale disclosure rule.

The Franchise Rule does not purport to regulate the substantive terms of a franchise or business opportunity contract. Rather, it is designed to prevent fraud by prohibiting sellers from failing to disclose material information to prospective buyers. The Franchise Rule is posited on the notion that a fully informed consumer can determine whether a particular offering is in his or her best interest.

The Franchise Rule requires extensive disclosures, including information about the seller;[3] the business background of its principals and their litigation and bankruptcy histories;[4] the terms and conditions of the offer;[5] statistical analyses of existing franchised and company-owned outlets;[6] prior purchasers, including the names and addresses of at least 10 purchasers nearest the prospective buyer;[7] and audited financial statements.[8] Additional disclosure and substantiation provisions apply if the seller chooses to make any financial performance representations.[9]

The Commission recognized that requiring these extensive disclosures would likely impose significant compliance costs on covered businesses. It therefore sought to strike the proper balance between prospective purchasers' need for pre-sale disclosure and the burden imposed on those selling business arrangements. As a result of this balancing, the Commission limited the scope of the Franchise Rule's coverage in three significant ways.

First, the Franchise Rule covers only those opportunities that require a buyer to make a payment of at least $500 within the first six months of operation.[10] In transactions where a prospective purchaser may incur high financial losses if the seller withholds material information, the benefit for purchasers of the Rule's pre-sale disclosure requirements outweighs the cost to sellers of making those disclosures. By contrast, when the required investment to purchase a business opportunity is comparatively small, prospective purchasers face a relatively small financial risk. In such circumstances, compliance costs may outweigh the benefits of pre-sale disclosure. Therefore, the Franchise Rule does not reach opportunities that charge lower fees.[11]

Second, the ''inventory exemption'' excludes certain types of payments from the Rule's $500 minimum cost threshold. The ''inventory exemption'' is the franchise industry's shorthand term for the Commission's determination that, as a matter of policy, voluntary purchases of reasonable amounts of inventory at bona fide wholesale prices for resale do not count toward the required threshold payment.[12] An important consequence of this policy determination is to eliminate from Franchise Rule coverage many pyramid marketing plans because the participants in such plans typically do not make a required payment of or exceeding $500, but instead make voluntary purchases of inventory in reasonable amounts and at bona fide wholesale prices for resale.[13]

Third, the Commission focused the Franchise Rule on the types of business opportunities that the record showed were likely to result in significant purchaser injury. The record showed that vending machines, rack displays, and similar opportunities frequently were sold through deception. A feature common to these types of schemes is the promise of assistance in securing locations or accounts.[14] Thus, the Commission incorporated this characteristic into the Rule's definitional elements to ensure coverage of demonstrably injurious schemes. Other forms of assistance that business opportunity sellers frequently offer—such as training[15] and the buy-back and resale of goods assembled by the purchaser (an element of many craft assembly opportunities)[16]—do not bring a business opportunity within the scope of the Franchise Rule's coverage.

In addition to these limits on the scope of the Franchise Rule's coverage—driven by balancing prospective purchasers' need for pre-sale disclosure against the burden imposed on business opportunity sellers—another aspect of the Rule's language further limits the Rule's scope of coverage. Specifically, the Rule provides that a business opportunity is covered only if the purchaser of the opportunity sells goods or services directly to end-users other than the business opportunity seller.[17] The effect of this limitation is to exclude most work-at-home opportunities—such as envelope stuffing and craft assembly ventures—from Franchise Rule coverage. In those opportunities, the purchaser typically works directly for the seller or produces various goods for the seller, who then purportedly distributes them to end-users.[18]

The proposed Business Opportunity Rule calls for streamlined disclosures that, compared to the Franchise Rule, substantially reduce the compliance burden. Therefore, the kinds of limits written into the Franchise Rule are not necessary to achieve an appropriate balance between prospective purchasers' need for pre-sale disclosure and the burden imposed on business opportunity sellers. Accordingly, the proposed Rule has no minimum cost threshold, no inventory exemption, and no limit on scope based on the type of assistance promised as part of the offer. Nor is the coverage of the proposed Rule limited to transactions where the purchaser of the opportunity sells goods or services directly to end-users other than the business opportunity seller. In short, the scope of coverage of the proposed Rule is much broader than

[2] 16 CFR part 436. *See also* Statement of Basis and Purpose (''SBP''), 43 FR 59614 (Dec. 21, 1978).

[3] 16 CFR at 436.1(a)(1) and (3).

[4] 16 CFR at 436.1(a)(2)–(5).

[5] 16 CFR at 436.1(a)(7)–(15) and (17)–(18).

[6] 16 CFR at 436.1(a)(16).

[7] 16 CFR at 436.1(a)(16).

[8] 16 CFR at 436.1(a)(20).

[9] 16 CFR at 436.1(b)–(c) and (e).

[10] 16 CFR at 436.2(a)(2) and (a)(3)(iii). In the SBP, the Commission noted that ''[w]here a franchisee makes no significant investment in the franchise business, he assumes only a limited risk, and the protection of the rule is inappropriate.'' 43 FR at 59704. *See also* Final Interpretive Guides (''Interpretive Guides'') accompanying the Franchise Rule: ''The Commission's policy determination [is that] a significant financial investment is a necessary element of a franchise.'' Interpretive Guides, 44 FR 49966, 49968 (August 24, 1978).

[11] Nevertheless, deceptive and unfair conduct by a business opportunity seller falling below the Franchise Rule's $500 threshold may constitute a violation of section 5 of the FTC Act. *E.g., FTC* v. *Med. Billers Network, Inc.,* No. 05 CIV 2014 (RJH) (S.D.N.Y. 2005) ($200–295 fee); *FTC* v. *Kamaco Int'l,* No. CV 02–04566 LGB (RNBx) (C.D. Cal. 2002) ($42 fee); *FTC* v. *Healthcare Claims Network,* No. 2:02–CV–4569 MMM (AMWx) (C.D. Cal. 2002) ($485 fee); *FTC* v. *Stuffingforcash.com, Corp.,* No. 92 C 5022 (N.D. Ill. 2002) ($45 fee); *FTC* v. *Medicor LLC,* No. CV01–1896 (CBM) (C.D. Cal. 2001) ($375 fee); *FTC* v. *SkyBiz.com,* No. 01–CV–0396–EA (X) (N.D. Okla. 2001) ($125 fee).

[12] Interpretive Guides, 44 FR at 49967.

[13] *E.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *Equinox, Int'l,* No. CV–S–99–0969–JBR–RLJ (D. Nev. 1999).

[14] 16 CFR at 436.2(a)(1)(ii)(B)(1)–(3).

[15] *E.g., FTC* v. *Academic Guidance Serv., Inc.,* No. 92–3001 (AET) (D. N.J. 1992).

[16] *E.g., FTC* v. *Misty Stafford,* No. 3: CV 05–0215 (M.D. Pa. 2005); *FTC* v. *USS Elder Enter. Inc.,* No. SACV–04–1039 AHS (ANx) (C.D. Cal. 2004); *FTC* v. *Holiday Magic,* No. C 93–4038 VRW (N.D. Cal. 1994).

[17] 16 CFR at 436.2(a)(1)(ii)(A)(1)–(3).

[18] *E.g., FTC* v. *Misty Stafford,* No. 3: CV 05–0215 (M.D. Pa. 2005); *FTC* v. *Sun Ray Trading, Inc.,* No. 05–20402 CIV-Seitz/Bandstra (S.D. Fla. 2005).

that of the Franchise Rule, while the compliance burden is much lighter.

2. Franchise Rule Review

In 1995, the Commission conducted a regulatory review of the Franchise Rule to ensure that it continues to serve a useful purpose.[19] One issue that the Commission explored in that proceeding was the application of the Franchise Rule to the sale of business opportunities. Specifically, the Commission noted that although the Franchise Rule applied to certain business opportunities, it lacked a clear definition of the term ''business opportunity.'' Accordingly, the Commission solicited comment on an appropriate definition.[20] In addition, the Commission asked whether such a definition should include business opportunities not covered by the Franchise Rule, such as ''multilevel marketing, seller assisted market plans, work-at-home plans, and certain distributorships and licenses.'' [21]

The Commission also inquired whether the Franchise Rule's extensive disclosure requirements are well-suited to business opportunity sales and whether the Franchise Rule imposes unnecessary compliance costs on both business opportunity sellers and buyers. For example, certain Franchise Rule disclosures—such as site selection and approval and public figure involvement—arguably are more likely to be important to franchise investors than business opportunity purchasers. To ensure that the required disclosures protect prospective business opportunity purchasers, while minimizing overall compliance costs, the Commission solicited comment on whether any of the Rule's disclosures should be eliminated because they are unnecessary in the business opportunity context and if any additional material disclosures should be required.[22]

At the conclusion of the Rule Review, the Commission determined to retain the Franchise Rule with modifications designed to harmonize it better with state franchise regulations. At the same time, the Commission determined to seek additional comment on whether to address the sale of business opportunities through a separate, narrowly tailored new trade regulation rule. To that end, it published an Advance Notice of Proposed Rulemaking, as described in the next section.

3. Advance Notice of Proposed Rulemaking

In 1997, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') in the **Federal Register**,[23] seeking further comment on several proposed Franchise Rule modifications, including the separation of disclosure requirements for sales of business opportunities from those for sales of franchises. The Commission also sought comment on the proper scope of the term ''business opportunity,'' [24] the types of business opportunities that are known to engage in deceptive or fraudulent conduct,[25] and the types of disclosures that are material to business opportunity purchasers.[26] In addition to soliciting written comments, the Commission staff held three public workshops specifically addressing business opportunity sales issues. These were held in Chicago, Dallas, and Washington, DC. The workshop participants included: Business opportunity promoters; the Direct Sellers Association (''DSA''); several of DSA's multilevel marketer members (*e.g.*, Amway, Longaberger Company, Pampered Chef); several attorneys who represent business opportunity promoters; state regulators; and several franchise and distribution law attorneys.

4. Franchise Rule Notice of Proposed Rulemaking

After assessing the comments received in response to the ANPR, the Commission decided to amend the Franchise Rule and, to that end, published a Franchise Rule Notice of Proposed Rulemaking (''Franchise Rule NPR''), soliciting comment on proposed revisions to the Franchise Rule.[27] At the same time, the Commission announced its intention to conduct a separate rulemaking to address business opportunity sales.[28] Agreeing with the overwhelming view of the commenters who discussed this issue during the Rule Review and in response to the ANPR, the Commission found that franchises and business opportunities are distinct business arrangements that require separate disclosure approaches. Without proposing any specific Business Opportunity Rule provisions at that time, the Commission noted that:

> [M]any of the [Franchise] Rule's pre-sale disclosures, in particular those pertaining to the parties' detailed relationship, do not apply to the sale of most business opportunities, which typically involve fairly simple contracts or purchase agreements. The Rule's detailed disclosure obligations may also create barriers to entry for legitimate business opportunity sellers.

Franchise Rule NPR, 64 FR at 57296.

Section B. Need for a Separate Business Opportunity Rule

Based upon its enforcement experience and the record developed to date, the Commission has determined to promulgate a separate trade regulation rule to address widespread fraud in the sale of business opportunities. This approach is consistent with the view of the vast majority of commenters and the regulatory approaches adopted in most states.

Rule Review and ANPR commenters and participants overwhelmingly urged the Commission to promulgate a separate business opportunity rule.[29] As an initial matter, several commenters observed that business opportunities and franchises are distinct business arrangements that pose very different regulatory challenges. For example,

[19] Rule Review, 60 FR 17656 (April 7, 1995). References to the Rule Review comments are cited as: The name of the commenter, RR comment number (*e.g.*, NASAA, RR 43). References to the Rule Review workshop conferences are cited as: Name of commenter, Sept95 Tr or March96 Tr, respectively (*e.g.*, D'Imperio, Sept95 Tr, and Ainsely, March96 Tr). A list of the Rule Review commenters and the abbreviations used to identify each is attached as Attachment A.

[20] Rule Review, 60 FR at 17656–658 (Question 13).

[21] Rule Review, 60 FR at 17658 (Question 13b).

[22] Rule Review, 60 FR at 17658 (Question 14).

[23] ANPR, 62 FR 9115 (Feb. 28, 1997). References to the ANPR comments are cited as: The name of the commenter, ANPR, comment number (*e.g.*, NASAA, ANPR 120). References to the ANPR workshop conferences are cited as: Name of commenter, ANPR, date Tr (*e.g.*, Bundy, ANPR, 6Nov97 Tr). A list of the ANPR commenters and the abbreviations used to identify each is attached as Attachment B.

[24] ANPR, 62 FR at 9116–117 and 9121 (Question 12).

[25] ANPR, 62 FR at 9121 (Questions 8–10).

[26] ANPR, 62 FR at 9121 (Questions 15–16).

[27] Franchise Rule NPR, 64 FR 57294 (October 22, 1999). References to the comments responding to the Franchise Rule NPR are cited as: Name of commenter, FR–NPR, commenter number (*e.g.*, IFA, FR–NPR 22). A list of the FR–NPR commenters and the abbreviations used to identify each is attached as Attachment C.

[28] Franchise Rule NPR, 64 FR at 57296.

[29] *E.g.*, Muncie, ANPR 15, at 2; Baer, ANPR 25; H&H, ANPR 28, at 6; Kaufmann, ANPR 33, at 6; DSA, ANPR 34, at 1; IL AG, ANPR 77, at 3; IFA, ANPR 82, at 2; Caffey, ANPR 94, at 1–2; Jeffers, ANPR 116, at 2; NASAA, ANPR 120, at 4; Selden, ANPR 133, at 2; Cendant, ANPR 140; Wieczorek, RR 23, at 2–3; CA BLS, RR 45, at 5–6; Forte Hotels, RR 52, at 2. *See also* Harrington, Sept95 Tr at 285 (noting complete consensus among public workshop participants for a separate business opportunity rule). *But see* NCL, ANPR 35 (''While there may be clear distinctions with those involved in the trade for franchises and business opportunities, the consumers who contact the NFIC are unaware of the differences. Moreover, a review of the NFIC complaints received in 1996 reveals that more involve business opportunities than franchises. This indicates that the same pre-sale disclosures are needed for business opportunities as for franchises.''); Cory, ANPR 12; McBirney, RR 7, at 2; Perry RR 44, at 3 (arguing that the Commission should create a level playing field between all income generating opportunities, subjecting each to the same disclosure approach).

franchises typically are expensive and involve complex contractual licensing relationships, while business opportunity sales are often less costly, involving simple purchase agreements that pose less of a financial risk for purchasers.[30] Also, in contrast to franchises, many business opportunity programs have no continuing relationship between the buyer and seller, but are a one time purchase of packaged information.[31]

Further, unlike most franchises, many business opportunities are permeated with fraud.[32] Perhaps one business opportunity and franchise consultant said it best when she described many business opportunity sellers as:

> Individuals who go from one business opportunity to the next, violating laws, committing frauds, taking funds without delivering what was promised only to shut down the operation within a year and move on to another one with new officers, new company names, and new products.

Chistopher, ANPR 115, at 1.[33]

Other commenters observed that business opportunity sellers take advantage of the Franchise Rule's narrow focus to avoid disclosure obligations.[34] Other commenters asserted that business opportunity sellers do not comply with the Franchise Rule because compliance costs are too high.[35] For example, attorney Kat Tidd explained:

> From my experience as a franchise attorney of more than 15 years, many entrepreneurs will choose to risk not complying with the Rule because the cost of compliance is too high relative to the size of the company, the size of the investment to be made and/or the number of, or profits to be derived from, the sale of opportunities.

Tidd, ANPR 112, at 1.[36]

The Commission is concerned that the current application of the Franchise Rule to the sale of business opportunities does not work well. Accordingly, the Commission is proposing a separate business opportunity rule, narrowly tailored to minimize compliance costs.[37] For the present, those business opportunity sellers covered by the original Franchise Rule will remain covered by that rule.[38]

Section C. Overview of the Proposed Rule

In drafting a Business Opportunity Rule, the Commission relies heavily on its law enforcement experience in addressing a wide array of business opportunity fraud under both the Franchise Rule and section 5 of the FTC Act. The Commission also relies on the staff's analysis of consumer complaints submitted to the FTC.[39] By far, the most frequent allegations in Commission business opportunity cases pertain to false or unsubstantiated earnings claims.[40] This is followed by false testimonials or fictitious references and misrepresentations concerning the profitability of locations, availability of support and assistance, nature of the products or services sold, prior success of the seller or locator, full extent of investment costs, and refund policies.[41] These alleged material misrepresentations or omissions also were most frequently mentioned in complaints to the Commission submitted by business opportunity purchasers.[42]

The proposed Rule would address these practices by requiring five affirmative disclosures.[43] The first

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[30] *E.g.,* IFA, FR–NPR 22, at 4; NASAA, ANPR 120, at 2–3; DSA, RR 21, at 3–4; Wieczorek, RR 23, at 2–3; D'Imperio, Sept95 Tr at 130; Kezios, Sept95 Tr at 365, 631.

[31] Caffey, ANPR 94, at 2.

[32] *E.g.,* Baer, ANPR 25, at 5; Wieczorek, 21Aug97 Tr at 35; DSA, *id.;* Finnigan, *id.* at 90; Kestenbaum, RR 14, at 3–4; Wieczorek, RR 23, at 2–3; Lewis, RR 40, Attachment at 3; CA BLS, RR 45, at 5–6; D'Imperio, Sept95 Tr at 130; Kezios, *id.* at 365, 631.

[33] At the Washington, DC public workshop conference, a business opportunity seller described an informal survey of business opportunity advertisements in the *Boston Globe.* He stated that in February 1997, he observed advertisements for 23 business opportunity ventures. When he attempted to call the advertised numbers the following August, he found ''20 of them were disconnected, meaning they shut down, left one to a thousand people with no customer support, no parts for machines, no parts whatsoever.'' M. Garceau, 20Nov97 Tr at 28–29.

[34] Kestenbaum, RR 14, at 3–4 (''Too many companies are trying to avoid the disclosure requirements of the Rule by sidestepping the franchise definition and taking a position that what they do is not defined under the FTC Rule.''). *See also* Caffey, 20Nov97 Tr at 24 (''I think one of the drawbacks of the existing Rule is it is very narrowly defined. Under the existing Rule * * * if the seller is not locating vending machines or providing assistance for locations, the seller is virtually not covered by the Rule.''); Lewis, Sept95 Tr at 283 (observing that the narrow definition of business opportunity enables business opportunity sellers to conclude that they ''are not part of it; it's very easy to say I'm not a franchise and I'm not a bis op [sic].'').

[35] CA BLS suggested that business opportunity sellers will go so far as to change their program to avoid falling within the Franchise Rule's definition of a business opportunity, resulting in reduced protection for prospective purchasers:

> [I]f the only reason that a seller's program is falling within the definition of the Rule is that it provides personnel who assist the purchaser in securing sites, it may withdraw this service. In some instances, companies have eliminated independent owner programs altogether rather than attempting to comply with the Rule and the ''patchwork quilt'' of multiple and diverse state regulations.

CA BLS, RR 45, at 6–7. *See also* Muncie, ANPR 15, at 2 (suggesting that Franchise Rule coverage of business opportunities ''only serve[s] to drive legitimate companies out of the marketplace, thereby harming consumers.'').

[36] *See also, e.g.*, Caffey, ANPR 94, at 2; Christopher, ANPR 115, at 1; CA BLS, RR 45, at 5–6; Huke, Sept95 Tr at 239–40.

[37] In this regard, one fairly typical comment urged that the Commission:

> Tailor the scope of disclosure content, creating a disclosure statement designed for compliance by a business opportunity seller. A number of sections of the FTC Rule disclosure have little relevance to a typical business opportunity sale. These include the business experience of executives of the seller, personal participation of the buyer in the operation of the business, termination/renewal information, statistical information, site selection, public figure involvement, financial information of the seller, the contract.

Caffey, ANPR 94, at 1–2. *See also* Muncie, ANPR 15, at 3; Baer, ANPR 25, at 5; Tifford, ANPR 78, at 4–5; D'Amico, Sept95 Tr at 151, 154; Huke, *id.* at 240; Simon, *id.* at 281; Lewis, *id.* at 284. A few commenters, however, suggested that disclosures for business opportunity sales should be ''stronger'' than those for franchise sales. *E.g.,* Cory, ANPR 12; D'Imperio, Sept95 Tr at 132; Perry, *id.* at 258–59.

[38] In the event that a revised Franchise Rule is promulgated before a new Business Opportunity Rule, business opportunities presently covered by the original Franchise Rule could remain covered by that rule pending completion of this rulemaking. For example, the Commission could finalize a revised Franchise Rule (16 CFR part 436), and simultaneously publish a modified version of the original Franchise Rule that would be named the ''Business Opportunity Rule'' (16 CFR part 437). This rule might differ from the original Franchise Rule in two respects. First, references to ''franchisor'' and ''franchisee'' in the original Franchise Rule would be changed to ''business opportunity seller'' and ''business opportunity purchaser,'' respectively. Second, the term ''franchise'' would be deleted from the original Franchise Rule's definitions and would be replaced with ''business opportunity.'' Further, the first part of the original definition—the ''franchise'' elements—would be deleted; the revised definition would focus on the second part of the original definition—the business opportunity elements. Except for these changes, all disclosures and prohibitions in part 437 would be identical to those of the original Franchise Rule.

[39] *See* Bureau of Consumer Protection Staff, *Franchise and Business Opportunity Program Review 1993–2000: A Review of Complaint Data, Law Enforcement, and Consumer Education* (June 2001) (''Staff Program Review'') (available at *http://www.ftc.gov/reports/franchise93-01.pdf*). *See also* Tifford, ANPR 78, at 4–5 (''[T]he FTC should draw upon its own experience with business opportunity enforcement in fashioning a definition that would encompass the business opportunity arrangements which have been the source of most of the consumer injury, as well as focusing on the types of disclosures that are best suited for business opportunity purchasers.'').

[40] Staff Program Review, *supra* note 39, Table I.1; I.2. (127 Franchise Rule allegations; 94 Section 5 allegations pertaining to earnings claims issues in FTC enforcement actions). *See also* NCL, ANPR 35, at 2.

[41] Staff Program Review, *supra* note 39, Table I.2.

[42] *Id.,* Appendix 5 (listing earnings claims; lack of promised support, locations, or training; exclusive territory and cost misrepresentations; and refund issues among most prevalent business opportunity complaints).

[43] Consistent with the Franchise Rule, the Commission does not express any opinion about the legality of any practices that might be disclosed under the proposed Rule. *See* 16 CFR part 436, note 1. In the Franchise Rule SBP, the Commission

Continued

affirmative disclosure would require a business opportunity seller to state whether the seller chooses to make earnings claims. If the seller does, then the proposed Rule would require substantiation and additional disclosures. The other four affirmative disclosures pertain to certain prior litigation; the seller's cancellation or refund policies; statistics on cancellation and refund requests; and contact information for prior purchasers as references.

In addition to these disclosure requirements, the proposed Rule would prohibit common deceptive business opportunity sales practices. Among other things, business opportunity sellers would be prohibited from misrepresenting: (1) Earnings; (2) costs or the efficacy, nature, or central characteristics of the business opportunity or the goods or services sold to the purchaser as part of the business opportunity; (3) cancellation or refund policies; (4) promised assistance; (5) the calculation and distribution of commissions, bonuses, incentives, premiums, or other payments from the seller; (6) the likelihood of finding locations for equipment or accounts for services; (7) a business opportunity as an offer of employment; (8) territorial exclusivity or more limited territorial protections; (9) endorsements; and (10) shills as references. Finally, the proposed Rule would prohibit business opportunity sellers from failing to make promised refunds, as well as assigning ''to any purchaser a purported exclusive territory that, in fact, encompasses the same or overlapping areas already assigned to another purchaser.''

Section D. Scope of the Proposed Rule

1. Business Opportunities Covered by the Franchise Rule

The proposed Rule would continue to cover those business opportunities that are presently covered by the original Franchise Rule. The Commission's law enforcement experience demonstrates that sales of these opportunities are fraught with unfair and deceptive practices, in particular the making of false or unsubstantiated earnings claims.

Indeed, such practices are widespread. Since 1990 alone, the Commission has brought more than 140 Franchise Rule cases against vending machine, rack display, and similar opportunities. Since 1995, the Commission has conducted more than 11 business opportunity sweeps,[44] many with other federal and state law enforcement partners, to combat persistent business opportunity scams violating the Franchise Rule, such as those involving the sale of vending machines,[45] rack displays,[46] public telephones,[47] Internet kiosks,[48] and 900-number ventures,[49] among others.

Further, business opportunity ventures covered by the Franchise Rule continue to stand out as a major source of consumer complaints.[50] In fact, business opportunities covered by the Franchise Rule consistently rank among the top 10 categories of consumer fraud complaints reported to the Commission.[51]

Moreover, such scams typically cost consumers thousands of dollars.[52]

recognized that the Franchise Rule may require franchisors to disclose practices that may raise antitrust issues. SBP, 43 FR at 59719. While antitrust issues are probably less of a concern in the narrowly tailored Business Opportunity Rule context, the Commission nevertheless reserves the right to pursue violations of antitrust laws even if a business opportunity seller discloses a violation in complying with the proposed Rule's disclosure requirements. In short, disclosure does not create a safe harbor for engaging in otherwise unlawful conduct.

Further, a business opportunity seller may have an obligation under section 5 of the FTC Act to impart material information to prospective purchasers beyond the disclosures required by this proposed Rule. This clarification is critical, especially in an age of quickly developing changes in the marketplace. The Commission cannot now predict what types of business opportunities will be offered in the future, nor the information a business opportunity purchaser will find material. This does not mean that a seller must include additional information in its disclosure document. As noted below, proposed section 437.5(c) prohibits the inclusion of additional information in a disclosure document. Rather, when a seller must impart material information beyond that required by the Rule, it must provide the information separately from its disclosure document. The Commission does not purport to specify how such information must be disseminated, permitting sellers the flexibility to decide which method is best for their particular business.

[44] *E.g.,* Project Telesweep (1995); Operation Missed Fortune (1996); Project Trade Name Games (1997); Project Vend Up Broke (1998); Project Bizillion$ (1999); Project Busted Opportunity (2002); and Project Biz Opp Flop (2005). In addition to joint law enforcement sweeps, Commission staff has also targeted specific business opportunity ventures such as 900 numbers (Project Buylines 1996); vending (Project Yankee Trader 1997); seminars (Operation Showtime 1998); medical billing (Project House Call 1998); and Internet-related services (Net Opportunities 1998).

[45] *See, e.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Huck (2004); *FTC* v. *Pathway Merch., Inc.,* No. 01–CIV–8987 (S.D.N.Y. 2001); *U.S.* v. *Photo Vend Int'l, Inc.,* No. 98–6935–CIV–Ferguson (S.D. Fla. 1998); *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *FTC* v. *Claude A. Blanc, Jr.,* No. 2:92–CV–129–WCO (N.D. Ga. 1992). *See also* FTC News Release: FTC Announces ''Operation Vend Up Broke'' (Sept. 3, 1998) (available at *http://www.ftc.gov/opa/1998/09/vendup2.htm*) (FTC and 10 states announce 40 enforcement actions against fraudulent vending business opportunities).

[46] *See, e.g., U.S.* v. *Elite Designs, Inc.,* No. CA 05 058 (D.R.I. 2005); *U.S.* v. *QX Int'l,* No. 398–CV–0453–D (N.D. Tex. 1998); *FTC* v. *Carousel of Toys,* No. 97–8587–CIV–Ungaro-Benages (S.D. Fla. 1997); *FTC* v. *Raymond Urso,* No. 97–2680–CIV–Ungaro-Benages (S.D. Fla. 1997); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996); *FTC* v. *O'Rourke,* No. 93–6511–CIV–Ferguson (S.D. Fla. 1993). *See also* FTC News Release: Display Racks for Trade-Named Toys and Trinkets are the Latest in Business Opportunity Fraud Schemes (Aug. 5, 1997) (available at *http://www.ftc.gov/opa/1997/08/tradenam.htm*) (FTC and 8 states file 18 enforcement actions against sellers of bogus display opportunities that use trademarks of well-known companies).

[47] *See, e.g., FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro-Benages (S.D. Fla. 2000); *FTC* v. *Ameritel Payphone Distribs., Inc.,* No. 00–0514–CIV–Gold (S.D. Fla. 2000); *FTC* v. *ComTel Commc'ns Global Network, Inc.,* No. 96–3134–CIV–Highsmith (S.D. Fla. 1996); *FTC* v. *Intellipay, Inc.,* No. H92 2325 (S.D. Tex. 1992).

[48] *See, e.g., FTC* v. *Bikini Vending Corp.,* No. CV–S–05–0439–LDG–RJJ (D. Nev. 2005); *FTC* v. *Network Service Depot, Inc.,* No. CV–S0–05–0440–LDG–LRL (D. Nev. 2005); *U.S.* v. *Am. Merch. Tech.,* No. 05–20443–CIV–Huck (S.D. Fla. 2005); *FTC* v. *Hart Mktg. Enter. Ltd., Inc.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998). *See also FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998); *FTC* v. *TouchNet, Inc.,* No. C98–0176 (W.D. Wash. 1998).

[49] *See, e.g., FTC* v. *Bureau 2000 Int'l, Inc.,* No. 96–1473–DT–(JR) (C. D. Cal. 1996); *FTC* v. *Genesis One Corp.,* No. CV–96–1516–MRP (MCX) (C. D. Cal. 1996); *FTC* v. *Innovative Telemedia, Inc.,* No. 96–8140–CIV–Ferguson (S. D. Fla. 1996); *FTC* v. *Ad-Com Int'l,* No. 96–1472 LGB (VAP) (C.D. Cal. 1996).

[50] *See* FTC, *The FTC in 2005: Standing Up For Consumers and Competition* (2005) (available at *http://www.ftc.gov/os/2005/04/0504abareportfinal.pdf*), at 18 (announcing 14 criminal indictments in connection with business opportunity fraud); FTC Staff Report, *Consumer Fraud in the United States: An FTC Survey* (Aug. 2004) (''Fraud Survey'') (available at *http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf*) at 48 (showing 450,000 victims of business opportunity fraud).

[51] *See, e.g.,* FTC News Release: Criminal and Civil Enforcement Agencies Launch Major Assault Against Promoters of Business Opportunity and Work-at-Home Schemes (Feb. 22, 2005) (available at *http://www.ftc.gov/opa/2005/02/bizoppflop.htm*) (defendants in FTC cases alone caused tens of thousands of consumers to lose a total of more than $100 million); FTC News Release: Law Enforcers Target ''Top 10'' Online Scams; Consumer Protection Cops From 9 Countries, 5 U.S. Agencies, and 23 States Tackle Internet Fraud (Oct. 31, 2000) (available at *http://www.ftc.gov/opa/2000/10/topten.htm*) (listing business opportunities and work-at-home schemes among the top 10 Internet frauds). *See also* Prepared Statement of Federal Trade Commission on ''Internet Fraud'' before the House Subcomm. on Commerce, Trade, and Consumer Protection of the Comm. on Energy and Commerce (May 23, 2001) (available at *http://www.ftc.gov/opa/2001/05/iftestimony.htm*) (listing pyramids, business opportunities, and work-at-home schemes among the top Internet frauds); Prepared Statement of the Federal Trade Commission on ''Internet Fraud'' before the Senate Comm. on Finance (April 5, 2001) (available at *http://www.ftc.gov/os/2001/04/internetfraudstate.htm*) (listing pyramid, business opportunities, and work-at-home schemes among the top 10 Internet frauds based on Consumer Sentinel Database).

[52] *E.g., FTC* v. *World Traders Ass'n, Inc.,* No. CV05 0591 AHM (CTx) (C.D. Cal. 2005) (estimated $30 million in consumer injury); *FTC* v. *Am. Entm't*

While precise figures of consumer injury from fraudulent business opportunity ventures is unknown, the Commission's law enforcement experience reveals that it is not uncommon for purchasers of fraudulent business opportunities to lose thousands of dollars each.[53] For these reasons, the Commission has determined that sales of vending machines, rack displays, and similar opportunities should be covered by the Business Opportunity Rule, now that the Franchise Rule is being amended to focus exclusively on the sale of franchises.

2. Business Opportunities Not Presently Covered by the Franchise Rule

The proposed Business Opportunity Rule would also address the sale of other business arrangements that are currently outside the scope of the Franchise Rule, but have been shown by the Commission's law enforcement experience and complaint data to be sources of prevalent and persistent problems. Two important types of fraudulent or deceptive opportunities that would fall within the proposed Rule's coverage are work-at-home schemes and pyramid marketing schemes.[54]

a. Work-at-Home Schemes

Deceptive work-at-home schemes are a persistent type of fraud, preying upon stay-at-home parents, the physically disabled, non-English speakers, and others who cannot obtain employment outside of the home.[55] For the most part, they are not distinguishable in any material respect from business opportunities covered by the existing Franchise Rule.[56]

Sellers of fraudulent work-at-home opportunities deceive their victims with promises of an ongoing relationship in which the seller will buy the output that opportunity purchasers produce. These sellers often misrepresent that there is a market for a purchaser's goods and services,[57] just as sellers of fraudulent vending machine and rack display opportunities falsely claim that profitable vending locations are available.[58] Work-at-home opportunity sellers also often claim to provide ongoing training and other assistance, as business opportunity sellers covered by the Franchise Rule often do.[59]

Each of these promises by work-at-home opportunity sellers is often just as illusory as the analogous promises made by business opportunity sellers covered by the Franchise Rule. In addition, fraudulent work-at-home opportunity sellers frequently invent undisclosed conditions and limitations for rejecting the work performed by purchasers and refusing to buy back the goods the purchasers produce.[60] Similarly, these sellers' promises of continuing support and assistance frequently prove empty, leaving work-at-home opportunity purchasers with no help in figuring out how to assemble misshapen components into finished products.

Moreover, as the Commission's cases and complaint data demonstrate, the con artists who promote fraudulent work-at-home schemes frequently dupe consumers with false earnings claims,[61] a very prevalent practice among fraudulent business opportunity sellers. For example, in one envelope-stuffing case brought under section 5 of the FTC Act, the defendant allegedly offered to pay purchasers $550 to $3,000 weekly.[62] Similarly, in a medical billing work-at-home case, the defendant allegedly promised purchasers annual incomes of $25,000–$50,000.[63] Because the initial investment is relatively low, hundreds of thousands of bilked consumers do not formally complain or take action against these illegal operators.

The Commission's law enforcement experience demonstrates that work-at-home scams are widespread, causing significant consumer injury. Indeed, since 1990 the Commission has brought over 60 work-at-home cases.[64] These actions have targeted a variety of schemes, ranging from envelope

Distribs., No. 04–22431–CIV–Huck (S.D. Fla. 2004) (estimated $20 million in consumer injury). *See also* United States Postal Inspection Service, News Release: U.S. Postal Inspectors, Federal Trade Commission, Department of Justice dismantle business-opportunity scams (''Postal Inspectors have arrested 28 individuals * * * who victimized more than 140,000 consumers with estimated losses exceeding $73 million.'').

[53] *E.g., FTC* v. *Am. Entm't Distribs.,* No. 04–22431–CIV–Huck (S.D. Fla. 2004) ($28,000–$37,500 for one machine); *FTC* v. *Accent Mktg., Inc.,* No. 02–0405–CB–M (S.D. Ala. 2002) ($8,000 initial payment). One measure of injury attributed to business opportunity fraud can be gleaned from the 2001 Staff Program Review. In its review of 2,665 business opportunity complaints from 1997 through the first half of 1999, over 70% of complainants reported losses of at least $1,000, with over 48% reporting losses of over $5,000. Approximately 24% reported losses over $10,000. Staff Program Review, *supra* note 39, at 36.

[54] In response to the ANPR, state regulators argued for a broad rule covering a wide array of opportunities. For example, in its ANPR Comment, NASAA recommended that the disclosure requirements for business opportunity ventures include business opportunity formats such as multilevel marketing plans, seller-assisted marketing plans, work-at-home plans and certain distributorships and licensing plans not currently covered under the Franchise Rule. NASAA, ANPR 120, at 5. *See also* James, ANPR 76; WA Securities, ANPR 117, at 2; Maxey, Sept95 Tr at 38.

[55] *See, e.g., FTC* v. *USS A Enter., Inc.,* No. SA CV–04–1039 AHS (ANx) (C.D. Cal. 2004) (craft assembly opportunity aimed at Spanish speakers); *FTC* v. *Esteban Barrios Vega,* No. H–04–1478 (S.D. Tex. 2004) (product assembly opportunity aimed at Spanish speakers); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003) (envelope-stuffing opportunity targeting unemployed, disabled, and elderly hoping to work from home); *FTC* v. *Medicor LLC,* No. CV01–1896 (CBM) (C.D. Cal. 2001) (work-at-home scams victimizing stay-at-home parents, the physically disabled, and non-English speakers). *See also* James, 21Nov97 Tr at 344 (describing work-at-home program aimed at the elderly and poorly-educated).

[56] *See* discussion above in Section A.1 explaining that the Franchise Rule's limitation requiring purchasers to sell directly to end-users effectively exempts many work-at-home opportunities from Franchise Rule coverage.

[57] *E.g., FTC* v. *Misty Stafford,* No. 3: CV 05–0215 (M.D. Pa. 2005); *FTC* v. *Elec. Med. Billing, Inc.,* No. SA02–368 AHS (ANX) (C.D. Cal. 2003); *FTC* v. *Holiday Magic,* No. C 93–4038 VRW (N.D. Cal. 1994); *In re New Mexico Custom Designs, Inc.,* FTC C–3485 (1993); *In re Sandcastle Creations,* FTC C–3484 (1993); *In re Homespun Prods., Inc.,* FTC C–3483 (1993); *In re Hairbow Co.,* FTC C–3482 (1993). *See* James, 21Nov97 Tr at 343 (bead assembly seller falsely represented a relationship with J.C. Penney).

[58] *E.g., FTC* v. *Nat'l Vending Consultants, Inc.,* No. CV–S–05–0160–RCJ–PAL (D. Nev. 2005); *FTC* v. *Pathway Merchandising, Inc.,* No. 01–CIV–8987 (S.D.N.Y. 2001); *FTC* v. *Int'l Computer Concepts, Inc.,* No. 1:94CV1678 (N.D. Ohio 1994).

[59] *E.g., FTC* v. *USS Elder Enter., Inc.,* No. SA CV–04–1039 AHS (ANx) (C.D. Cal. 2004) (company would provide work or substantial assistance in obtaining work); *FTC* v. *Leading Edge Processing, Inc.,* No. 6:02–CV–681–ORL–19 DAB (M.D. Fla. 2003) (company would provide specialized software, manuals, and training); *FTC* v. *Fin. Res. Unlimited,* No. 03–C–8864 (N.D. Ill. 2003) (no prior experience necessary; company would provide all supplies needed); *FTC* v. *Darrell Richmond,* No. 3:02–3972–22 (D.S.C. 2003) (seller claimed to provide all necessary materials to perform the work-at-home envelope stuffing business); *FTC* v. *Elec. Med. Billing, Inc.,* No. SACV02–368 AHS (ANX) (C.D. Cal. 2003) (company promised to provide everything necessary to perform medical billing, including a list of doctors, training, and software). *See also* Finnigan, 21Aug97 Tr at 95 (a business or income-earnings opportunity inherently must offer some sort of assistance or training); Catalano, 20Nov97 Tr at 37 (purchasers buy business opportunities to obtain the seller's expertise and know-how).

[60] *See FTC* v. *Misty Stafford,* No. 3: CV 05–0215 (M.D. Pa. 2005). *See also* James, 21Nov97 Tr at 244–45 (describing clown assembly work-at-home program that repeatedly rejected goods produced by investor).

[61] *E.g., FTC* v. *Sun Ray Trading,* No. 05–20402 CIV-Sitz/Bandstra (S.D. Fla. 2005) (potential weekly income of $550 to $3,000); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003) (earn $2,900 to $5,000 and more weekly); *FTC* v. *Darrell Richmond,* No. 3:02–3972–22 (D.S.C. 2002) (earn between $100 and $1,000 or more per week). *See also* James, 21Nov97 Tr at 341 (describing a bead assembly work-at-home program that claimed earnings of $1,400 per $1,000 investment).

[62] *FTC* v. *Fin. Res. Unlimited,* No. 03–C–8864 (N.D. Ill. 2003) (earn ''$550.00 to $3,000 and more weekly'' stuffing envelopes).

[63] *FTC* v. *Elec. Med. Billing, Inc.,* No. SA02–368 AHS (AN) (C.D. Cal. 2002).

[64] Many of these cases were brought in connection with sweeps of fraudulent work-at-home and related employment opportunities, including Project Biz Opp Flop (2005); Project Homework (2001); Operation Top Ten Dot Con (2000); and Operation Missed Fortune (1996).

stuffing[65] and craft assembly programs,[66] to technology-driven opportunities,[67] including medical billing plans.[68] In some of these cases, what appeared to be simple work-at-home scams turned out to be illegal pyramid schemes.[69]

Consumer complaints to the Commission also demonstrate the prevalence of fraudulent work-at-home schemes.[70] To determine the level of complaints and alleged injury from work-at-home scams, the Commission staff analyzed fraud complaint information from the Commission's complaint database for the period January 1997 through December 2005. The staff's analysis shows 37,333 work-at-home complaints, resulting in alleged injury of over $15 million ($15,408,934).[71] Indeed, work-at-home complaints ranked among the top fraud complaint categories submitted to the Commission. For example, during the period studied, work-at-home schemes ranked among the top 20 fraud complaint categories each year:

Year	Rank	Complaints
1997	5th	1,399
1998	20th	1,653
1999	19th	2,611
2000	18th	3,448
2001	13th	4,852
2002	11th	17,307
2003	9th	16,694
2004	12th	6,485
2005	15th	4,366

Were it not for the minimum investment requirement and direct sales to end-user limitation in the Franchise Rule, many work-at-home schemes would be covered by that rule because the same potential for abuse exists as with vending machines and rack display opportunities, which are covered. In view of the misrepresentations and omissions that fraudulent work-at-home opportunity sellers have used, as shown by consumer complaints and past Commission cases, the Commission has determined that the proposed business opportunity disclosure requirements and prohibitions would provide potential work-at-home purchasers with the tools they need to protect themselves from false claims.

b. Pyramid Marketing Schemes

Like business opportunities covered by the existing Franchise Rule, pyramid schemes often deceive consumers with the promise of large potential incomes. It is not uncommon for promoters of these schemes to claim potential incomes of thousands of dollars a week or month.[72] Because of the claimed high earnings potential, pyramid schemes are highly successful in attracting prospective investors. For example, one pyramid program attracted more than 150,000 consumers who collectively paid over $80 million during the course of three years.[73] Indeed, cases brought under section 5 against pyramid marketing promotions have resulted in huge consumer redress, such as $40 million in *Equinox* and $20 million in *SkyBiz.com*.[74]

The prevalence of false earnings claims is not the only similarity between pyramid schemes and business opportunity frauds covered by the current Franchise Rule. Many induce new recruits with the promise of an ongoing commercial relationship that will enable recruits to operate their own business selling various products or services.[75] Typically, they promise to provide recruits with promotional assistance.[76] Some also offer training.[77] Few, however, reveal their high drop-out rates, much less the fact that the vast majority of those who have joined the program—often 90 percent or more—will not recoup their investment.[78]

Further, since 1990, the Commission has brought 20 cases against pyramid

[65] *E.g., FTC* v. *Sun Ray Trading,* No. 05–20402 CIV-Seitz/Bandstra (S.D. Fla, 2005); *FTC* v. *Fin. Res. Unlimited,* No. 03–C–8864 (N.D. Ill. 2003); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003); *FTC* v. *Patrick Cella,* No. CV03–3202 GAF (SHSx) (W.D. Cal. 2003); *FTC* v. *Terrance Maurice Howard,* No. SA02CA0344 (W.D. Tex. 2002); *FTC* v. *Stuffingforcash.com, Corp.,* No. 92 C 5022 (N.D. Ill. 2002); *FTC* v. *America's Shopping Network, Inc.,* No. 02–80540–CIV-Hurley (S.D. Fla. 2002).

[66] *E.g., FTC* v. *Misty Stafford,* No. 3: CV 05–0215 (M.D. Pa. 2005); *FTC* v. *Esteban Barrios Vega,* No. H–04–1478 (S.D. Tex. 2004); *FTC* v. *Nat'l Crafters, Corp.,* No. 01–4825–CIV-Graham-Turnoff (S.D. Fla. 2001); *FTC* v. *Ed Boehlke,* No. 96–0482–E–BLW (D. Idaho 1996); *In re Sandcastle Creations,* FTC C–3484 (1993); *In re Hairbow Co.,* FTC C–3482 (1993); *FTC* v. *Holiday Magic,* No. C 93–4038 VRW (N.D. Cal. 1993); *In re Homespun Prods., Inc.,* FTC C–3483 (1993); *In re New Mexico Custom Designs, Inc.,* FTC C–3485 (1993). *See also* Prepared Statement of the FTC on ''Internet Fraud'' before the House Subcomm. on Commerce, Trade, and Consumer Protection, Comm. on Energy and Commerce (May 23, 2001) (listing business opportunities and work-at-home schemes among top 10 Internet or online scams); Prepared Statement of the FTC on ''Internet Fraud'' before the Senate Comm. on Finance (April 5, 2001) (listing business opportunities and work-at-home schemes among top 10 online scams).

[67] *E.g., FTC* v. *Wealth Sys., Inc.,* No. CV 05 0394 PHX JAT (D. Ariz. 2005) (web design); *FTC.* v. *Leading Edge Processing, Inc.,* No. 6:02–CV–681–ORL–19 DAB, (M.D. Fla. 2002) (data entry); *FTC* v. *LS Enter.,* FTC C–3884 (1999) (bulk email); *In re Computer Bus. Servs.,* FTC C–3705 (1996) (in-home computer work); *FTC* v. *AMP Publ'n, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2000) (in-home computer work).

[68] *E.g., FTC* v. *Med. Billers Network, Inc.,* No. 05 CV 2014 (RJH) (S.D.N.Y. 2005); *FTC* v. *Elec. Med. Billing,* No. SA02–368 AHS (AN) (C.D. Cal. 2002); *FTC* v. *Elec. Processing Servs., Inc.,* No. CV–S–02–0500–L.H.–R.S. (D. Nev. 2002); *FTC* v. *Medicor, LLC,* No. CV01–1896 (CBM) (C.D. Cal. 2001); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000); *FTC* v. *Physicians Healthcare Dev. Serv. Corp.,* No. CV–02–2936 RMT (C.D. Cal. 2000); *FTC* v. *Data Med. Capital, Inc.,* No. SACV–99–1266 AHS (C.D. Cal. 1999); *FTC* v. *Elec. Filing Acad.,* No. 98–0054–PHX–EHC (D. Ariz. 1998).

[69] *E.g., FTC* v. *David Martinelli, Jr.,* No. 3:99 CV 1272 (CFD) (D. Conn. 1999) (income from work-at-home opportunity processing applications dependent upon signing new recruits to join the opportunity).

[70] In adopting amendments to the Telemarketing Sales Rule (''TSR''), the Commission observed ''that telemarketing fraud perpetuated by the advertising of work-at-home and other business opportunity schemes in general media sources is a prevalent and growing phenomenon.'' Indeed, the Commission stated that ''the single greatest per capita monetary loss category in complaints reported to the FTC is for business opportunities, including work-at-home schemes.'' 67 FR 4492, at 4530 (Jan. 30, 2002). *See also* TSR Statement of Basis and Purpose, 68 FR 4480, at 4661 (Jan. 29, 2003).

[71] *See also* James, 21Nov97 Tr at 340–45 (describing three work-at-home opportunities in Florida, one of which took in $18 million, victimizing 6,000 consumers).

[72] *E.g., FTC* v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999) (''about $2,000 in the first month * * * and then it went to $60,000''); *FTC* v. *Bigsmart.com,* No. CIV 01–0466 PHX ROS (D. Ariz. 2001) (''50 people made over $50,000 their first month! We also had a $100,000 first month money earner!''); *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998) (''If you're serious, we can show you how to make ten thousand a month * * * And, you know, we have people doing thirty thousand a month.''); *FTC* v. *Nia Cano,* No. 97–7947–CAS (AJWx) (C.D. Cal. 1997) (as much as $18,000 per month); *FTC* v. *Global Assistance Network for Charities,* No. 96–2494 PHX RCB (D. Ariz. 1996) (promising over $89,000 a month); *FTC* v. *NexGen3000.com,* No. CIV–03–120 TUC WDB (D. Ariz. 2003) (''each activated business center has the potential to earn up to $60,000 per week''); *FTC* v. *SkyBiz.com,* No. 01–CV–0396–EA (X) (N.D. Okla. 2001) (''he's making 76,000 a week and growing'').

[73] *FTC* v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999). *See also FTC* v. *Fortuna Alliance, LLC,* No. C96–799M (W.D. Wash. 1996) (tens of thousands of consumers in over 60 countries); *FTC* v. *Jewelway, Int'l,* No. CV–97 TUC JMR (D. Ariz. 1997) (200,000 investors).

[74] *See also FTC* v. *Bigsmart.com,* No. CIV 01–0466 PHX ROS (D. Ariz. 2001) ($5 million for redress); *FTC* v. *Nia Cano,* No. 97–7947–CAS (AJWx) (C.D. Cal. 1997) (nearly $2 million for redress); *FTC* v. *Fortuna Alliance, LLC,* No. C96–799M (W.D. Wash. 1996) (approximately $5.5 million for redress); *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998) ($1 million for redress); *FTC* v. *Jewelway, Int'l,* No. CV–97 TUC JMR (D. Ariz. 1997) ($5 million for redress); *FTC* v. *ICR Servs.,* No. 03 C 5532 (N.D. Ill. 2003) ($1.5 million for redress).

[75] *E.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *Equinox, Int'l,* No. CV–S–99–0960–JBR–RLH (D. Nev. 1999); *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998).

[76] *E.g., FTC* v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999); *FTC* v. *Bigsmart.com,* No. CIV 01–0455 PHX ROS (D. Ariz. 2001); *FTC* v. *NexGen3000.com,* No. CIV–03–120 TUC WDB (D. Ariz. 2003).

[77] *FTC* v. *World Class Network, Inc.,* No. SACV–97–162–AHS (EEx) (C.D. Cal. 1997).

[78] Peter J. VanderNat and William W. Keep, *Marketing Fraud: An Approach to Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. of Pub. Pol'y & Marketing (Spring 2002), at 139–151.

schemes under section 5.[79] These matters have involved a wide range of purported product sales or investments, ranging from the mundane [80] (nutritional supplements, beauty aids, weight-loss products, and water filters) to the unusual (auto leasing,[81] charitable giving,[82] unsecured credit cards,[83] credit repair,[84] travel agency credentials,[85] Internet malls,[86] and Internet access [87]). Indeed, pyramid fraud has gone high-tech, flooding the Internet [88] and consumers' email boxes.[89]

The Commission staff's analysis of consumer fraud complaint data also demonstrates the prevalence of deceptive pyramid marketing schemes.[90] For the period January 1997 through December 2005, Commission staff found that consumers lodged 17,858 complaints against pyramid schemes, reporting alleged aggregate injury level of over $46 million ($46,824,347). Indeed, complaints against pyramid marketing companies consistently ranked among the top 20 injury categories reported in consumer fraud complaints to the Commission.[91] For example, during the period 1997 through 2005, pyramid marketing schemes ranked among the top 20 injury levels each year, except in 2003, as follows:

Year	Rank	Injury
1997	9th	$352,769
1998	5th	1,858,787
1999	10th	2,011,012
2000	4th	12,632,132
2001	10th	10,685,083
2002	18th	9,685,722
2003	(not in top 20).	
2004	18th	2,264,112
2005	17th	3,347,443

Were it not for the minimum investment and inventory exemptions in the Franchise Rule, many pyramid schemes would be covered because the same potential for abuse exists as with vending machines and rack display opportunities covered by the Franchise Rule.[92] In view of the misrepresentations and omissions that fraudulent pyramid scheme promoters have used, as shown by consumer complaints and past Commission cases, pre-sale disclosures and prohibitions are necessary to protect potential recruits from deceptive practices.

Section E. The Proposed Rule

The proposed Rule is divided into nine sections. Section 437.1 would set forth the Rule's definitions. Section 437.2 would establish the business opportunity seller's obligation to furnish prospective purchasers with material information in the form of a written basic disclosure document. Section 437.3 would specify the content of the basic disclosure document. Section 437.4 would set forth the requirements business opportunity sellers must follow if they elect to make earnings representations. Section 437.5 would prohibit a number of deceptive claims and practices in connection with business opportunity sales. Section 437.6 would set forth the Rule's recordkeeping provisions. Section 437.7 would expressly exempt from the Business Opportunity Rule those business arrangements that are covered by the Franchise Rule. Finally, two administrative sections—437.8 and 437.9—would address other laws, rules, and orders, and severability.

1. Proposed Section 437.1: Definitions

The proposed Rule would begin with a definitions section setting forth defined terms in alphabetical order. In several instances, the proposed definitions closely track those contained in the current Franchise Rule, Commission interpretations of the Franchise Rule, and the states' comparable franchise disclosure document, the Uniform Franchise Offering Circular (''UFOC'') Guidelines. These include the definitions for the terms ''action,'' ''affiliate,'' ''disclose or state,'' ''earnings claims,'' ''person,'' and ''written.'' The Commission also proposes to define the terms ''business assistance,'' ''business opportunity,'' ''cancellation or refund request,'' ''designated person,'' ''exclusive territory,'' ''general media,'' ''new business,'' ''prior business,'' ''providing locations, outlets, accounts, or customers,'' ''purchaser,'' ''quarterly,'' and ''seller.'' Each proposed definition is set forth below.

a. Proposed Section 437.1(a): ''Action''

The term ''action'' arises in proposed section 437.3(a)(3), which would require business opportunity sellers to disclose material information about the seller's prior litigation. Proposed section 437.1(a) would define the term ''action'' closely tracking the Commission's current interpretation of the term ''action'' in connection with the Franchise Rule. Specifically, it would make clear that disclosures involving litigation include not only civil actions brought before a court, but matters before arbitrators.[93] It would also make clear that an ''action'' includes all governmental actions, including criminal matters, and administrative law enforcement actions, including cease and desist orders, or assurances of voluntary compliance.

b. Proposed Section 437.1(b): ''Affiliate''

To combat business opportunity sales fraud, proposed section 437.3(a)(3) would require a business opportunity seller to disclose not only litigation in which it was named as a party, but any litigation naming any of its affiliates. Closely tracking the UFOC Guidelines, proposed section 437.1(b) would define the term ''affiliate'' to mean: ''an entity controlled by, controlling, or under

[79] *E.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *Streamline Int'l,* No. 01–6885–CIV–Ferguson (S.D. Fla. 2001); *FTC* v. *Bigsmart.com,* No. CIV 01–0466 PHX ROS (D. Ariz. 2001); *FTC* v. *Five Star Auto Club, Inc.,* No. CIV–99–1693 McMahon (S.D.N.Y. 1999); FTC v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999); *FTC* v. *Equinox, Int'l,* No. CV–S–99–0969–JBR–RLH (D. Nev. 1999); *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998).

[80] *E.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *Streamline Int'l, Inc.,* No. 01–6885–CIV–Ferguson (S.D. Fla. 2001); *FTC* v. *2Xtreme Performance Int'l,* No. JFM 99CV 3679 (D. Md. 1999); *FTC* v. *Equinox, Int'l,* No. CV–S–99–0969–JBR–RLH (D. Nev. 1999).

[81] *FTC* v. *Five Star Auto Club, Inc.,* No. CIV–99–1693 McMahon (S.D.N.Y. 1999).

[82] *FTC* v. *Universal Direct,* No. C 3–02–145 (S.D. Ohio 2002); *FTC* v. *Global Assistance Network for Charities,* No. 96–2494 PHX RCB (D. Ariz. 1996).

[83] *FTC* v. *Nia Cano,* No. 97–7947–CAS (AJWx) (C.D. Cal. 1997).

[84] *FTC* v. *ICR Servs.,* No. 03 C 5532 (N.D. Ill. 2003).

[85] *FTC* v. *World Class Network, Inc.,* No. SACV–97–162–AHS (Eex) (C.D. Cal. 1997).

[86] E.g., *FTC* v. *NexGen3000.com,* No. CIV–03–120 TUC WDB (D. Ariz. 2003); *FTC* v. *Bigsmart.com,* No. CIV 01–0466 PHX ROS (D. Ariz. 2001).

[87] *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998).

[88] *E.g., FTC* v. *Sun Ray Trading, Inc.,* No. 05–20402–CIV–Seitz/Bandstra (S.D. Fla. 2005); *FTC* v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999); *FTC* v. *Nia Cano,* No. 97–7947–CAS (AJWx) (C.D. Cal. 1997); *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998).

[89] *E.g., FTC* v. *David Martinelli, Jr.,* No. 3:99 CV 1272 (CFD) (D. Conn. 1999); *FTC* v. *Universal Direct,* No. C 3–02–145 (S.D. Ohio 2002); *In re Kalvin P. Schmidt,* FTC C–3834 (1998).

[90] State regulators report similar data. For example, a Florida business opportunity regulator noted that in his office, 60% of the written complaints received pertain to pyramid marketing companies. ''They last about six months and they're gone.'' James, 20Nov97 Tr at 115–26. The State of Washington also reported a large number of pyramid marketing scheme complaints. See WA Securities, ANPR 117 at 2.

[91] *See also* Fraud Survey, *supra* note 50, at 48 (1.55 million victims of pyramid fraud).

[92] *See* discussion above in Section A.1 explaining that the current Rule's minimum required payment and inventory exemptions effectively exempt many pyramid marketing opportunities from Franchise Rule coverage.

[93] *See* Interpretive Guides, 44 FR at 49973; Rabenberg, Sept. 95 Tr. at 105, 279 (arguing for the disclosure of matters in arbitration, which normally are not public documents). *See also* Franchise Rule NPR, 64 FR at 57297 and 57332; UFOC Guidelines, Item 3.

common control with a business opportunity seller.'' [94] This definition would also cover litigation involving a parent and subsidiaries of the business opportunity seller.

c. Proposed Section 437.1(c): ''Business assistance''

One of the definitional elements of the term ''business opportunity'' in section 437.1(d) is the offer of ''business assistance.'' Proposed section 437.1(c) would define ''business assistance'' to mean '' the offer of material advice, information, or support to a prospective purchaser in connection with the establishment or operation of a new business.'' [95] By using the concept of business assistance as one of the definitional elements of the term ''business opportunity''—the term that establishes the parameters of the Rule's coverage—the Commission intends to ensure coverage of those business relationships that involve more than the ordinary sale of goods or services to existing businesses.

In addition, the proposed definition of ''business assistance'' lists five illustrative, but not exhaustive, examples of qualifying assistance, corresponding to practices shown by the Commission's law enforcement experience, and that of the states, to be common among sellers of fraudulent business opportunities.[96] The common thread linking each of these five examples is that the seller promotes his or her expertise in operating the business or in providing a market for the goods or services the purchaser sells to the public, or in ensuring compensation promised to the purchaser, thereby reducing the purchaser's financial risk. Each of the five illustrative examples is discussed immediately below.

i. Location Assistance

The proposed ''business assistance'' definition would include as an illustrative example the promise to provide locations ''for the use or operation of equipment, displays, vending machines, or similar devices on premises neither owned nor leased by the purchaser.'' This is substantially similar to the analogous provision in the current Franchise Rule.[97] Including this example would help ensure that business opportunities currently covered by the Franchise Rule will remain covered by the Business Opportunities Rule. Indeed, the Commission's enforcement experience shows that the offer of location assistance is the hallmark of fraudulent vending machine and rack display route opportunities.[98]

ii. Account Assistance

Another illustrative example of ''business assistance'' would be ''providing, or purporting to provide, outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services.'' As Commission cases have shown, fraudulent promises of assistance in securing accounts are often the linchpin of business opportunity scams such as fraudulent medical billing schemes.[99] The proposed definition would be similar to the current ''account assistance'' provision of the Franchise Rule,[100] but would update that provision by specifying that outlets, accounts, or customers include those on the Internet. Accordingly, the offer to provide Web sites or online shopping malls where the seller's products can be sold would also qualify as an offer of account assistance.[101]

iii. Buy-Back Assistance

A business opportunity seller's offer to pay purchasers for their work by buying back their work product typifies most fraudulent work-at-home plans, such as craft assembly opportunities.[102] To capture such opportunities, the term ''business assistance'' would include as an illustrative example ''buying back, or purporting to buy back, any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides.'' [103] The proposed definition, however, would not include the offer to buy back inventory or equipment needed to start a business.[104] In response to the ANPR, DSA opined that such a proposal very likely would result in discouraging legitimate sellers from adopting inventory or equipment buy-back policies.[105] The Commission finds this argument persuasive.

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[94] *See* NASAA Commentary on the Uniform Franchise Offering Circular Guidelines (1999), Bus. Franchise Guide (CCH), ¶5790, at 8,466. This is a greatly streamlined version of the definition of ''affiliated person'' in the current Franchise Rule:

The term affiliated person means a person * * * (1) Which directly or indirectly controls, is controlled by, or is under common control with, a franchisor; or (2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a franchisor; or (3) Which has, in common with a franchisor, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

16 CFR at 436.2(i).

[95] As discussed below, the term ''new business'' also includes a new line of business.

[96] The examples are drawn from the Illinois business opportunity statute. Business Opportunity Sales Law of 1995, 815 ILCS 602/5–1 through 602/5–135 (1995) (''Illinois Act''). Several commenters pointed to that statute as a good model. E.g., Pampered Chef, ANPR 86, at 1; Amway, ANPR 89, at 1; Elman, Sept. 95 Tr. at 132–33; Wieczorek, id. at 284.

[97] *See* 16 CFR at 436.2(a)(1)(ii)(B). *See also* Illinois Act, 815 ILCS 602/5–510(a)(1) (''The seller or a person recommended by the seller will provide or assist the purchaser in finding locations for the use or operation of vending machines, rack display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller.'').

[98] *E.g., FTC* v. *Am. Entm't Distribs.,* No. 04–22431–CIV–Huck (S.D. Fla. 2004); *FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro-Benages (S.D. Fla. 2000); *FTC* v. *Ameritel Payphone Distribs., Inc.,* No. 00–0514–CIV–Gold (S.D. Fla. 2000); *FTC* v. *Mktg. and Vending Concepts,* No. 00–1131 (S.D.N.Y. 2000).

[99] *E.g., FTC* v. *Mediworks, Inc.,* No. 00–01079 (C.D. Cal. 2000); *FTC* v. *Home Professions, Inc.,* No. 00–111 (C.D. Cal. 2000); *FTC* v. *Data Med. Capital, Inc.,* No. SACV–99–1266 (C.D. Cal. 1999). *See also, FTC* v. *AMP Publ'n, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2000).

[100] *See* 16 CFR at 436.2(a)(1)(ii)(B). *See also,* Illinois Act, 815 ILCS at 602/5–1.10(a)(2) (''The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services.'').

[101] *See, e.g., FTC* v. *NexGen3000.com,* No. CIV–03–120 TUC WDB (D. Ariz. 2003); *FTC* v. *Netforce Seminars,* No. 00 2260 PHX FJM (D. Ariz. 2000); *FTC* v. *iMall, Inc.,* No. 99–03650 (C.D. Cal. 1999).

[102] *E.g., FTC* v. *Fin. Res. Unlimited,* No. 03–C–8864 (N.D. Ill. 2003); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003); *FTC* v. *Patrick Cella,* No. CV03–3202 GAF (SHSx) (W.D. Cal. 2003); *FTC* v. *Terrance Maurice Howard,* No. SA02CA0344 (W.D. Tex. 2002); *FTC* v. *Stuffingforcash.com, Corp.,* No. 92 C 5022 (N.D. Ill. 2002); *FTC* v. *America's Shopping Network, Inc.,* No. 02–80540–CIV–Hurley (S.D. Fla. 2002); *FTC* v. *Esteban Barrios Vega,* No. H–04–1478 (S.D. Tex. 2004); *FTC* v. *Nat'l Crafters, Corp.,* No. 01–4825–CIV–Graham-Turnoff (S.D. Fla. 2001); *FTC* v. *Ed Boehlke,* No. 96–0482–E–BLW (D. Idaho 1996); *In re Sandcastle Creations,* FTC C–3484 (1993); *In re Hairbow Co.,* FTC C–3482 (1993); *FTC* v. *Holiday Magic,* No. C 93–4038 VRW (N.D. Cal. 1993); *In re Homespun Prods., Inc.,* FTC C–3483 (1993); *In re New Mexico Custom Designs, Inc.,* FTC C–3485 (1993).

[103] *See* Illinois Act, 815 ILCS at 602/5–1.10(a)(3) (''The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.''). *See also* California Contracts for Seller Assisted Marketing Plans, Cal. Civ. Code at § 1812.201(a)(3) (CA SAMP) (The ''seller will buy back or is likely to buy back any product made, produced, fabricated, grown or bred by the purchaser using in whole or in part, the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller assisted marketing plan seller'').

[104] *Cf.* Illinois Act, 815 ILCS at § 5–5.10(a)(5) (attaching coverage where ''[t]he seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business'').

[105] Elman, 21-Aug-97 Tr. at 106–08. *See also,* Wieczorek, id. at 108–09 (a broad buy-back policy would result in business opportunity coverage where a franchisor permits a prospective franchisee to ''test drive'' an opportunity for a limited period of time).

iv. Payment Assistance

The proposed list of illustrative business assistance examples also includes ''tracking or paying, or purporting to track or pay, commissions or other compensation based upon the purchaser's sale of goods or services or recruitment of other persons to sell goods or services.'' Many pyramid marketing plans offer this type of assistance, purporting to compensate participants not only for their own product sales but also for sales made by their participants' downline recruits.[106] The inclusion of this illustrative example would help to make it clear that the Rule encompasses business opportunities in the form of pyramid schemes. As noted above, the Commission's law enforcement experience shows that these schemes cause significant injury to consumers.

v. Other Advice or Training Assistance

The final illustrative example of ''business assistance'' is ''advising or training, or purporting to advise or train, the purchaser in the promotion, operation, or management of a new business, or providing, or purporting to provide, the purchaser with operational, managerial, technical, or financial guidance in the operation of a new business.'' Our law enforcement experience shows that the promise of such assistance is a key feature of many fraudulent business opportunity ventures, such as vending, rack display scams, and medical billing work-at-home schemes.[107]

The proposed ''business assistance'' definition concludes with an important proviso—that the term ''business assistance'' does not include ''a written product warranty or repair contract, or guidance in the use, maintenance, and/or repair of any product to be sold by the purchaser or of any equipment acquired by the purchaser.'' This proviso is necessary to distinguish ordinary support and warranty commitments that many manufacturers or retailers offer in connection with the sale of their products from the more extensive assistance that characterizes a business opportunity offer. For example, a copier manufacturer may advise customers on how to operate and perform service on a copier machine. Or, a camera retailer may demonstrate routine maintenance on a high-end camera sold to a professional photographer. In both of these instances, the printing business and photographer may well find the promised assistance valuable even if they are already operating established businesses. In addition, this type of assistance is not likely to cause someone contemplating a new business to conclude that he or she is assured of success even if they have no prior business experience. For these reasons, offers of such product-related assistance, without more, do not rise to the level of ''business assistance'' necessary for coverage under the proposed Rule.

d. Proposed Section 437.1(d): ''Business opportunity''

This definition establishes the proposed Rule's scope. The proposed definition of ''business opportunity'' is intended to capture the sale of true business opportunities without regulating the ordinary sale of goods and services to businesses. The three definitional elements of the term ''business opportunity'' are: (1) A solicitation to enter into a new business; (2) payment of consideration, directly or indirectly through a third party; and (3) either an earnings claim or an offer to provide business assistance. Each of these elements is discussed immediately below.

i. Solicitation to Enter Into a New Business

The proposed definition of ''business opportunity'' set forth at section 437.1(d)(1) contemplates that business opportunity sellers will solicit prospective purchasers to enter into new businesses, as opposed to merely soliciting purchasers for goods or services.[108] A business opportunity seller typically advertises the sale of a business, not just goods or services. In contrast, a typical retailer may sell various goods that could be used in a business, and may even recommend that its goods be used in a particular business, but the retailer does not ordinarily promote the business itself.

ii. Consideration

The proposed definition of ''business opportunity'' in section 437.1(d) would apply where the purchaser pays consideration to the seller.[109] ''Consideration'' is to be read broadly to include a monetary payment, share of profits, or a current obligation to make a payment at a future date.[110] The proposed definition also would make clear that consideration can be paid directly to the seller, or indirectly through a third party, such as a broker, lead generator, or locator. This provision is designed to close a potential loophole that would subvert the proposed Rule's anti-fraud protections. Without such a provision, fraudulent business opportunity sellers could circumvent the Rule by requiring payment to a third party with whom the seller has a formal or informal business relationship.[111]

iii. An Earnings Claim or an Offer to Provide Business Assistance

The definition of ''business opportunity'' in section 437.1(d) would specify that either the making of an earnings claim or the promise of business assistance by a seller in connection with an offer to sell a new business will trigger Rule coverage. These elements are discussed in greater detail in the sections immediately below.

1. Earnings Claims

The Commission's law enforcement history demonstrates that the making of earnings claims underlies virtually all fraudulent business opportunity schemes. As detailed above, the Commission to date has brought over 140 cases against a multitude of business opportunities and related schemes, each of which lured

[106] E.g., *FTC* v. *NexGen3000.com,* No. CIV–03–120 TUC WDB (D. Ariz. 2003); *FTC* v. *Bigsmart.com,* No. CIV 01–0466 PHX ROS (D. Ariz. 2001); *FTC* v. *SkyBiz.com,* No. 01–CV–0396–EA (X) (N.D. Okla. 2001); *FTC* v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999); *FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998); *FTC* v. *Nia Cano,* No. 97–7947–CAS (AJWx) (C.D. Cal. 1997); *FTC* v. *Global Assistance Network for Charities,* No. 96–2494 PHX RCB (D. Ariz. 1996). *See also, FTC* v. *Am. Safe Mktg.,* No. 1:89–CV–462–RLV (N.D. Ga. 1989).

[107] *E.g., FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Inv. Dev. Inc.,* No. 89–0642 (E.D. La. 1989). *FTC* v. *Home Professions, Inc.,* No. 00–111 (C.D. Cal. 2000); *FTC* v. *Star Publ'g Group, Inc.,* No. 00–023 (D. Wyo. 2000) *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *FTC* v. *Fresh-O-Matic Corp.,* No. 96–CV–315–CAS (E.D. Mo. 1996) *FTC* v. *Joseph Hayes,* No. 4:96CV06126SNL (E.D. Mo. 1996). *See* Illinois Act, 815 ILCS at § 602/5–5.15 (The seller offers a marketing plan, defined as ''advice or training * * * includ[ing], but not limited to * * * training, regarding the promotion, operation or management of the business opportunity; or operational, managerial, technical, or financial guidelines or assistance.'').

[108] ''New business'' is a term defined at section 437.(1)(k) of the proposed Rule: '' 'new business' means a new business in which the prospective purchaser is not engaged, or a new line or type of business.'' *See* Illinois Act, 815 ILCS at § 5–510(a) (''Business opportunity' means a contract or agreement * * * wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any product, equipment, supplies, or services enabling the purchaser to start a business'').

[109] As discussed below in connection with section 437.7 (exemptions), the proposed Business Opportunity Rule, unlike the Franchise Rule, would not include a minimum required payment exemption.

[110] This is consistent with the broad definition of ''payment'' in the current Franchise Rule. See Interpretive Guides, 44 FR at 49967.

[111] *See* Illinois Act, 815 ILCS at § 602/5–5.10 (a) (''payment to the seller or a person recommended by the seller'').

unsuspecting consumers through false or deceptive earnings representations.[112] These claims have taken the form of purported historical earnings statistics (*e.g.*, ''Our operators have earned $100,000 a year''), as well as wild and unsupported earnings projections (*e.g.*, ''You will earn $100,000 in your first year''). In the Commission's experience, such claims are highly relevant to consumers in making their investment decisions and typically are the single most decisive factor in such decisions.

Some commenters questioned whether the making of an earnings claim alone should be sufficient to bring the sale of a business opportunity within the ambit of the Rule, thereby triggering disclosure and other obligations. Pointing to various state business opportunity laws, these commenters contended that the disclosure and other requirements of the proposed Rule should be triggered only if either: (1) The seller guarantees a level of earnings; or (2) the seller represents that the purchaser will earn at least as much as his or her investment.[113]

Given the prevalence of earnings claims in business opportunity sales, the Commission believes that a broad earnings disclosure requirement is necessary to prevent fraud. Limiting the Rule's coverage to scenarios in which a seller either makes an express earnings guarantee or represents that the purchaser will recoup his or her investment would effectively clear the way for fraudulent sellers to make other types of earnings claims to deceive prospects. We see little difference, for example, between a seller representing that ''our purchasers earn $10,000 a month'' and ''we guarantee you $10,000 a month.'' In both instances, prospective purchasers are likely to give the claim significant weight in making their investment decision.[114]

2. An Offer of Business Assistance

Proposed section 437.1(d) brings within the scope of the Rule's coverage those business opportunity sellers that do not make earnings claims, but offer business assistance. As one business opportunity representative put it: ''[Purchasers are] buying the seller's expertise to an extent. * * * The [sellers] know how to do it and that's why [purchasers are] paying a premium.'' Catalano, 20Nov97 Tr at 37.[115] At the same time, the ''business assistance'' prong of the definition helps to distinguish the sale of a business opportunity from the ordinary sale of goods or services: The proposed definition of ''business assistance'' is limited to only those situations involving ''the establishment or operation of a new business.'' Assistance provided by a seller in connection with the sale of off-the-shelf goods, for example, would be excluded. The proposed definition of ''business assistance,'' therefore, expressly states that '' 'business assistance' does not include a written product warranty or repair contract, or guidance in the use, maintenance, and/or repair of any product to be sold by the purchaser or of any equipment acquired by the purchaser.''

e. Proposed Section 437.1(e): ''Cancellation or Refund Request''

Section 437.3(a)(5) uses the term ''cancellation or refund request.'' It would require a business opportunity seller to disclose the number of cancellation or refund requests received in the last two years.[116] As explained more fully below, this provision would enable the prospective purchaser to assess previous buyers' satisfaction with the business opportunity purchase. In that regard, it is analogous to the Franchise Rule's disclosure of terminations, cancellations, and non-renewals.[117] Proposed section 437.1(e) would define ''cancellation or refund request'' broadly to mean ''any request to cancel or rescind a business opportunity purchase, or any request to seek a refund, in whole or in part, for a business opportunity purchase, whether or not the purchaser has a contractual right to cancel, rescind, or seek a refund.''

f. Proposed Section 437.1(f): ''Designated Person''

The term ''designated person'' appears in section 437.1(d)(3)(ii), the business assistance element of the proposed ''business opportunity'' definition. That section specifies that offered business assistance underlying a business opportunity solicitation need not be provided to a purchaser directly by the seller. Rather, a seller who represents that business assistance may or will be provided by a third party, such as a locator or supplier, will still be covered by the Rule and subject to its disclosure requirements and prohibitions.[118] Proposed section 437.1(d)(3)(ii) uses the term ''designated person'' as a convenient way to refer to any third parties who would provide business assistance to a business opportunity purchaser. Section 437.1(f) would define the term ''designated person'' to mean ''any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business, including, but not limited to, any person who finds or purports to find locations for equipment.''

The definition of ''designated person'' and the use of this defined term in setting the scope of what constitutes a ''business opportunity'' are designed to close a potential loophole. For example, a fraudulent vending machine route seller would not be able to circumvent the Rule by representing to a prospective purchaser that a specific locator will place machines for the purchaser, because that would qualify as ''business assistance,'' bringing the transaction within the ambit of the Rule. Similarly, a fraudulent rack display seller could not evade Rule coverage by simply recommending that a prospective purchaser use a particular rack supplier. The recommendation itself would be sufficient to constitute ''business assistance'' under the Rule.

g. Proposed Section 437.1(g): ''Disclose or State''

Proposed section 437.1(g) would define the terms ''disclose'' and ''state''

[112] *See* Section D above, discussing the scope of the proposed Rule. *See also* Franchise Rule SBP, 43 FR at 59630–632; 59684–689.

[113] *E.g.*, Wieczorek, 20Nov97 Tr at 32–33; Cantone, *id.* at 33; Catalano; *id.* at 34. *See* Illinois Act, 815 ILCS at § 602/5–5.10(a)(4) (''The seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller.''); CA SAMP, Cal. Civ. Code, at § 1812.201(a)(1) (''represented that the purchaser will earn, is likely to earn, or can earn an amount in excess of the initial payment paid by the purchaser for participation in the seller assisted marketing plan'').

[114] *See* Grant, 20Nov97 Tr at 40–41 (''I'm concerned that using the word guarantee would be too limiting, that it would actually prevent the FTC going after companies that we are all concerned about for maybe not using the word guaranteeing but in their representations virtually guaranteeing through a variety of implications a level or range that the person can expect.'').

[115] *See also* Christopher, 20Nov97 Tr at 68; Grant, *id.* at 69.

[116] Like other provisions of the proposed Rule, this provision would be subject to the Rule's quarterly updating requirement set forth at proposed section 437.3(b). For example, a seller offering business opportunities on November 5, 2006, would disclose the data for the period October 1, 2004 through October 1, 2006, the last eight quarters before the date of disclosure. *See also* proposed section 437.1(p) (defining the term ''quarterly'' to mean January 1, April 1, July 1, and October 1).

[117] *See* 16 CFR at 436.1(a)(16).

[118] This approach is consistent with the current Franchise Rule's analogous definitional elements, extending the scope of that rule's coverage to reach transactions in which the franchisor provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites, or locations. 16 CFR at 436.2(a)(1)(ii)(B)(3). *See also, e.g.*, Illinois Act, 815 ILCS at § 602/5–5.10(a)(1) (''The seller or a person recommended by the seller will provide or assist the purchaser in finding locations.'').

to mean ''to give information in writing that is clear and conspicuous, accurate, concise, and legible.'' [119] This ensures that a prospective purchaser will receive complete information in a form that can easily be read. For example, the furnishing of a disclosure document without punctuation or appropriate spacing between words would not be ''clear.'' Similarly, required information such as the number and percentage of prior purchasers obtaining a represented level of earnings would not be ''conspicuous'' if set in small type, printed in a low-contrast ink, or buried amid extraneous information.

h. Proposed Section 437.1(h): ''Earnings Claim''

Proposed section 437.1(h) would define the term ''earnings claim'' as ''any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits.''[120] It is intended to cover all variations of earnings representations that the Commission's law enforcement experience shows are associated with business opportunity fraud.

The definition also provides examples of communications that constitute earnings claims. The first of these examples is taken from the UFOC Guidelines' description of common types of potentially fraudulent earnings claims: ''a chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables.'' UFOC Guidelines, Item 19, at i.[121] This is intended to clarify that sales matrixes that purport to show income from an array of ''vends'' per day from a vending machine, for example, would constitute an ''earnings claim'' under the proposed Rule.[122]

The second example incorporates the principle, as expressed in the Interpretive Guides to the Franchise Rule, that ''any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income'' constitutes an earnings claims. Such implied claims are at least as likely to mislead prospective purchasers as express claims. The proposed definition includes three specific examples illustrative of this type of earnings claim, as follows: ''earn enough to buy a Porsche,'' ''earn a six-figure income,'' and ''earn your investment back within one year.'' [123] Each of these three illustrative examples imply a minimum value—the cost of the lowest priced Porsche in the first example, at least $100,000 in the second, and an amount equal to the purchaser's initial investment in the third.[124] Accordingly, the proposed language makes it clear that these types of representations are indistinguishable from direct, express earnings claims.

i. Proposed Section 437.1(i): ''Exclusive Territory''

As discussed below, proposed section 437.5(n) would prohibit misrepresentations concerning exclusive territories. Representations about exclusive territories are material because they purport to assure a purchaser that he or she will not face competition from other business opportunity purchasers of the same type in his or her chosen location, or from the seller offering the same goods or services through alternative channels of distribution. Exclusive territory promises go to the viability of the business opportunity and to the level of risk entailed in the purchase. Indeed, misrepresented territories are commonly made by business opportunity sellers to lure consumers into believing that the offer poses little financial risk.[125]

Proposed section 437.1(i) would define an exclusive territory as follows:

> a specified geographic or other actual or implied marketing area in which the seller promises not to locate additional purchasers or offer the same or similar goods or services as the purchaser through alternative channels of distribution.

Thus, the definition of ''exclusive territory'' would reflect the common industry practice of establishing geographically delimited territories—such as a city, county, or state borders—as well as other marketing areas, such as those delineated by population.[126] It includes both representations that other business opportunity purchasers will not be allowed to compete with a new purchaser within the territory, as well as representations that the business opportunity seller itself or other purchasers will not compete with the new purchaser through alternative means of distribution, such as through Internet sales. It also includes implied marketing areas, such as representations that the seller or other operators will not compete with the purchaser, without delineating a specific territory, or stating a vague or undefined territory, such as ''in the metropolitan area,'' or ''in this region.'' If false, any of these kinds of representations can mislead a prospect about the likelihood of his or her success.

j. Proposed Section 437.1(j): ''General Media''

The term ''general media'' appears in proposed section 437.4(b), which prohibits business opportunity sellers from making unsubstantiated earnings claims in the ''general media.''[127] Proposed section 437.1(j) would define the term ''general media'' as follows: ''any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, Web site, and commercial bulk e-mail.''[128] Thus, the definition includes traditional advertising media, such as television, radio, and newspapers, as well as new technologies such as the Internet (both standard advertisements and pop-up window ads), and Web sites.[129] It also includes commercial bulk e-mail messages that are unsolicited, and often sent to individuals who have not previously expressed an interest in receiving an e-mail from the particular business opportunity seller.[130]

[119] The Franchise Rule contains a comparable provision, 16 CFR at 436.1(a), as do the UFOC Guidelines. UFOC Guidelines, General Instruction 150.

[120] *See* UFOC Guidelines, Item 19.

[121] *See also* Staff Advisory Opinion, Handy Hardware Centers, Bus. Franchise Guide (CCH) ;¶ 6426 (1980).

[122] *E.g., FTC* v. *Inspired Ventures, Inc.*, No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Inv. Dev. Inc.*, No. 89–0642 (E.D. La. 1989).

[123] *See* Interpretive Guides, 44 FR at 49967.

[124] *See* Interpretive Guides, 44 FR at 59685 n. 486.

[125] *See* Staff Program Review, *supra* note 39, at 39, 57. *E.g., FTC* v. *Vendors Fin. Serv., Inc.*, No. 98–1832 (D. Colo. 1998); *FTC* v. *Int'l Computer Concepts, Inc.*, No. 1:94CV1678 (N.D. Ohio 1994); *FTC* v. *O'Rourke*, No. 93–6511–CIV–Ferguson (S.D. Fla. 1993); *FTC* v. *Am. Safe Mktg.*, No. 1:89–CV–462–RLV (N.D. Ga. 1989).

[126] *See* UFOC Guidelines, Item 12 Instructions, ii.

[127] This proposed provision is based on an analogous provision in the current Franchise Rule. 16 CFR at 436.1(e). The Commission has alleged violations of this provision in numerous cases, for example: *FTC* v. *Wealth Sys., Inc.*, No. CV 05 0394 PHX JAT (D. Ariz. 2005); *U.S.* v. *Am. Coin-Op Servs., Inc.*, No. 00–0125 (N.D.N.Y. 2000); *U.S.* v. *Cigar Factory Outlet, Inc.*, No. 00–6209–CIV–Graham-Turnoff (S.D. Fla. 2000); *U.S.* v. *Emily Water & Beverage Co., Inc.*, No. 4–00–00131 (W.D. Mo. 2000); and *U.S.* v. *Greeting Card Depot, Inc.*, No. 00–6212–CIV–Gold (S.D. Fla. 2000).

[128] *See* Interpretative Guides, 44 FR at 49984–85 (earnings claims made ''for general dissemination'' includes ''claims made in advertising (radio, television, magazines, newspapers, billboards, etc.), as well as those contained in speeches or press releases.'' We also note that the Interpretive Guides recognize several exemptions to the general media claim, such as claims made to the press in connection with bona fide news stories, as well as claims made directly to lending institutions. *Id.* We propose that future Compliance Guides to the new Business Opportunity Rule retain these standard general media claims exemptions.

[129] *E.g., FTC* v. *Am. Entm't Distribs., Inc.*, No. 04–22431–CIV–Martinez (S.D. Fla. 2004) (challenging earnings claims posted on seller's Web site).

[130] *See* Informal Staff Advisory 04–2, Bus. Franchise Guides (CCH) ¶ 6522 (2004).

k. Proposed Section 437.1(k): ''New Business''

The term ''new business'' appears in section 437.1(d), setting forth the definitional elements of the term ''business opportunity.'' As noted above, the proposed ''business opportunity'' definition includes a ''solicitation to enter into a new business'' prong in order to distinguish the sale of a business opportunity from the ordinary sale of products and services. Section 437.1(k) would define the term ''new business'' to mean ''a business in which the prospective purchaser is not currently engaged, or a new line or type of business.'' Thus, the definition covers not only the establishment of a new business, but also entry into a new ''line or type of business.'' The intention in including the latter language is to cover sales of business opportunities to persons who may already be in a business. It is reasonable to assume that an existing businessperson could be defrauded like any other consumer when expanding his or her business to include new products or services not currently offered for sale. For example, an existing tire business could purchase a vending machines route, or a beverage vending machine route owner could purchase an envelope stuffing opportunity.[131] In such instances, the veteran businessperson may need the proposed Rule's protections as much as a novice.

l. Proposed Section 437.1(l): ''Person''

Proposed section 437.1(l) would define the term ''person,'' a term used in many of the proposed Rule's definitional or substantive provisions.[132] As in the current Franchise Rule, the term would include: ''an individual, group, association, limited or general partnership, corporation, or any other entity.''[133] Accordingly, the term ''person'' is to be read broadly to refer to both natural persons, businesses, associations, and other entities. Where the proposed Rule refers to a natural person only, it uses the term ''individual.''

m. Proposed Section 437.1(m): ''Prior Business''

As discussed below, section 437.3(a)(3) of the proposed Rule would require business opportunity sellers to disclose litigation in which they have been involved, in whole or in part, as well as that in which any of their affiliates or any prior businesses have been involved. Proposed section 437.1(m) defines ''prior business'' as

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets, or

(2) any business previously owned or operated by the seller, in whole or in part, by any of the seller's officers, directors, sales managers, or by any other individual who occupies a position or performs a function similar to that of an officer, director, or sales manager of the seller.

Thus, the definition is broader than the definition of ''predecessor'' found in the UFOC Guidelines, for example, which covers only an entity from whom a seller acquired, directly or indirectly, the major portion of the seller's assets.[134] It includes instances where the seller owned or operated companies that ceased operations. This broader definition is necessary to eliminate a potential loophole that would exist under a more restrictive definition. The Commission's law enforcement experience shows that sellers of fraudulent business opportunities frequently ply their trade through multiple companies simultaneously or sequentially, disappearing in order to avoid detection, and then reemerging in some new form or different part of the country under new names. Accordingly, the broader ''prior business'' is needed to capture all of a seller's operations that might fall outside a narrower term like ''predecessor.''[135]

n. Proposed Section 437.1(n): ''Providing Locations, Outlets, Accounts, or Customers''

As noted above, one of the hallmarks of fraudulent business opportunities is the offer to find locations, outlets, or accounts for prospective purchasers. The seller itself may purport to secure locations, or may represent that third parties will do so for the business opportunity purchaser.[136] Proposed section 437.1(n) would make clear that ''providing locations, outlets, accounts, or customers'' means:

> furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; or training or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers.

Accordingly, ''providing locations,'' for example, includes both an offer to provide locations that have already been found, as well as an offer to furnish a list of potential locations. It includes not only directly furnishing locations, but also recommending to a prospective purchaser specific locators, providing a list of locators who will furnish the locations, and training or otherwise assisting prospects in finding their own locations.[137] The Commission's law enforcement history shows that in either case, misrepresentations of this nature are particularly potent fraudulent devices to which prospective purchasers are susceptible because of their reliance on the seller's expertise in making their investment decision.[138]

[131] One commenter questioned whether the Rule should cover existing businesses that seek to expand into new lines of business. Caffey, 20Nov97 Tr at 25–27. In his view, experienced businesses may not need full disclosure, noting that the Commission recognized this point in including a fractional franchise exemption in the Franchise Rule. Id. We disagree. As a preliminary matter, we note that the current Franchise Rule's fractional franchise exemption is very narrow, covering instances where the purchaser has been in the same type of business for more than two years and the parties anticipate sales arising from the relationship will represent no more than 20% of total sales. 16 CFR at 436.2(a)(3)(i) and (h). The fractional franchise exemption's prior experience prerequisite recognizes the fact that, because a businessperson may be experienced in one sector—such as snack vending—does not necessarily mean that he or she is experienced enough to understand the potential for success and the risk of loss in another line of business, such as a greeting card rack display or envelope stuffing. Moreover, we are inclined to believe that a ''fractional'' exemption is unnecessary in the business opportunity context, given the greatly streamlined disclosure document contemplated by the proposed Rule, since the benefits of disclosure would outweigh the minimal compliance costs.

[132] *E.g.*, sections 437.1(o); 437.5(p).

[133] *See* 16 CFR at 436.2(b).

[134] *See* UFOC Guidelines, Item 1 Instructions, iii.

[135] *E.g., FTC* v. *Joseph Hayes*, No. 4:96CV06126 SNL (E.D. Mo. 1996); *FTC* v. *O'Rourke*, No. 93–6511–CIV–Ferguson (S.D. Fla. 1993); *FTC* v. *Inv. Dev. Inc.*, No. 89–0642 (E.D. La. 1989).

[136] *See, e.g., FTC* v. *Showcase Distribs., Inc.*, No. 95–1368–PHX–SMM (D. Ariz. 1995) (location assistance found where investor introduced to a third party to secure locations or sites or provided with a list of such persons); *FTC* v. *Jordan Ashley, Inc.*, No. 93–2257–CIV–Nesbitt (S.D. Fla. 1994) (locations assistance found where purchasers referred to a professional locator); *U.S.* v. *Hill*, No. IP–154–CR (S.D. Inc. 1991) (location assistance found, in contempt action, where the promoter permitted investors to find their own locations or engaged the services of independent locating companies, but introduced investors to one or two ''favored'' locators). *See also FTC* v. *World Traders Ass'n, Inc.*, No. CV05 0591 AHM (CTx) (C.D. Cal. 2005) (assistance in finding businesses to purchase surplus goods).

[137] The scope of this definition is consistent with the parallel scope of ''location assistance'' required for business opportunity coverage by the Franchise Rule. *See* Staff Advisory Opinion 95–10, Bus. Franchise Guide (CC) ¶ 6475 (1995).

[138] *See, e.g., FTC* v. *Greeting Cards of Am., Inc.*, No. 03–60745–CIV–Gold (S.D. Fla. 2003); *FTC* v. *Home Professions, Inc.*, No. 00–111 (C.D. Cal. 2000); *FTC* v. *Hart Mktg. Enter. Ltd., Inc.*, No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *FTC* v. *Hi Tech Mint Sys., Inc.*, No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *FTC* v. *Fresh-O-Matic Corp.*, No. 96–CV–315–CAS (E.D. Mo. 1996).

o. Proposed Section 437.1(o): ''Purchaser''

Proposed section 437.1(o) would define the term ''purchaser'' to mean ''a person who buys a business opportunity.'' By operation of the definition of ''person'' in section 437.1(l), a natural person, as well as any of various entities, would qualify as a business opportunity purchaser.[139]

p. Proposed Section 437.1(p): ''Quarterly''

To ensure accuracy and reliability of disclosures, proposed section 437.3(b) would require sellers to revise their disclosures at least ''quarterly.''[140] Proposed section 437.1(p) would set forth a bright line rule that is easy to follow and that would ensure uniformity of disclosures: ''quarterly'' means ''as of January 1, April 1, July 1, and October 1.'' Thus, the proposed Rule would require sellers to update their disclosure by those specific dates each year.

q. Proposed Section 437.1(q): ''Seller''

Proposed section 437.1(q) defines the term ''seller'' to mean: ''a person who offers for sale or sells a business opportunity.'' Like the ''purchaser'' definition, it contemplates that both natural persons and entities may be business opportunity sellers.

r. Proposed Section 437.1(r): ''Written'' or ''In Writing''

Proposed section 437.1(r) would define the terms ''written'' or ''in writing,'' which are used throughout the proposed Rule.[141] The terms are defined to include type-set, word processed, printed, handwritten, and faxed documents. The definition also would include new technologies, such as information stored in computer disks or CD–ROMs, as well as information sent via email or posted on the Internet.[142] Nevertheless, the definition seeks a balance, minimizing compliance costs while preventing fraud. To that end, the definition would make clear that all electronic media must be in a form ''capable of being downloaded, printed, or otherwise preserved in tangible form and read,'' thus ensuring that a prospective purchaser who receives disclosures electronically can read them, share them with an advisor, and retain them for future use.

2. Proposed Section 437.2: The Obligation To Furnish Written Documents

Proposed section 437.2 would set forth the Rule's basic disclosure obligation. It would specify that it is a violation of the Rule and section 5 of the FTC Act for a seller to fail to furnish a prospective business opportunity purchaser with a complete and accurate basic disclosure document containing particular items of material information (section 437.3(a)) and, where applicable, an earnings claim statement (section 437.4(a)). The provision requires that these disclosures must be provided to prospective purchasers ''at least seven calendar days before the earlier of the time that the prospective purchaser: (1) Signs any contract in connection with the business opportunity sale; or (2) makes a payment or provides other consideration to the seller, directly or indirectly through a third party.'' These two requirements are discussed immediately below.

a. ''Seven Calendar Days''

The proposed seven calendar-day timing period is modeled on the current Franchise Rule requirement that franchisors furnish prospective purchasers with a completed copy of the franchise agreement at least five business days (which typically works out to be seven calendar days), before the agreement is executed.[143] The Commission believes that seven calendar days is sufficient to enable a prospective purchaser to review the basic disclosure document and any earnings claims statement, as well as conduct a due diligence review of the offering, including contacting references. Nevertheless, the Commission recognizes that for business opportunity sales—as opposed to more complex franchise sales—a shorter period may be warranted. Accordingly, the Commission solicits comment on whether it should adopt a shorter time period.

b. Signing a Contract or Making a Payment as the Trigger for the Disclosure Obligation

Proposed section 437.2 would set forth two events before which the seller must furnish disclosures: The execution of any contract in connection with the business opportunity sale, or the payment of any consideration.[144] This provision ensures a uniform standard for determining when sellers must furnish disclosures, while ensuring sufficient time for prospective purchasers to review the sellers' disclosures before putting money at risk. To prevent circumvention of this requirement, section 437.2 clarifies that payment to the seller can be made either directly to the seller or indirectly through a third party, such as a broker or locator.[145]

3. Proposed Section 437.3: The Basic Disclosure Document

Proposed section 437.3 specifies the items of material information that must be included in the basic disclosure document. As an initial matter, we note that the proposed Rule specifies that only sellers of business opportunities have an obligation to prepare and furnish a basic disclosure document. Other persons involved in the sale of a business opportunity—such as brokers, locators, or suppliers—would have no obligation to prepare basic disclosure documents or to furnish such documents. The ultimate responsibility to ensure that disclosures are accurately prepared and disseminated would rest with the seller.[146]

Proposed § 437.3(a) would provide instructions for preparing the basic disclosure document. Specifically, sellers must present the information in ''a single written document in the form and using the language set forth in Appendix A to part 437''. The single written document requirement is necessary to ensure that disclosures are not furnished in piecemeal fashion that can easily be overlooked or lost. It

[139] *See* 16 CFR at 436.2(b).

[140] *See* 16 CFR at 436.1(a)(22).

[141] *E.g*, sections 437.2, 437.3(a), 437.4(a).

[142] *Cf.* Franchise Rule NPR, 64 FR at 57333. This proposal would effectively permit business opportunity sellers to comply with the proposed Rule electronically, consistent with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001.

[143] 16 CFR 436.1(g). *See* NASAA, ANPR 120, at 4 (advocating 10 business days); Wieczorek, 21Aug97 Tr at 113–14 (suggesting a seven-day or 10 calendar-day waiting period). *But see* Caffey, ANPR 94, at 2 (opposing any waiting period).

[144] This is similar to the comparable Franchise Rule provision. 16 CFR at 436.1(a) and 436.2(g).

[145] This proposal is narrower than the original Franchise Rule approach. Under the original Franchise Rule, a franchisor must furnish a disclosure document before the signing of a contract or ''the payment by a prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.'' 16 CFR at 436.2(g). Accordingly, a franchisor must furnish the disclosures if it knows or should know that a prospective franchisee is going to pay for required equipment from a third party. *See* Interpretive Guides, 44 FR 49970. To reduce compliance burdens, the proposed Business Opportunity Rule, in contrast, would provide that a seller must provide required disclosure seven calendar days before it actually receives consideration, directly or indirectly from a third party.

[146] *See* Wieczorek, 20Nov97 Tr at 13. This is the same approach staff has recommended with respect to the Franchise Rule. See Staff Report on the Proposed Revised FTC Franchise Rule, at 85 (Aug. 25, 2004) (''Franchise Rule Staff Report'') (available at *http://www.ftc.gov/os/2004/08/0408franchiserulerpt.pdf.*

would also prevent a seller from circumventing the Rule by presenting damaging information in a format that is not sufficiently prominent to be noticed and understood, or not readily accessible.[147] By specifying that the basic disclosure document be ''in the form and using the language set forth in Appendix A,'' the Commission intends to make clear that all of the standard disclosures and other wording shown in Appendix A are to be followed without deviation. Failure to follow Appendix A's form and language would violate the Rule.

Appendix A to part 437 would set forth the required format and language of the disclosure document. It consists of a single page and certain attachments that in some instances may be necessary. Specifically, Appendix A prescribes required introductory identifying information, a standard preamble, and five substantive disclosures: (1) Earnings claims; (2) legal actions; (3) cancellation or refund policy; (4) cancellation or refund request history; and (5) references. Three of these disclosure items—earnings claims, legal actions, and cancellation or refund policy—take the form of a ''yes'' or ''no'' check box on the disclosure document. Finally, the seller must include a copy of the basic disclosure document to be signed by the prospect as a receipt. Each of these elements of the required disclosure document is explained in greater detail below.

a. Identifying Information

The basic disclosure document would begin with identifying information about the seller.[148] Proposed section 437.3(a)(1) would specify that the seller must include the seller's name, business address, telephone number, the name of the salesperson offering the opportunity,[149] and the date. This background information is material because it would enable a prospective purchaser to contact the seller and any salesperson for additional information, while providing a written record of who provided the required disclosures and when for law enforcement purposes.

b. Preamble

After the identifying information, the basic disclosure document would prescribe a preamble that briefly explains the purpose and limitations of the disclosures to prospective purchasers. Specifically, the preamble would state that the information contained in the disclosure document ''can help you in deciding whether to purchase a business opportunity.'' At the same time, it cautions that ''no governmental agency has verified the information.'' [150] It also advises prospects to seek more information from the FTC by calling the FTC or visiting the FTC's Web site.[151] It also advises prospects to check for information about additional state law requirements with their state's attorney general office.

c. ''Yes'' or ''No'' Disclosure Items

As noted above, the basic disclosure document would instruct the seller to check a box providing ''yes'' or ''no'' as to whether it: (1) Makes earnings claims; (2) has been the subject of legal actions; and (3) offers cancellation or refund rights.

i. Proposed Section 437.3(a)(2): Earnings Claims

Proposed section 437.3(a)(2) would address earnings claims. As discussed further below in connection with section 437.4, the Rule would permit sellers to make an earnings claim, provided there is a reasonable basis for the claim and the seller can substantiate the claim at the time it is made.[152] If the seller makes no earnings claim, then section 437.3(a)(2) would direct the seller simply to check the ''no'' box. If the seller does make an earnings claim, however, then the Rule would require the seller to check the ''yes'' box and to furnish the prospective purchaser with an earnings claim statement attached to the basic disclosure document.[153]

ii. Proposed Section 437.3(a)(3): Legal Actions

Proposed section 437.3(a)(3) would address fraud in the sale of business opportunities by requiring the disclosure of material information about certain prior legal actions.[154] Specifically, if the seller or certain persons associated with the seller have been the subject of specific types of actions within the last 10 years, the seller would be required to check the ''yes'' box. The types of actions covered by this provision include ''any civil or criminal actions for misrepresentation, fraud, securities law violations, or unfair or deceptive practices.'' Knowledge of actions of this nature against the seller or other persons associated with the seller would obviously affect a prospective purchaser's decision to go forward with the transaction. Moreover, the obligation to disclose these actions is not narrowly confined to the seller in its specific current corporate identity. It extends to any ''affiliate or prior business of the seller,'' any of the seller's ''officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller,'' as well as any of the seller's ''employees who are involved in business opportunity sales activities.'' If there are no actions to disclose, the seller would simply check the ''no'' box.

Disclosure of actions against ''any affiliate or prior business of the seller'' is necessary to prevent circumvention of the Rule. The Commission's law enforcement experience amply demonstrates that fraudulent business opportunity sellers often operate through multiple related affiliates, or use, sequentially or simultaneously, a variety of corporate identities in order to

[147] *See* 16 CFR at 436.1(a)(21).

[148] *See* 16 CFR at 436.1(a)(1) (requiring the disclosure of the official name and address of the principal place of business of the franchisor); UFOC Guidelines, Cover Page, at 2; Item 1. The Commission has long recognized the materiality of a business opportunity seller's background information. For example, in the Franchise Rule SBP, the Commission concluded that:

The failure to disclose such material information * * * may mislead the [prospect] as to the business experience of the parties with whom he or she is dealing and * * * could easily result in economic injury to the [prospect] because of the * * * dependence upon the business experience and expertise of the [business opportunity seller].

43 FR at 59642. Other Commission trade regulation rules similarly require identity disclosures. *E.g.,* Wool Products Labeling Rule, 16 CFR at 300.14 (recognizing that names on a label may mislead consumers about the actual manufacturer); Fur Products Labeling Rule, 16 CFR at 301.43 (recognizing that corporate name may mislead consumers about the character of the product).

[149] *See* D'Imperio, Sept95 Tr at 278 (asserting that disclosure of salesperson is an imperative disclosure).

[150] This is very similar to the current Franchise Rule approach. *See* 16 CFR at 436.1(a)(21).

[151] The reference to the FTC Web site will further reduce fraud by giving prospects access to a wealth of information about business opportunities, including news releases on individual cases and joint enforcement sweeps, consumer education materials, and Commission reports.

[152] This is consistent with analogous provisions in the Franchise Rule, 16 CFR 436.1(b), (c), and (e), as well as the UFOC Guidelines, Item 19.

[153] Business opportunity sellers must also make the following prescribed cautionary statement in close proximity to the ''yes'' or ''no'' check boxes: ''*Read this statement carefully. You may wish to show this information to an advisor or accountant.*'' Obviously, this statement would not apply when a seller checks the ''no'' box.

[154] This provision is based upon analogous provisions of the original Franchise Rule, 16 CFR 436.1(a)(4), and UFOC Guidelines, UFOC Item 3. In connection with the Franchise Rule, the Commission stated in the Franchise Rule SBP that litigation history is material because it bears on the ''integrity and financial standing of the [seller].'' 43 FR at 59649. *E.g., FTC* v. *Joseph Hayes,* No. 4:96CV02162SNL (E.D. Mo. 1996) (full disclosure would have revealed prior state fines and injunctions); *FTC* v. *Inv. Dev. Inc.,* No. 89–0642 (E.D. La. 1989) (full disclosure would have revealed arson and insurance fraud convictions).

avoid detection.[155] The requirement to disclose legal actions against affiliates or prior businesses is designed to thwart such attempts to skirt the Rule.

The obligation to disclose prior legal actions reaches ''any of the seller's officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller'' [156] to ensure that key officers and sales personnel with prior litigation against them cannot evade the Rule by merely foregoing a formal title. It is the function such individuals perform, not a title, that triggers the proposed Rule's disclosure obligation. In the Commission's experience, there is often little correlation between titles and functions performed in business opportunity scams. Business opportunity sellers often operate as a ''d/b/a.'' [157] Even when a seller operates through a corporation, there often is no compliance with corporate formalities, or other separations of the entity from its owners, and any of the individuals involved in such operations may go on to operate multiple frauds in a variety of corporate formats.[158] Accordingly, any person who acts as a corporate director, officer, or sales manager would be deemed to fall within the ambit of the lawsuit disclosure requirement, whether or not he or she has a formal corporate title.

The section 437.3(a)(3) litigation disclosure would also extend to the ''seller's employees who are involved in business opportunity sales activities.'' [159] The Commission's law enforcement experience shows that sales employees, like officers, often make material misrepresentations to induce prospects to purchase a business opportunity.[160] To enable a prospective purchaser to evaluate better such salesperson's statements, the Rule would require a business opportunity seller to disclose certain information about sales personnel's prior adverse legal history.

The seller, however, would have no obligation to disclose litigation against other employees—secretarial, clerical, and accounting staff, for example. Indeed, because a prospective purchaser typically does not rely on these individuals' expertise, and does not expect these individuals to perform under the business opportunity agreement, any litigation in which they may have been involved is largely immaterial to the business opportunity sale.

To minimize compliance costs, only criminal proceedings or civil actions involving ''misrepresentation, fraud, securities law violations, or unfair or deceptive practices'' would be disclosed.[161] As previously noted in the discussion of the term ''action,'' disclosure of such actions is required regardless of whether the claim is brought in a court or administrative action or arbitration proceeding, and whether it is brought by a private party or a governmental agency.[162] The Commission believes that these types of actions are the most relevant in addressing business opportunity fraud.[163]

To minimize compliance costs further, the proposed Rule would not require sellers to detail the nature of each legal action, as in the Franchise Rule.[164] If the seller has litigation to disclose, it need only state in an attachment to the disclosure document the full caption of each legal matter (names of the principal parties, case number, full name of court, and filing date). We note that the disclosure document itself instructs prospects that the legal matters disclosed pertain to ''misrepresentation, fraud, securities law violation, or unfair or deceptive practices.'' This will provide the prospect with a basic understanding of the subject matter of the action. Armed with the full caption, a prospective purchaser can seek additional information if he or she so chooses.[165]

iii. Proposed Section 437.3(a)(4): Cancellation or Refund Policy

Proposed section 437.3(a)(4) would require sellers to disclose all terms and conditions of any cancellation or refund policy.[166] This pertains to a common practice among business opportunity sellers, namely, offering prospective purchasers the right to cancel or to seek a whole or partial refund.[167] Such

[155] *See* discussion of section 437.1(m) (''prior business'') above.

[156] The original Franchise Rule and UFOC Guidelines have comparable disclosure requirements. *See* 16 CFR at 436.1(a)(2) and (3) (directors, executives, including the chief executive and chief operating officer, financial, franchise marketing, training and service officers); UFOC Guidelines, Items 2 and 3 (affiliates offering franchises under the franchisor's principal trademark, directors, trustees and/or general partners, the principal officers, and other executives or subfranchisors who will have management responsibility relating to the offered franchises). Cf. Franchise Rule Staff Report, supra note 146, at 101 (recommending that a franchisor identify all individuals who control the franchisor, regardless of any formal title).

[157] *E.g., FTC* v. *Am. Universal Vending Corp.,* No. 00–0155 (W.D.N.Y. 2000); *FTC* v. *Data Med. Capital, Inc.,* No. SACV–99–1266 (C.D. Cal. 1999).

[158] *E.g., FTC* v. *Tashman,* 318 F.3d 1275 (11th Cir. 2003); *FTC* v. *Inv. Dev. Inc.,* No. 89–0642 (E.D. La. 1989).

[159] *See* D'Imperio, Sept95 Tr at 278 (asserting that salesperson litigation is a critical disclosure).

[160] *E.g., FTC* v. *Universal Greeting Card Corp.,* No. 02–21753–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Raymond Urso,* No. 97–2680–CIV–Ungaro–Benages (S.D. Fla. 1997). *See also FTC* v. *America's Shopping Network, Inc.,* No. 02–80540–CIV–Hurley (S.D. Fla. 2002).

[161] This is narrower than the range of actions that must be disclosed under the Franchise Rule. *See* 16 CFR at 436.1(a)(4) (legal actions that must be disclosed include embezzlement, fraudulent conversion, misappropriation of property, and actions filed by franchisees involving the franchise relationship). *See also* UFOC Guidelines, Item 3 (franchise, antitrust, or securities law, fraud, unfair or deceptive practices, or comparable allegations). One commenter suggested that the enumerated list of legal actions that must be disclosed in the Franchise Rule context may be unwarranted for business opportunities. We agree. *See* Wieczorek, 21Aug97 Tr at 124 (suggesting that disclosure of embezzlement, fraudulent conversion, and restraint of trade litigation for business opportunities may go too far).

[162] The proposed disclosure of legal actions is broader than the comparable disclosure under the Franchise Rule in one respect. The proposed Rule contemplates that a business opportunity seller must disclose prior suits even if the seller prevailed. In contrast, franchisors need not disclose isolated instances of suits in which they prevailed if such suits are not material. *See* 16 CFR at 436.1(a)(4)(ii) (only material individual civil actions need be listed). With respect to business opportunities, the filing of a suit for fraud or misrepresentation, for example, is likely to indicate discontent with the business opportunity seller, which is a material fact needed for a prospective purchaser to assess the quality of the relationship between the seller and prior purchasers. In that regard, it is comparable to the disclosure of requests for cancellation or refund, even if the sales agreement contemplates no cancellations or refunds, addressed below. *See also* 16 CFR at 436.1(a)(4)(ii) (requiring disclosure of ''any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material'').

[163] *See* Finnigan, 21Aug97 Tr at 123 (observing that litigation disclosures are ''crucial information,'' but should be limited); Sokol, *id.* (suggesting fraud litigation by an enforcement body should be disclosed).

[164] *Cf.* 16 CFR at 436.1(a)(4) (''Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of the settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling.'').

[165] We note that the public's ability to review complaints in legal proceedings has become significantly easier since the advent of the Internet. Many legal documents are now routinely posted on court or related websites.

[166] The Commission adopted the same approach in the TSR. *See* 16 CFR at 310.3(a)(1)(iii) (If a seller makes a representation about a refund policy, it must disclose ''a statement of all material terms and conditions of such policy.''). *See also* Cecal, 21Aug97 Tr at 126 (suggesting there should be a refund policy statement).

[167] *See, e.g., FTC* v. *AMP Publ'n., Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2001); *FTC* v. *Home Professions, Inc.,* No. SACV 00–111 AHS (Eex) (C.D. Cal. 2001); *FTC Innovative Prods.,* No. 3:00–CV–0312–D (N.D. Tex. 2000); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000); *FTC* v. *Mediworks, Inc.* No. 00–01079 (C.D. Cal. 2000). Indeed, allegations that business opportunity sellers misrepresented their refund policies ranks among the top 10 complaint allegations in

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cancellation or refund offers are material to prospective purchasers because they involve the potential risk of the proposed transaction, creating the impression that the business opportunity offer is either risk free or a low financial risk. Indeed, the Staff Program Review found that 24% of business opportunity complaints involved consumers seeking to cancel their purchase (818 of 4512 complaints), and 22% involved a refund policy issue (752 of 4512 complaints).[168]

The proposed Rule does not require any seller to offer cancellation or a refund. Rather, if a seller does make a cancellation or refund offer, it must disclose the terms and conditions prior to the sale. Specifically, a seller that offers a cancellation or refund policy must check the ''yes'' box on the disclosure document and also must attach to the disclosure document a written description of its policy. To minimize compliance costs, the seller may comply with this disclosure by attaching to the disclosure document a copy of a pre-existing document that details the seller's cancellation or refund policy. For example, a seller may detail its refund policy in a company brochure. If so, the seller need only attach to the disclosure document the particular page setting forth the refund policy. As in the other examples above, if no cancellation or refund is offered, then the seller need only check the ''no'' box.

d. Proposed Section 437.3(a)(5): Cancellation and Refund History

In addition to the ''yes'' or ''no'' items discussed above, the proposed Rule would require sellers to disclose information about prior cancellation or refund requests. This information is material to prospective purchasers because it goes to the viability of the business, the success of past purchasers, and their satisfaction with the business opportunity. Knowing that a seller has received a large number of cancellation or refund requests would likely influence a prospective purchaser's decision as to whether to go forward with a transaction.

In many instances, business opportunity sellers make false or deceptive claims about the success of prior purchasers.[169] Such claims are similar to false earnings representations in that they imply that the purchaser will also be successful, or, at the very least, that the seller's offer is a safe investment.[170] The most effective measure to combat such practices might be to require a business opportunity seller to disclose the drop-out rate of prior purchasers of the same opportunity within a given time period. Such an approach would be similar to the Franchise Rule requirement of detailed disclosures about the number of existing franchisees, as well as those who have left the system in the previous year.[171]

The Commission recognizes, however, that a business opportunity seller may not have access to detailed information about prior purchasers who have ceased operations. For example, a vending business opportunity seller may have no further contacts with purchasers after locating the machines and, therefore, would not necessarily know if the purchaser subsequently abandons the business. This is in contrast with the typical business format franchise, where the franchisor maintains direct and extensive contacts with its franchisees during the entire course of the franchise relationship. With respect to a typical business opportunity transaction, therefore, the Commission believes it would be impracticable to mandate a drop-out rate disclosure.

In lieu of a drop-out rate, the Commission proposes that sellers disclose cancellation or refund requests[172] made by prior purchasers during the past two years.[173] Specifically, proposed section 437.3(a)(5) would require sellers to state first the number of purchasers of the business opportunity during the two years prior to the date of disclosure.[174] This number would serve as a base line. Second, the seller would disclose the number of those purchasers who, during the same two-year period, asked to cancel their purchase or sought a refund, whether or not the purchaser has the contractual right to receive a cancellation or refund. This two-fold disclosure is reflected in Appendix A to the proposed Rule, setting forth the required format and language of the disclosure requirement.

The Commission believes that this proposed disclosure is narrowly tailored and would impose minimal compliance costs. It does not require a seller to gather statistics about the status of prior purchasers. Rather, the seller need only report the number of sales, as well as the total number of requests for cancellations or refunds that it has received,[175] both of which should be easy to tally. In addition, it would require sellers to disclose only the number of cancellation requests or refunds, not the identity of individual cancellation or refund requesters.

While the Commission believes that information on refund requests can provide material information on the satisfaction of previous purchasers, it is also aware that it is possible that such a disclosure requirement might cause some sellers to discourage refund requests by not offering refunds or by limiting the situations in which refunds are offered. On the other hand, the absence of a refund provision or the presence of a very restrictive provision might reduce the attractiveness of the offer. Therefore, the Commission invites comment on the likely effect of this provision on the willingness of business opportunity sellers to offer refunds.

Commission business opportunity cases brought under Section 5. *See* Staff Program Review, *supra* note 39, at 39.

[168] Staff Program Review, *supra* note 39, at 57.

[169] *E.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *2Xtreme Performance Int'l, LLC,* No. JFM 99CV 3679 (D. Md. 1999); *In re Computer Bus. Servs.,* FTC C–3705 (1996); *FTC* v. *Roche, No. SACV* 96–481 LHM (Eex) (C.D. Cal. 1996); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996).

[170] *Cf.* Franchise Rule SBP, 43 FR at 59670–71 (''statistical information gives [prospects] material information about the size of the * * * system they are contemplating joining and sheds light on the prospect's likelihood of success.'').

[171] *See* 16 CFR at 436.1(a)(16); UFOC Guidelines, Item 20. *See also* Finnigan, 21Aug97 Tr at 167 (identifying success rate of a business opportunity as a ''crucial piece of information''). On the other hand, DSA and its members contended that a drop-out rate may be misleading in the multilevel marketing field, where, because of the low entry costs, people may test the waters for a period before deciding whether to continue with the program. *E.g.,* Elman, 21Aug97 Tr at 155–56; 168–69; Brown, *id.* at 157–58, 168. In such circumstances, a drop-out rate disclosure may overstate the difficulty of succeeding in the business. *But see In re Amway,* 93 FTC 618 (1979) (ordering Amway to make such a disclosure). The approach taken in the proposed Rule does not require a drop-out rate. Rather than requiring disclosure of a broad drop-out rate, it focuses narrowly on a subset of purchasers who have ceased operations, namely those who have requested to cancel or to obtain a refund.

[172] As discussed above, the definition of ''cancellation or refund request'' is broad, including any request for cancellation or a full or partial refund, whether or not the requester has the contractual right to receive such a remedy.

[173] *Cf.* Illinois Act, 815 ILCS § 602/5–35(b)(16)(B) (''The names and addresses of purchasers who have requested a refund or rescission from the seller within the last 12 months and the number of those who have received the refund or rescission). *See also* CA BLS, RR 45, at 9 (''If there is a promise to refund if the purchaser is not satisfied with the business opportunity, the number of times this has occurred during a certain period of time is relevant.'').

[174] *See* Wieczorek, 21Aug97 Tr at 157; Cecal, *id.* at 159.

[175] For purposes of this disclosure, the term ''past two years'' means the eight quarters immediately preceding the date of the disclosure document. This would require quarterly updating, consistent with the Rule's general updating provision, discussed below at proposed section 437.3(b).

e. Proposed Section 437.3(a)(6): References

Proposed section 437.3(a)(6) would require the disclosure of a limited number of prior purchasers as references. As in the current Franchise Rule,[176] the Commission believes that the disclosure of prior purchasers is very important to prevent fraud because it enables prospects to verify the seller's claims independently.[177] Such a disclosure has been required for over 25 years for business opportunities covered by the Franchise Rule.

Nevertheless, this proposed disclosure was one of the most controversial proposals in the ANPR. Several business opportunity seller representatives asserted that names of prior purchasers are proprietary information, essentially comprising a customer list. They maintained that there are certain fundamental differences between franchises and business opportunities with respect to the sensitivity of such information. They argued that in franchise relationships, franchisees are often subject to supplier agreements that compel them to purchase goods or services from specific sources contractually mandated by the franchisor. Accordingly, competing suppliers would not approach a franchisee listed in a disclosure document as a potential customer. In contrast, the seller of a business opportunity, such as a vending machine route, may supply the purchaser not only with machines, but products to fill the machines. Often, however, there is no ongoing contractual provision limiting the purchaser's source of supplies. A list of prior business opportunity purchasers, therefore, is essentially a list of potential customers.[178]

While the commenters' concern is not without merit, the Commission believes that the value to prospects of information about prior purchasers is so great as to outweigh any potential detriment to sellers jealous of their customer base. First, the only way prospects can reasonably protect themselves from a seller's fraudulent claims is to conduct their own due diligence review of the business opportunity offer by contacting prior purchasers.[179] Unlike franchisees identified by a common trademark or trade name, who can be identified by looking in the yellow pages or other business directories, business opportunity purchasers are not readily identifiable. Indeed, many business opportunities are conducted out of the purchaser's home, making them difficult, if not impossible, to find. Under the circumstances, the Commission concludes that a disclosure of references is essential.

The Commission has taken care to limit the scope of proposed section 437.3(a)(6). The seller need only disclose the name, city and state,[180] and telephone number of each prior purchaser (if fewer than 10), or at least the 10 prior purchasers nearest to the prospective purchaser's location.[181] In order to minimize compliance costs further, the proposed Rule provides an alternative: In lieu of a list of the 10 prior purchasers nearest the prospect, a seller may provide a prospect with a national list of all purchasers.[182] For example, the seller making disclosures online could maintain a master list of purchasers on its website that can be updated periodically. This would enable the seller to avoid having to tailor the disclosure to each prospective purchaser. Proposed section 437.3(a)(6) specifies that sellers selecting the national option must insert the words ''See Attached List'' and attach a list of the references to the disclosure document.

In addition, proposed section 437.3(a)(6) would limit the disclosure of references to those who have purchased the business opportunity within the last three years. The Commission believes that purchasers within the last three years—as opposed to those who purchased the business opportunity earlier than that—are likely to have the most current information about the seller and its business operation. Limiting the disclosure of references to a three-year period will also minimize compliance costs.

Finally, proposed section 437.3(a)(6) would address the privacy concerns raised by the use of purchaser information. As noted above, the proposed Rule would require a seller to disclose the name, city and state, and telephone number of certain purchasers to serve as references. The Commission has concerns about privacy protection with respect to requiring the disclosure of prior purchasers' contact information—notwithstanding the fact that this type of information is often readily available and in the public domain from such sources as telephone directories. To address this concern, the Commission proposes that sellers be required to state the following language clearly and conspicuously in their disclosure document and in immediate conjunction with the list of references: ''If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.''

The Commission seeks comments and suggestions on balancing the need to enable prospective purchasers to verify sellers' claims with privacy concerns. Specifically, the Commission seeks comment on ways that the Commission might achieve availability of independent information about purchasers' experience consistent with protecting those purchasers' privacy. The Commission seeks comment on alternatives, including approaches that may be used by states with business opportunity laws containing reference disclosures. In addition, the Commission seeks comment on whether the Rule should permit purchasers the opportunity to opt-out of the disclosure of their contact information.

f. Proposed Section 437.3(a)(7): Receipt

Proposed section 436.3(a)(7) would set forth a receipt requirement. Specifically, the seller must attach a duplicate copy of the basic disclosure page to be signed and dated by the purchaser. A designation for the signature and date is included at the bottom of the page. This requirement is designed to document proper

[176] 16 CFR at 436.1(a)(16)(iii).

[177] *See* Franchise Rule SBP, 43 FR at 59673 (The disclosure of current franchisees' names and addresses ''will provide prospective franchisees with a means to (a) ascertain the problems confronting franchisees operating under conditions similar to those under which the prospective franchisees would be operating, and (b) verify the representations by the franchisor concerning the franchise'').

[178] *See, e.g.*, Catalano, ANPR 27, at 2–4 (''[U]nscrupulous competitors [with] access to the customer base of legitimate business opportunity sellers * * * would have a 'field day' contacting customers of other sellers, attempting to sell them competing products and services.''); Brown, 21Aug97 Tr at 167 (contending that Amway would fight ''tooth and nail'' to not disclose purchaser information, which it views as its customer list); Silverman 20Nov97 Tr at 222–23.

[179] *See* Rabenberg, Sept95 Tr at 105–06 (business opportunity purchaser asserting that the disclosure of names and addresses of existing purchasers is material information needed to conduct a due diligence investigation of the offer); D'Imperio, RR 16, at 3 (priority should be given to mandatory disclosure of reliable contact information).

[180] The proposed Rule would not require the disclosure of prior purchasers' street addresses. The Commission believes that prospects can readily contact a prior purchaser if provided with the prior purchaser's name, city and state, and telephone number. This approach enables prospects to contact references while minimizing the intrusion into prior purchasers' privacy.

[181] *See* 16 CFR at 436.1(a)(16)(iii).

[182] *See* Catalano, ANPR 27, at 5. Mr. Catalano opposed the required disclosure of prior purchasers. He stated, however, that if the Commission were to mandate such a requirement, then sellers may prefer disclosing a single national reference list to the regulatory burden imposed by compiling individualized reference lists for each prospective purchaser. *Id.*

disclosure. The receipt is especially important to prove proper disclosure with respect to electronic documents. A seller furnishing disclosures online, either through email or access to a Web site, has the burden of establishing that the prospect was actually able to access the electronic document. Completion and submission of the receipt serves that purpose.

The proposed Rule does not impose any particular method of transmitting the receipt. In order to minimize compliance costs, the Commission believes that the parties should have maximum flexibility to determine the best method for their business opportunity. Accordingly, proposed section 437.3(a)(7) would permit the seller to inform the prospective purchaser how to return the signed receipts, for example, by sending the receipt to a street address, or through email address, or facsimile.

g. Proposed Section 437.3(b): Updating

To ensure that a seller's disclosures are current, proposed section 437.3(b) would require sellers to update their disclosures periodically. Specifically, the provision states that it would be a violation of the Rule for a seller to fail to update the disclosures to reflect any material changes in the information presented in the basic disclosure document on at least a quarterly basis.[183] The Commission believes that quarterly updating strikes the right balance between the need for accurate disclosure and the costs and burdens more frequent updating would entail. Nevertheless, proposed section 437.3(b) would include a proviso that would require more frequent updating in one respect: the list of references. Specifically, a seller would be required to update the list of references monthly until such time that it is able to include the full list of 10 purchaser/references. This is particularly necessary for start-up systems that may have few or no prior purchaser references when they commence business opportunity sales. The Commission believes that prospective purchasers' ability to contact at least 10 purchasers in their due diligence investigation of business opportunity offers outweighs any costs of more frequent updating until the list of 10 is compiled.

4. Proposed Section 437.4: Earnings Claims

Section 437.4 of the proposed Rule would address earnings claims.[184] For the most part, this section is similar to the parallel section of the Franchise Rule. Like the Franchise Rule, the proposed Rule would not require business opportunity sellers to make an earnings claim. Rather, the disclosure of earnings information is strictly voluntary. Also, like the analogous provision in the Franchise Rule, proposed section 437.4(a) would require a seller making an earnings claim to: (1) Have a reasonable basis for the claim at the time the claim is made;[185] (2) have in its possession written materials that substantiate the claim at the time the claim is made;[186] (3) make the written material available to the prospect and the Commission upon request;[187] and (4) furnish the prospect with an earnings claim statement.[188] Also, like the Franchise Rule, proposed section 437.4(b) would set forth the requirements for making earnings claims in the general media.[189] Finally, proposed section 437.4(d), like the analogous section of the Franchise Rule, would require sellers to notify prospects in writing of any changes in earnings information before the prospect enters into a contract or provides any consideration to the seller, directly or indirectly through a third party.[190] At the same time, the proposed Rule would differ from the original Franchise Rule by addressing in proposed section 437.4(c) the use of industry financial or earnings information. Each of these issues is discussed in the following section.

a. Proposed Section 437.4(a)(4): The Earnings Claim Statement

Proposed section 437.4(a)(4) would prescribe the content of the earnings claim statement. To ensure ease of review, each earnings claim statement must be a single written document.[191] The document must be titled ''EARNINGS CLAIM STATEMENT REQUIRED BY LAW'' in capital, bold type letters. This ensures that the prospective purchaser can readily determine from the face of the document the importance of its text. The title is followed by the name of the person making the claim, and the date of the claim.

After the title and identifying information, the proposed Rule requires the seller to state the specific earnings claim. The proposed Rule does not specify any particular format or formula for an earnings claim. Consistent with the Franchise Rule, the proposed Rule allows flexibility in presenting earnings information in the manner that is appropriate for each opportunity, provided that any such claim have a reasonable basis and that there be written substantiation for the claim at the time it is made, as noted above.

The proposed Rule would also require the seller making an earnings claim to disclose the beginning and ending dates when the represented earnings were achieved.[192] This information is material because a prospective purchaser cannot begin to evaluate an earnings representation without knowing how recently the supporting data was collected. For example, a seller may have conducted a survey of opportunity purchasers in 2002. The Rule would not necessarily prohibit the use of that survey information in 2005 or beyond.[193] Nonetheless, the prospect should be made aware of the applicable time period in order to assess the relevance of the claim to current market conditions. Similarly, a prospect may reasonably give greater weight to a survey of purchasers over an extended period of time (for example, over a three-year period), than a more limited survey (for example, over a three-month period).

Further, this section of the proposed Rule would require the disclosure of the number and percentage of all purchasers during the relevant time period who have achieved at least the claimed earnings.[194] This information is highly material because it enables the prospect to determine whether the claimed earnings of prior purchasers are typical.

[183] *See* 16 CFR at 436.1(a)(22).

[184] Commenters widely supported earnings disclosure and substantiation. *E.g.,* Christopher, ANPR 115, at 2; Caffey, ANPR 94, at 2; NASAA, ANPR 120, at 3–4; NCL, ANPR 142; Samson, 21Aug97 Tr at 173; Finnigan, *id.*; Wieczorek, RR 23, at 2–3; NASAA, RR 43, at 2; Simon, Sept95 Tr at 281–82. *Cf.* TSR, 16 CFR at 310.3(a)(2)(vi) (prohibiting misrepresentations about any ''material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability'').

[185] *E.g.,* 16 CFR at 436.1(b)(2); 436.1(c)(2). Consistent with the Franchise Rule NPR, the Commission also proposes not to include in the proposed Business Opportunity Rule a ''geographic relevance'' requirement on the grounds that that prerequisite is subsumed in the ''reasonable basis'' requirement. *See* Franchise Rule NPR, 64 FR at 57310.

[186] 16 CFR at 436.1(b)(2); 436.1(c)(2).

[187] 16 CFR at 436.1(b)(2); 436.1(c)(2).

[188] 16 CFR at 436.1(d).

[189] 16 CFR at 436.1(e).

[190] 16 CFR at 436.1(d)(2) and 436.1(e)(6) (each prospective franchisee to whom the representation is made shall be notified of any material change in the information contained in the earnings claims document).

[191] *See* 16 CFR at 436.1(e)(5).

[192] *See, e.g.,* 16 CFR at 436.1(b)(5)(ii).

[193] Of course, supporting data may become so stale that a seller would no longer have a reasonable basis for making an earnings representation because the data, even if true when collected, no longer reflects current market conditions. Any such determination is necessarily fact-specific and can only be made on a case-by-case basis.

[194] *See, e.g.,* 16 CFR at 436.1(e)(5)(ii).

For example, a seller may claim that purchasers have average earnings of $50,000 a year. Even if true, this statement may not reflect the experience of the typical purchaser because a few purchasers with unusually high earnings could skew the average. Thus, the number and percentage of purchasers earning $50,000 a year might actually be very low.

In addition to the earnings claim and substantiation requirements, this section of the proposed Rule would require a seller making an earnings claim to disclose any characteristics that distinguish purchasers who achieved at least the represented level of earnings from those characteristics of the prospective purchasers.[195] For example, a survey of ice cream vending route purchasers operating only in the South may not be readily applicable to other regions, such as the North. Similarly, a survey limited to large urban areas may not be applicable to smaller, rural areas. Distinguishing characteristics of opportunity purchasers who achieved a represented level of earnings is very material information because it enables a prospect to assess the relevance of an earnings claim to his or her particular market.

Finally, the proposed Rule would require a seller making an earnings claim to disclose to the prospective purchaser that written substantiation for the claim will be made available upon request. Requiring that a prospective purchaser can obtain and review, or have his or her own advisor review, substantiation for earnings claims increases the likelihood that such claims actually have a reasonable basis, thus reducing fraud.[196] This proposal balances the prospective purchaser's need for material information with the necessity of minimizing the seller's compliance costs. Thus, a seller need only provide such substantiation upon request.

b. Proposed Section 437.4(b): General Media Claims

Proposed section 437.4(b) would address the making of earnings claims in the general media.[197] Specifically, a seller can make an earnings claim in the general media provided the seller: (1) Has a reasonable basis for the claim at the time the claim is made;[198] (2) has written material that substantiates the claim at the time the claim is made;[199] and (3) states in immediate conjunction with the claim the beginning and ending date when the represented earnings were achieved and the number and percentage of those who have achieved the presented earnings in the given time period.[200] These requirements are necessary to prevent deceptive and misleading earnings representations in advertisements, as well as to enable a prospect to assess the typicality of any advertised earnings claim.[201]

c. Proposed Section 437.4(c): Industry Statistics

As noted above, proposed section 437.4(c) would address a problem that is prevalent among business opportunity sellers: The use of real or purported industry statistics in the marketing of business opportunity ventures. It is common for vending machine promoters, for example, to tout what are purported to be industry-wide vending sales statistics. A matrix of potential earnings based upon an industry-average sliding scale of ''vends per day'' is typical.[202] The use of such industry statistics in the promotion of a business opportunity creates the impression that the level of sales or earnings is typical in the industry, and by extrapolation, that the prospective purchaser will achieve similar results.

To prevent this type of deceptive earnings claim, proposed section 437.4(c) would prohibit the use of industry financial, earnings, or performance information ''unless the seller has written substantiation demonstrating that the information reflects the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.'' Accordingly, before a seller could use industry statistics, it must be able to measure the performance of existing purchasers and document that the industry statistics reflect the existing purchasers' typical performance. For example, a start-up business opportunity with no or very limited prior sales would probably not be able to use industry statistics because it would lack a sufficient basis to demonstrate that the industry statistics reflect the typical or ordinary experience of the start-up's prior purchasers.

d. Prospective Section 437.4(d): Material Changes

Proposed section 437.4(d) would address post-disclosure changes in earnings information. Consistent with the Franchise Rule, it would prohibit any seller making an earnings claim from failing to notify the prospective purchaser, before the prospect enters into a contract or pays any consideration, of any material change that has occurred and that calls into question the relevance or reliability of the information contained in its earnings claim statement.[203] Such material changes include the issuance of a new survey or other facts that would lead the seller to conclude that a prior survey is no longer valid. As with the analogous provisions of the Franchise Rule, proposed section 437.4(d) recognizes the high degree of materiality of earnings information for prospective purchasers. At the same time, the Commission seeks to minimize compliance costs. The proposal would not require a seller, for example, to prepare a revised earnings claim statement immediately, but would simply require written notification of the change. The Commission believes this approach strikes the right balance between accurate disclosure to prevent deception and compliance costs that would result from a more frequent updating requirement.

5. Proposed Section 437.5: Other Prohibited Practices

In addition to the disclosure requirements and earnings claims provisions discussed above, section 437.5 of the proposed Rule would prohibit sellers from engaging in a number of deceptive practices, directly or through a third party, that are common in the sale of fraudulent business opportunity ventures. Each of these proposed prohibitions is discussed in detail below.

a. Proposed Section 437.5(a): Disclaimers

Proposed section 437.5(a) would prohibit a seller, directly or through a third party, from disclaiming, or requiring a prospective purchaser to waive reliance on, any statement made in any of the disclosures required or permitted by the Rule. This provision is parallel to the anti-disclaimer prohibition proposed in the revised

[195] This is a more streamlined approach than the current Franchise Rule, which requires earnings claims be presented with a statement of the material bases and assumptions upon which the claim is made. *See* 16 CFR at 436.1(b)(3); 436.1(c)(3).

[196] *See, e.g.,* 16 CFR at 436.1(b)(2); 436.1(c)(2).

[197] The Franchise Rule has an analogous section. *See* 16 CFR at 436.1(e).

[198] *See* 16 CFR at 436.1(e)(1).

[199] *See* 16 CFR at 436.1(e)(1).

[200] *See* 16 CFR at 436.1(e)(3).

[201] *E.g., FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *MegaKing, Inc.,* No. 00–00513–CIV–Lenard (S.D. Fla. 2000).

[202] *E.g., FTC* v. *Tashman,* 318 F.3d 1275 (11th Cir. 2003); *FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Inv. Dev. Inc.,* No. 89–0642 (E.D. La. 1989).

[203] *See* 16 CFR at 436.1(e)(6).

Franchise Rule.[204] It is intended to preserve the reliability and integrity of pre-sale disclosures. Otherwise, the Rule's very purpose would be undermined by signaling to prospects that they cannot trust or rely on the Rule's mandated disclosures. It would prevent sellers from using disclaimers or waivers as a means of insulating themselves from the consequences of materially false or deceptive statements in their own disclosure documents.

b. Proposed Section 437.5(b): Inconsistent or Contradictory Information

Proposed section 437.5(b) would prohibit sellers from making any representation, directly or through a third party, that is inconsistent with or that contradicts any statement made in the basic disclosure document or in any earnings claim disclosures required by the Rule.[205] Inconsistent or contradictory statements can be made orally, visually, or in writing. Without this proposed prohibition, a seller, for example, would be free to show a prospect a graph with earnings information, even though the seller's disclosure document states that it does not make an earnings claim. Our law enforcement experience shows that this is a prevalent problem.[206] Accordingly, this provision, like the anti-disclaimer provision noted above, is necessary to preserve the reliability and integrity of the required disclosures.

c. Proposed Section 437.5(c): Extraneous Materials

Proposed section 437.5(c) would prohibit the inclusion of any additional information in a disclosure document that is not explicitly required or permitted by the Rule. This preserves the clarity, coherence, readability, and utility of the disclosures by ensuring that a seller does not include extraneous materials that may overwhelm purchasers, distracting them from the required disclosures.[207] The proposed provision also reflects the Commission's acknowledgment that some sellers may wish to furnish disclosures electronically and, to that end, expressly permits the use of common navigational tools, such as scroll bars and internal links that facilitate review of an electronic document. The proposed provision would expressly prohibit other electronic features—such as audio, video, animation, or pop-up screens—that may distract attention from the core disclosures.[208]

The prohibition on including extraneous materials extends to information required or permitted by state law. This approach toward the treatment of state law disclosures contrasts with the analogous provision of the Franchise Rule. The Franchise Rule permits franchisors great latitude to include information required or permitted by state law. This approach is appropriate in the franchise context because all the states with franchise disclosure laws have adopted the UFOC disclosure format. As a result, state additions to an FTC disclosure document generally are fitted smoothly into that uniform format. Because of this relative uniformity, such additions do not impede a prospect's ability to compare easily among various franchise offerings. This approach also reduces compliance burdens. If adding state materials were prohibited, franchisors would have to incur significant costs to prepare and disseminate separate federal and state disclosure documents simultaneously, without any corresponding benefit to consumers.

In contrast, business opportunity laws vary widely from state to state. Were the proposed Rule to permit the inclusion of the varied additional information and disclosures required by various states, the resulting disclosure document would likely confuse prospective purchasers with an overload of divergent and possibly inconsistent information.[209] Under the circumstances, we believe that the Commission's disclosures should be kept separate from any disclosures mandated by state law. Moreover, any additional costs associated with complying with separate federal and state business opportunity disclosure laws are likely to be small, given the proposed Rule's greatly streamlined disclosures. The Commission specifically requests comment on the appropriateness of this approach and seeks alternatives that could reconcile federal and state business opportunity disclosure laws while reducing compliance burdens.

d. Proposed Section 437.5(d): False Earnings Claims

As noted throughout this NPR, the making of false earnings claims is the most prevalent problem in the offer and sale of business opportunities.[210] Proposed section 437.5(d) would prohibit sellers from misrepresenting, directly or through a third party, the amount of sales, or gross or net income or profits a prospective purchaser may earn or that prior purchasers have earned. This prohibition would complement the Rule's proposed earnings substantiation requirements detailed in proposed section 437.4. Thus, both unsubstantiated and false earnings claims would be prohibited by the Rule.

e. Proposed Section 437.5(e): Misrepresentations Regarding the Law as to Earnings Claims

Proposed section 437.5(e) would prohibit sellers from misrepresenting,

[204] Franchise Rule NPR, 64 FR at 57323. Like the analogous proposed Franchise Rule revisions, this provision would not ban the use of disclaimers such as integration clauses. Integration clauses often serve valid purposes, putting a prospect on notice that he or she should rely solely on information authorized by the franchisor.

[205] This provision is similar to the current Franchise Rule prohibition against the making of statements that contradict required disclosures. *See* 16 CFR at 436.1(f). *See also* UFOC Guidelines, General Instruction 190.

[206] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Mortgage Serv. Assocs., Inc.,* No. 395–CV–13362 (AVC) (D. Conn. 1995); *FTC* v. *Tower Cleaning Sys., Inc.,* No. 96 58 44 (E.D. Pa. 1996). *See also FTC* v. *Minuteman Press,* 53 F. Supp. 2d 248, at 262 (E.D.N.Y. 1998) (''[A] conflict between a specific disclaimer and a contrary oral representation—typically fatal to a reasonable reliance argument in a purely private suit—is * * * ipso facto, actionable by the FTC as violative of Franchise Rule 436.1(f) if the disclaimer is in a [disclosure document.]'').

[207] As with the Franchise Rule, a seller may provide a prospective purchaser with truthful, consistent and non-contradictory information in materials that are separate and apart from the required disclosures. *See* 16 CFR at 436.1(a)(21).

[208] This is the same approach proposed in the Franchise Rule NPR. 64 FR at 57318.

[209] To illustrate the lack of consistency among state business opportunity statutes, the staff compared disclosure requirements in five states: Alaska (Alaska Stat. § 45.66.010–090); California (Cal. Civ. Code § 1812.200–1812.221); Florida (Fla. Stat. ch. 559.80–815); Kentucky (KRS 367.801–819), and Ohio (Ohio Rev. Code Ann. § 1334.01–99). In many instances, certain disclosures are required in some of the five states only. For example, Alaska and California require disclosures about the owners of the business opportunity, while Florida, Kentucky, and Ohio do not. Alaska alone requires a disclosure about other registration attempts by the seller. California, Florida, and Ohio require disclosures about bond and guarantees of credit requirements, while Alaska and Kentucky do not. Ohio requires disclosures about refunds, while California, Florida, Kentucky, and Alaska do not. Florida, however, requires a disclosure stating that the purchaser is permitted to cancel the business opportunity agreement if ''the seller fails to deliver the product * * * within 45 days.'' Ohio requires disclosure about affiliated persons with whom the purchaser is required to do business, while Alaska, Florida, and Kentucky do not. In addition to these inconsistent disclosure requirements, the timing requirements for making disclosures differ significantly. For example, Alaska requires disclosure within ''ten days;'' Florida requires ''three working days;'' California requires at least ''48 hours;'' and Ohio requires ''ten business days.''

[210] In the Franchise Rule SBP, the Commission found that one of the most frequent abuses occurring in the marketing of franchises and business opportunities is the use of deceptive past and potential sales, income, and profit claims. Indeed, the Commission stated that the ''use of deceptive and inaccurate profit and loss statements * * * has resulted in a legion of 'horror stories.' '' 43 FR at 59684.

directly or through a third party, that any law prohibits the furnishing of earnings information. This addresses a recurring problem identified in the rulemaking record—sellers misrepresenting that federal law or the FTC prohibits the making of earnings claims.[211] In effect, this prohibition ensures that prospective purchasers are not misled into believing that earnings information is unavailable to them as a matter of law. Prospective purchasers can then understand that if the seller provides no earnings information, it is because none exists, or because the seller chooses not to make such information available.

f. Proposed Section 437.5(f): Written Substantiation for Earnings Claims

Proposed section 437.5(f) would prohibit a seller who makes an earnings claim from failing to provide written substantiation to prospective purchasers and to the Commission upon request.[212] Rather than mandating that business opportunity sellers include documentation for earnings claims—which could be voluminous—in the earnings claim statement itself, section 437.5(f) would reduce compliance costs by requiring only that such materials be provided to potential purchasers and to the Commission upon request. Purchasers could then review the documentation if they so choose.

g. Proposed Section 437.5(g): Payments From the Seller

Proposed section 437.5(g) would prohibit sellers from misrepresenting, directly or through a third party, how or when commissions, bonuses, incentives, premiums, or other payments from the seller to the purchaser will be calculated or distributed. Our law enforcement experience shows that these kinds of misrepresentations underlie work-at-home and pyramid opportunities, where prospective purchasers rely on the seller as the source of income, or where the seller manages the system's cash flow.[213] Absent this prohibition, the Rule would not address false promises about the compensation sellers will provide post-sale.

h. Proposed Section 437.5(h): Costs and Material Characteristics

A common complaint of victims of business opportunity fraud arises from misrepresentations about the costs or the performance, efficacy, nature, or central characteristics of a business opportunity offered to a prospective purchaser, or the goods or services needed to operate the business opportunity. For example, a seller may misrepresent the total costs involved in purchasing or operating a business opportunity.[214] In other instances, a seller may misrepresent the quality of goods offered by the business opportunity seller, either for use in operating the business (*e.g.*, vending machines) or for ultimate resale to consumers (*e.g.*, novelty items).[215] Proposed section 437.5(h) would make such deception, directly or through a third party, actionable as a violation of the proposed Rule.

i. Proposed section 437.5(i): Assistance

Another area for potential fraud is the misrepresentation of post-sale assistance offered to a prospective purchaser.[216] The Commission's enforcement experience shows that this practice is an element common to many business opportunity frauds targeted in our cases.[217] Also, consumer complaints about misrepresentations concerning the type and amount of assistance promised but not received are among the top categories of reported deceptive business opportunity practices.[218] The Commission believes that the best way to address this deceptive practice is through a direct prohibition. Section 437.5(i), therefore, would prohibit business opportunity sellers from misrepresenting, directly or through a third party, any material aspect of assistance provided to purchasers.

j. Proposed Section 437.5(j): Locations, Outlets, Accounts, Customers

In many instances, business opportunity sellers promise to find locations or outlets for purchasers' equipment, or accounts or customers for the purchasers' services. Indeed, the Commission's law enforcement experience shows that business opportunity sellers not only offer such assistance, but also represent that the seller or some other third party will find locations, outlets, accounts, or customers for the purchaser.[219] Such

[211] In the Franchise Rule context, the Commission proposed to address this problem through a new requirement that franchise sellers include a specific preamble in the financial performance section of their disclosures. Among other things, the prescribed preamble would make clear that franchisors can make financial performance information available, assuming they have a reasonable basis for their claims. Franchise Rule NPR, 64 FR at 57309–310; ANPR, 62 FR at 9118. In an effort to streamline the business opportunity disclosure document and reduce compliance costs, the proposed Rule takes a different approach. It would bar sellers from representing that any law prohibits the furnishing of earnings information. We believe this approach is sufficient to address deceptive business opportunity sales: whereas the Franchise Rule seeks to encourage franchisors to make earnings claims, no such encouragement is needed in the business opportunity field, where such claims are all too common.

[212] *See* 16 CFR at 436.1(b)(2); 436.1(c)(2). *See also* 16 CFR at 436.1(e)(1).

[213] *E.g., FTC* v. *Sun Ray Traders, Inc.,* No. 05–20402–CIV–Seitz/Bandstra (S.D. Fla. 2005); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003); *FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *Terrance Maurice Howard,* No. SA02CA0344 (W.D. Tex. 2002); *FTC* v. *America's Shopping Network, Inc.,* No. 02–80540–CIV–Hurley (S.D. Fla. 2002); *FTC* v. *Equinox, Int'l,* No. CV–S–99–0969–JAR–RLH (D. Nev. 1999).

[214] *E.g., FTC* v. *World Traders Ass'n, Inc.,* No. CV05 0591 AHM (CTx) (C.D. Cal. 2005); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003); *FTC* v. *End70 Corp.,* No. 3 03CV–0940N (N.D. Tex. 2003); *FTC* v. *Darrell Richmond,* No. 3:02–3972–22 (D.S.C. 2003); *FTC* v. *Carousel of Toys USA, Inc.,* No. 97–8587 CIV–Ungaro–Benages (S. D. Fla. 1997); *FTC* v. *Parade of Toys, Inc.,* No. 97–2367–GTV (D. Kan. 1997); *FTC* v. *Telecomm. of Am., Inc.,* No. 95–693–CIV–ORL–22 (M.D. Fla. 1995). In the Franchise Rule SBP, the Commission recognized that the failure to disclose complete and accurate information about fees is deceptive because ''it (1) misleads, or at least confuses [prospects] as to the amount of the required initial * * * investment and (2) could readily result in economic injury to a [prospect] unable to fully obtain all such funds or unable to recoup the full amount of such funds in the course of the * * * business.'' 43 FR at 59653. Indeed, pre-sale disclosure of cost information is a remedial approach taken in many Commission trade regulation rules. E.g., 900 Number Rule, 16 CFR at 308.3(b); Telemarketing Sales Rule, 16 CFR at 310.3; Funeral Rule, 16 CFR at 453.2.

[215] *E.g., FTC* v. *Kitco of Nevada,* 612 F. Supp. 1282 (D. Minn. 1985); *FTC* v. *Associated Record Distribs., Inc.,* No. 02–21754–CIV–Graham/Garber (S.D. Fla. 2002); *FTC* v. *Home Professions, Inc.,* No. 00–111 (C.D. Cal. 2000); *FTC* v. *Worldwide Mktg. and Distrib. Co., Inc.,* No. 95–8422–CIV–Roettger (S.D. Fla. 1995). *See also FTC* v. *Med. Billers Network,* No. 05 CV 2014 (RJH) (S.D.N.Y. 2005).

[216] In the Franchise Rule SBP, the Commission recognized that promises of assistance made to induce prospects to purchase a franchise are material, especially to those prospects with ''little or no experience at running a business.'' 43 FR at 59676–77.

[217] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *USS Elder Enter., Inc.,* No. SA CV–04–1039 AHS (ANx) (C.D. Cal. 2004); *FTC* v. *Kitco of Nevada,* 612 F. Supp. 1282 (D. Minn. 1985), *FTC* v. *Leading Edge Processing, Inc.,* No. 6:02–CV–681–ORL–19 DAB (M.D. Fla. 2003); *FTC* v. *Darrell Richmond,* No. 3:02–3972–22 (D.S.C. 2003); *FTC* v. *Elec. Med. Billing, Inc.,* No. SA02–368 AHS (ANX) (C.D. Cal. 2003); *FTC* v. *Transworld Enter., Inc.,* No. 00 8126–CIV–Graham (S.D. Fla. 2000); *FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro–Benages (S.D. Fla. 2000); *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *U.S.* v. *QX Int'l, Inc.,* No. 398–CV–0453–D (N.D. Tex. 1998). *See* Cory, ANPR 12 (misrepresented training); SBA Advocacy, ANPR 36, at 6–7 (observing improper training and credentials in a travel opportunity). *Cf.* 16 CFR at 436.1(a)(18) (requiring a description of any training program); UFOC Guidelines, Item 11 (disclosure of franchisor's obligations including pre-opening advertising and training assistance).

[218] *See* Staff Program Review, *supra* note 39, Table I.2; Appendix 5.

[219] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *Int'l Trader,* No. CV–02–02701 AHM (JTLx) (C.D. Cal. 2002); *FTC* v. *Elec. Processing Servs, Inc.,* No. CV–S–02–0500–L.H.–R.S. (D. Nev. 2002); *FTC* v. *Home*

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representations include claims that a particular locator is successful in finding locations, as well as representations that the seller or other third party has already found and entered into contracts with location owners or customers.[220] These types of representations are material to a prospective purchaser because they foster the expectation that a profitable market exists for the goods or services the purchaser will sell. To prevent fraudulent location assistance representations, proposed Section 437.5(j) would prohibit sellers, directly or through a third party, from misrepresenting ''the likelihood that a seller, locator, or lead generator will find locations, outlets, accounts, or customers for the purchaser.''

k. Proposed Section 437.5(k): Cancellation or Refund Policy

The Commission's law enforcement experience demonstrates that, in many instances, business opportunity sellers claim that they permit a purchaser to cancel the purchase, guarantee a 100% refund, or promise to buy back some or all of the products sold to a purchaser.[221] These representations have lured prospective purchasers into believing that the investment is either low-risk or even risk-free.[222] As noted above, however, a high level of business opportunity purchaser complaints received by the Commission revolve around cancellation and refund issues.[223] Accordingly, proposed section 437.5(k) would prohibit a seller from misrepresenting, directly or through a third party, the terms and conditions of any cancellation or refund policy. The Commission emphasizes, however, that this prohibition does not compel any seller to offer cancellation or a refund, nor does it dictate the terms and conditions under which a seller may offer such relief. Rather, it simply ensures that any cancellation or refund offer a seller makes before the sale is truthful and accurate.

l. Proposed Section 437.5(l): Failure To Cancel or Make a Refund

Proposed section 437.5(l) would prohibit a seller from failing to cancel a purchase or make a refund when the purchaser has qualified for such relief under the seller's cancellation or refund policy.[224] As noted above, proposed section 437.5(k) would prohibit a seller from misrepresenting, pre-sale, the seller's cancellation or refund policy. Proposed section 437.5(l) complements that section and is intended to address sellers' post-sale conduct, prohibiting the seller from failing to honor cancellation or refund requests when purchasers have satisfied all the terms and conditions disclosed in the seller's basic disclosure document for obtaining such relief.[225] In our experience, the failure of business opportunities sellers to make promised refunds or to honor cancellation policies ranks high among issues raised by business opportunity purchasers.[226]

m. Proposed Section 437.5(m): Employment Opportunity

Proposed section 437.5(m) would prohibit business opportunity sellers from misrepresenting, directly or through a third party, a business opportunity as an employment opportunity.[227] The Commission's law enforcement experience demonstrates that some business opportunity sellers lure unsuspecting consumers by falsely representing that they are offering employment when, in fact, they are offering vending, work-at-home, or pyramid sales opportunities. For example, in many instances consumers have responded to advertisements seeking sales executives, only to discover that the ''position'' requires them to purchase equipment or products from the seller and, in turn, to sell the products or to recruit a downline to sell the products for them.[228]

n. Proposed Section 437.5(n): Territories

Proposed section 437.5(n) would prohibit misrepresentations made directly by the seller or through a third party about the terms of any territorial exclusivity or limited territorial protection offered to a prospective purchaser.[229] In the Commission's experience, representations about territorial exclusivity or more limited territorial protections are material because they often induce a prospective purchaser into believing that he or she will not be competing for customers with the seller or other purchasers, thereby increasing the purchaser's likelihood of success.[230] As noted

Professions, Inc., No. SACV 00–111 AHS (Eex) (C.D. Cal. 2001); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000); *FTC* v. *AMP Publ'n, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2001); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996). *See* Staff Program Review, *supra* note 39, Table I.2, Appendix 5; Samson, 21Aug97 Tr at 100; Wieczorek, *id.* at 76–77; Cecal, *id.* at 78–79; James, 20Nov97 Tr at 19; Rabenberg, Sept95 Tr at 105.

[220] *E.g., FTC* v. *Hart Mktg. Enter. Ltd., Inc.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *FTC* v. *Vendors Fin. Servs., Inc.,* No. 98–1832 (D. Colo. 1998); *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (S.D.N.Y. 1998); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996). Similarly, a Florida business opportunity regulator noted that during sales presentations, sellers of vending machines typically claim that they have ''15 locations in X community. And in fact there [are] no locations there. They have to hire a locator, a second locator, or a second person. A second check is written to the locator. And the consumer invariably ends up with a second-rate location because there [were none] to start with.'' James, 20Nov97 Tr at 19.

[221] *E.g., FTC* v. *Med. Billers Network,* No. 05 CV 2014 (RJH) (S.D.N.Y. 2005); *FTC* v. *Castle Publ'g, Inc.,* No. AO3CA 905 SS (W.D. Tex. 2003); *FTC* v. *America's Shopping Network, Inc.,* No. 02–80540–CIV–Hurley (S.D. Fla. 2002); *FTC* v. *Home Professions, Inc.,* No. SACV 00–111 AHS (Eex) (C.D. Cal. 2001); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000).

[222] In the Franchise Rule SBP, the Commission noted the difficulty consumers have in obtaining promised refunds from franchisors. ''It is clear from the record that all franchisors do not adequately adhere to the refund policies they themselves agree to in their contracts. By requiring strict adherence to their own refund policies, [the Rule] serves an essential remedial purpose.'' 43 FR at 59696–697.

[223] *See, e.g.,* Staff Program Review, *supra* note 39, Table I.2 and Appendix 5.

[224] This is consistent with the current Franchise Rule approach. *See* 16 CFR at 436.1(h). *See also* Franchise Rule SBP, 43 FR at 59697.

[225] *E.g., FTC* v. *AMP Publ'ns, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2001) (failure to honor 90-day money back guarantee); *FTC* v. *Star Publ'g Group, Inc.,* No. 00–023 (D. Wyo. 2000) (failure to honor 90-day refund policy). *See* 16 CFR at 436.1(h). *See also* Cory, ANPR 12 (describing difficulty in securing a refund).

[226] *See* Staff Program Review, *supra* note 39, at 28–29 (nearly 25% of business opportunity complaints indicated the consumer's desire to cancel, and more than 20% indicated that consumers failed to receive a refund or were dissatisfied with the company's refund policies.). *See, e.g., FTC* v. *AMP Publ'ns, Inc.,* No. 00–112 (C.D. Cal. 2000); *FTC* v. *Home Professions, Inc.,* No. 00–111 (C.D. Cal. 2000); *FTC* v. *Innovative Prods.,* No. 3–00–0312 (N.D. Tex. 2000); *FTC* v. *Mediworks, Inc.,* No. 00–01079 (C.D. Cal. 2000).

[227] *See* Wis. Admin. Code § ACP 116.06 (prohibiting misrepresented employment offers).

[228] *See, e.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002) (defendants placed ads in ''Help Wanted'' sections of newspaper offering salaried position); *FTC* v. *Leading Edge Processing, Inc.,* No. 6:02–CV–681–ORL–19 DAB (M.D. Fla. 2003) (defendants sent emails to job seekers who posted their resumes on job websites, falsely representing the availability of jobs and guaranteeing a steady stream of work); *FTC* v. *David Martinelli, Jr.,* No. 3:99 CV 1272 (D. Conn. 2000) (defendants sent unsolicited emails falsely offering a $13.50 per hour position processing applications for credit, loans, or employment); *FTC* v. *Equinox, Int'l,* No. CV–S–99–0969–JAR–RLH (D. Nev. 1999) (defendants allegedly ran classified ads in the ''Help Wanted'' sections of newspapers, impliedly offering a salaried position).

[229] *See* 16 CFR at 436.1(a)(13) (requiring a description of any limited geographic area or territorial protections); UFOC Guidelines, Item 12 (disclosure of the nature and scope of any exclusive territory). In some instances, a business opportunity seller may offer a prospect an exclusive territory, in which no other person has the right to compete within the territory. In other instances, a seller may offer a more limited protection. For example, the seller may prohibit other purchasers from operating in the territory, but reserve to itself the ability to conduct telemarking or Internet sales in the territory. Regardless of the scope of the territorial protection, section 437.5(n) prohibits business opportunity sellers from misrepresenting the nature of the territory.

[230] *E.g., FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro–Benages (S.D. Fla.

above, the Staff Program Review revealed that false promises about territories are a common deceptive practice reported by business opportunity purchasers.[231]

o. Proposed Section 437.5(o): Assignment of Territories

Proposed section 437.5(o) would prohibit a seller from assigning a single ''exclusive'' territory to more than one purchaser. This prohibition complements section 437.5(n), which prohibits sellers from misrepresenting territories. It is intended to address sellers' post-sale conduct, prohibiting the seller from failing to honor its promises regarding exclusive or protected territories. Consumer complaints indicate, and the Commission's law enforcement experience confirms, that fraudulent business opportunity sellers often sell the same purportedly exclusive territory to several unsuspecting purchasers.[232] In these circumstances, purchasers who have been lured to invest in an opportunity on the basis of promises of an exclusive territorial lock on their market find that their chances of success are materially reduced by competition from the other purchasers.

p. Proposed Section 437.5(p): Third-Party Endorsements

To prevent endorsement fraud, Proposed section 437.5(p) would prohibit business opportunity sellers from misrepresenting, directly or through a third party, that ''any person, trademark or service mark holder, or governmental entity, directly or indirectly benefits from, sponsors, participates in, endorses, approves, authorizes, or is otherwise associated with the sale of the business opportunity or the goods or services sold through the business opportunity.'' [233] Our law enforcement experience reveals that business opportunity frauds often lure consumers by misrepresenting that their opportunities have been approved or endorsed by a government agency or well-known third party.[234] In other instances, business opportunity sellers falsely claim that their opportunities are sponsored by or associated with a charity, or that a charity will benefit from a percentage of sales.[235] Such claims are material to a purchaser because an alleged endorsement or shared-profit arrangement may create the impression that the opportunity is legitimate or that the affiliation will enhance sales and profits.

q. Proposed Section 437.5(q): Shills

Proposed section 437.5(q) would address one of the most pernicious practices common in fraudulent business opportunity sales—the use of shill references to lure unsuspecting consumers to invest.[236] The Commission has brought many actions against business opportunity sellers who provided prospects with the names of individuals they falsely claimed were independent prior purchasers or independent third parties, but who in fact were paid by the seller to give favorable false reports confirming the seller's claims, especially their earnings claims.[237] The use of paid shills to give false reports induces prospective purchasers into believing that the opportunity is a safe and lucrative investment.

To address this deceptive practice, Proposed section 437.5(q) contains two related prohibitions. First, it would prohibit any seller from misrepresenting, directly or through a third party, that any person ''has purchased a business opportunity from the seller.'' This would prevent a seller, for example, from claiming that a company employee, locator, or other third party is a prior purchaser of the opportunity, when that is not the case. Second, the provision would prohibit a seller from misrepresenting that any person—such as a locator, broker, or organization that purports to be an independent trade association—''can provide an independent or reliable report about the business opportunity or the experiences of any current or former purchaser.'' Providing a prospect with a list of brokers who are paid to give favorable reports, for example, would violate this provision because any statement a person on such a list makes would fail the ''independence and reliability'' test.[238]

r. Proposed Section 437.5(r): Paid Consideration or Prior Relationship

Proposed section 437.5(r) would complement the prohibition in section 437.5(q) against fictitious references by requiring sellers to disclose any compensation paid to an endorser [239] and the existence of any personal or business relationship between the seller and an endorser. The Commission has long held that the failure to disclose compensation paid to an endorser is a deceptive practice in violation of section 5.[240] Obviously, an individual

2000); *FTC* v. *Summit Photographix,* No. 398–CV–0449–T (N.D. Tex. 1998); *FTC* v. *Telecard Dispensing Corp.,* No. 98–7058 (S.D. Fla. 1998); *FTC* v. *Vendors Fin. Servs., Inc.,* No. 98–1832 (D. Colo. 1998); *U.S.* v. *QX Int'l, Inc.,* No. 398–CV–0453–D (N.D. Tex. 1998); *FTC* v. *Am. Legal Distribs.,* No. 1:88–CV–519–MHS (N.D. Ga. 1988). *See also* Franchise Rule SBP, 43 FR at 59662 (recognizing that sales restrictions and limited territories impact upon a purchaser's ability to conduct business and are, therefore, material).

[231] *See* Staff Program Review, *supra* note 39, Table I.2; Appendix 5.

[232] *E.g., FTC* v. *Am. Safe Mktg.,* No. 1:89–CV–462–RLV (N.D. Ga. 1989).

[233] *Cf.* TSR, 16 CFR at 310.3(a)(vii) (prohibiting misrepresentations concerning ''affiliation with, or endorsement or sponsorship by, any person or government entity'').

[234] *E.g., FTC* v. *Streamline Int'l,* No. 01–6885–CIV–Ferguson (S.D. Fla. 2001) (misrepresented FDA approval); *FTC* v. *Bus. Opportunity Ctr., Inc.,* No. 95 8429–CIV–Zloch (S.D. Fla. 1995) (misrepresented FDA approval); *FTC* v. *Star Publ'g Group, Inc.,* No. 00–023 (D. Wyo. 2000) (misrepresented HUD approval). *See also FTC* v. *Hawthorne Commc'ns,* No. 93–7002 AAH (JGX) (C.D. Cal. 1993) (order restricting use of testimonials and endorsements in the sale of business opportunities); James, 21Nov97 Tr at 343 (work-at-home promoter falsely represented that JCPenney was a buyer of its products).

[235] *E.g., FTC* v. *Global Assistance Network for Charities,* No. 96–2494 PHX RCB (D. Ariz. 1996). *See also* NCL, ANPR 35, at 2.

[236] Staff Program Review, *supra* note 39, Table I.2 (after earnings claims, false testimonials and shill references are the most common Section 5 allegations in Commission business opportunities cases). *See also* NCL, ANPR 35, at 2; Cecal, 21Aug97 Tr, at 67–68 (observing the common use of shills to sell business opportunities in Illinois).

[237] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *U.S.* v. *Vaughn,* No. 01–20077–01–KHV (D. Kan. 2001); *FTC* v. *Hart Mktg. Enter. Ltd., Inc.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *FTC* v. *Inetintl.com,* No. 98–2140 (C.D. Cal. 1998); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996); *FTC* v. *Allstate Bus. Consultants Group, Inc.,* No. 95–6634–CIV–Ryskamp (S.D. Fla. 1995). *See also* Cantone, 20Nov97 Tr at 245 (''Shills may be one of the most common problems in the business opportunity industry.''); James, *id.* at 246 (''It is a huge, huge problem.'').

[238] *E.g., FTC* v. *Affiliated Vendors Ass'n, Inc.,* No. 02–CV–0679–D (N.D. Tex. 2002); *FTC* v. *Raymond Urso,* No. 97–2680–CIV–Ungaro–Benages (S.D. Fla. 1997). *See* Cantone, 20Nov97 Tr at 251–52 (voicing concern about reports from groups that purport to be independent consumer associations. ''I know from our standpoint in Maryland, we have a lot of complaints from buyers who * * * got a report from who they thought was an independent company like a Better Business Bureau for business opportunities.''); McKee, *id.* at 252 (observing that the Internet permits anyone to set up a website that purports to belong to an independent organization providing reports similar to those of the Better Business Bureau).

[239] *E.g., FTC* v. *Tashman,* 318 F.3d 1275 (11th Cir. 2003); *FTC* v. *Wolf,* No. 94–8119 CIV–Ferguson (S. D. Fla. 1994); *FTC* v. *Jordan Ashley,* No. 93–2257–CIV–Nesbitt (S.D. Fla. 1993); *FTC* v. *Nat'l Bus. Consultants,* 781 F. Supp. 1136 (E.D. La. 1991).

[240] *See* Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 CFR at 255.5 (''When there exists a connection between the endorser and the seller of the advertised product which might materially affect the weight or credibility of the endorsement (i.e, the connection is not reasonably expected by the audience) such connection must be fully disclosed. * * * [W]hen the endorser is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the

Continued

paid for his or her assessment of an opportunity is likely to be biased, and any story of success or high earnings from a person paid to tell it is suspect. The proposed Rule would clarify that the term ''consideration'' is to be interpreted broadly. Specifically, proposed section 437.5(r)(1) would state that consideration includes not only direct cash payments, but indirect financial benefits, such as forgiveness of debt, as well as other tangible benefits such as equipment, services, and discounts.

Similarly, proposed section 437.5(r)(2) would also prohibit a seller from failing to disclose any personal or business relationship with any endorser. For example, an endorser may have a personal relationship with the seller (*e.g.*, family member), or an ongoing business relationship with the seller (*e.g.*, as a broker, supplier, or locator) other than a relationship created by the prior purchase of the business opportunity being offered for sale.[241] In each instance, the prior business or personal relationship is material to a prospective purchaser because it calls into question the endorser's independence from the seller.

6. Proposed Section 437.6: Record Retention

Proposed section 437.6 would establish minimal record retention requirements necessary to document compliance and permit effective Rule enforcement. This section applies to both the business opportunity seller and its principals to ensure that records required by the Rule are not destroyed if the seller goes out of business or otherwise ceases operations. As detailed below, sellers and their principals must keep, and make available to the Commission, the following five types of records for a period of three years:

Proposed section 437.6(a)	Each materially different version of all documents required by the Rule;
Proposed section 437.6(b)	Each purchaser's disclosure receipt;
Propsed section 437.6(c)	Each executed written contract with a purchaser;
Proposed section 437.6(d)	Each oral or written cancellation or refund request received from a purchaser; and
Proposed section 437.6(e)	All substantiation upon which the seller relies from the time an earnings claim is made.

The Commission believes that these limited recordkeeping requirements strike the right balance, requiring no more than necessary for effective law enforcement, while reducing compliance costs.

7. Proposed Section 437.7: Franchise Exemption

Proposed section 437.7 is designed to eliminate potential overlap between the Business Opportunity Rule's coverage and that of the Franchise Rule, so that no business would face duplicative compliance burdens.[242] Specifically, section 437.7 would exempt from the proposed Rule's coverage those business opportunities that: (1) Satisfy the definitional elements of the term ''franchise'' under the Franchise Rule; (2) entail a written contract between the seller and the business opportunity buyer; and (3) require the buyer to make a payment that meets the Franchise Rule's minimum payment requirement. These criteria are designed to accomplish two ends: to ensure that certain categories of businesses ''carved out'' from the Franchise Rule's coverage are not inappropriately subjected to coverage by the proposed Business Opportunity Rule; and, simultaneously, to obviate any loophole that could be exploited by certain other types of business opportunities that are exempt from the Franchise Rule but that should be regulated by the proposed Business Opportunity Rule.

Thus, for example, businesses exempt from Franchise Rule coverage pursuant to the exemption for fractional franchises[243] and the exemption for ''leased department'' arrangements[244] would not be subjected to coverage by the proposed Business Opportunity Rule because such businesses would meet the criteria of proposed section 437.7. This is an appropriate result because the same rationale underlying exemption of these types of businesses from the Franchise Rule would also dictate that they not be covered by the proposed Business Opportunity Rule—*i.e.*, in the case of a fractional franchise, the franchisor is not likely to deceive the prospective franchisee or to subject the prospective franchisee to significant investment risk. Therefore, imposing the requirements of either the Franchise Rule or the proposed Business Opportunity Rule would not be justified.

On the other hand, certain businesses carved out of Franchise Rule coverage should not escape regulation by the proposed Business Opportunity Rule—specifically, those exempt from the Franchise Rule's coverage due to the minimum payment exemption[245] or the oral agreement exemption.[246] While these two exemptions are warranted in the franchise context to ensure that the significant disclosure costs imposed by the Franchise Rule are cost-justified, they do not apply to the proposed Business Opportunity Rule, with its comparatively much lighter disclosure burden.

In response to the ANPR, DSA and its members argued for additional exemptions that would keep multilevel programs, in particular, from falling within the proposed Rule's purview.[247] DSA asserted that pre-sale disclosures are unnecessary in the context of direct selling where the risk of financial loss is low.[248] To that end, DSA and its members recommended that the Commission preserve the inventory

endorsement or the fact that the endorser knew or had reasons to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser.''). *See also* UFOC Guidelines, Item 18 (disclosure of any compensation or other benefit given or promised to a public figure).

[241] *See, e.g., FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Universal Greeting Cards Corp.,* No. 02–21753–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Inetintl.com, Inc.,* No. 98–2140 (C.D. Cal. 1998).

[242] *See, e.g.,* Illinois Act, 815 ILCS § 601/5–10.(f) (exempting opportunities falling under the Franchise Disclosure Act of 1987); CA SAMP, Cal. Civ. Code at § 1812.201(b)(2) (exempting opportunities falling under the Franchise Investment Law).

[243] 16 CFR at 436.2(a)(3)(i).

[244] 16 CFR at 436.2(a)(3)(ii).

[245] 16 CFR at 436.2(a)(3)(iii).

[246] 16 CFR at 436.2(a)(3)(iv).

[247] The comments submitted by DSA and its members urging various exemptions from the proposed Rule apparently contemplated extensive disclosures, something akin to the current Franchise Rule. For example, during the Rule Review and ANPR proceedings, comments suggested a wide array of disclosures for business opportunities. *E.g.,* Christopher, ANPR 115, at 2 (adding officer histories, financial statements); NASAA, ANPR 120, at 3–4 (adding business experience of promoters and bankruptcy information); Simon, Sept95 Tr at 281–82 (adding audited financials, guarantee of sites); Wieczorek, Sept95 Tr at 284 (adding background on the seller, bankruptcy, fees and initial investment, financials). In light of the streamlined proposed Rule, such exemptions are unnecessary.

[248] DSA, ANPR 34, at 6.

exemptions from the minimum payment requirement.[249] In addition, they contended that a Business Opportunity Rule should not cover opportunities with a repurchase or buy-back plan.[250] They also suggested that the minimum payment threshold should be raised from the current $500 to at least $1,000,[251] in order not to impose significant costs on small direct sellers. In short, DSA and its members asserted that any regulation of the multilevel marketing industry is likely to impose significant costs on small proprietors. Rather, in DSA's view, the problem in the industry is not from multilevel marketers, but from fraudulent pyramid schemes, which the Commission can address through current law.[252]

We note, however, that DSA's position on raising the minimum payment threshold was opposed by many other commenters. Several commenters noted that the purpose of the Rule is to prevent fraud, regardless of the amount at issue. Others asserted that a monetary threshold simply provides scam operators a means to circumvent the Rule, noting that business opportunities frequently charge $495 to skirt the current Franchise Rule's disclosure requirements. For example, NCL stated that the:

> $500 minimum investment * * * leaves many consumers without the disclosures and other protections that they need. Nearly one-third of the consumers who reported to the NFIC last year that they had lost money to fraudulent or deceptive business opportunities paid less than $500. . . . Whatever minimum amount might be set, fraudulent operators will price their services below it, and consumers will be victimized.

NCL, ANPR 35, at 11.[253]

The Commission agrees with the commenters that the scope of the Rule should be broadened to reach all business opportunities that our anti-fraud law enforcement history and consumer complaints show are a widespread and persistent problem. This expansion of Rule coverage, however, would be balanced by drastically reduced compliance costs, as discussed above.

8. Proposed Section 437.8: Other Orders and Preemption

Proposed section 437.8 would address the effect the proposed Rule may have on outstanding Commission orders. It also discusses preemption of state business opportunity laws.

a. Proposed Section 437.8(a): Effect on Prior Commission Orders

The Commission recognizes that the proposed Rule significantly changes the disclosure obligations for those sellers who are now under order in prior Commission Franchise Rule and section 5 actions. For example, the proposed Business Opportunity Rule contemplates greatly streamlined disclosures, as compared to the Franchise Rule's extensive disclosures. At the same time, the proposed Rule would require new disclosures not present in the Franchise Rule, such as the disclosure of the seller's cancellation or refund history. To enable business opportunity sellers to take advantage of the Business Opportunity Rule's reduced disclosure obligations, as well as to reduce any potential conflicts between existing orders and the proposed Business Opportunity Rule, proposed section 437.8(a) would permit persons under order to petition the Commission for relief consistent with the provisions of the new Rule. Specifically, ''business opportunities covered by FTC or court order to follow the Franchise Rule, 16 CFR part 436, may petition the Commission to amend the order so that the business opportunity may follow the provisions of the Business Opportunity Rule.'' Such determinations, however, will be made on a case-by-case basis.

b. Proposed Section 437.8(b): Preemption

Proposed section 437.8(b) would adopt the preemption policy currently found at note 2 of the Franchise Rule.[254] It would provide that the Commission does not intend to preempt state or local business opportunity laws, except to the extent of any conflict with the Rule. Further, a law does not conflict if it affords prospective purchasers equal or greater protection, such as a requirement for registration of disclosure documents or more extensive disclosures.

9. Proposed Section 437.9: Severability

Finally, proposed section 437.9 would adopt the severability provision currently found in the Franchise Rule at 16 CFR at 436.3. This provision would make clear that, if any part of the Rule is held invalid by a court, the remainder will still be in effect.[255]

Section F—Rulemaking Procedures

Pursuant to 16 CFR 1.20, the Commission will use the following rulemaking procedures. These procedures are a modified version of the rulemaking procedures specified in section 1.13 of the Commission's Rules of Practice.

First, the Commission is publishing this Notice of Proposed Rulemaking. The comment period will be open until June 16, 2006, followed by a rebuttal period until July 7, 2006. Interested parties are invited to submit written comments. Written comments must be received on or before June 16, 2006. Rebuttal comments must be received on or before July 7, 2006. All comments should be filed as prescribed in the **ADDRESSES** section above.

Second, pursuant to Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will hold hearings with cross-examination and rebuttal submissions only if an interested party requests a hearing by the close of the comment period. Parties interested in a hearing must submit within the comment period the following: (1) A comment in response to this notice; (2) a statement how they would participate in a hearing; and (3) a summary of their expected testimony. Parties wishing to cross-examine witnesses must also file a request by the

[249] *E.g.,* Longaberger, ANPR 31, at 1; DSA, ANPR 34, at 4; Amway, ANPR 89, at 2; Mary Kay, ANPR 110, at 2.

[250] DSA, ANPR 34, at 5. DSA explained that its code requires all members to repurchase 90% of all inventory on hand from a terminating direct seller if that inventory was purchased within one year prior to termination. *Id. See also* Amway, ANPR 89 at 2 (buyback of unused, marketable inventory within 12 months). DSA and its supporters also contended that the Commission should retain the current 'sales kit exemption.'' In the Interpretive Guides, the Commission said that the sale of sales kits or the distribution of promotional materials alone would not constitute 'significant assistance'' for coverage as a franchise. Interpretive Guides, 44 FR at 49967.

[251] *E.g.,* DSA, ANPR 34, at 3–4; Pampered Chef, ANPR 86, at 2; Amway, ANPR 89, at 2; Mary Kay, ANPR 110.

[252] DSA, RR 21, at 5; Elman, Sept95 Tr at 42. Similarly, DSA asserted that false earnings claims can be addressed through section 5 of the FTC Act. Elman, Sept95 Tr at 265. *See also* Catalano, 20Nov97 Tr at 20 (noting that 25–26 states already have business opportunity laws on the books).

[253] *See also* SBA Advocacy, ANPR 36, at 6 (''threshold should be lowered to $100 in order to curtail the number of unsavory companies that are beyond the reach of the FTC because they sell their scandalous 'business opportunities' for $495.''); James, ANPR 76 (lower the threshold to $300); M. Garceau, 20Nov97 Tr at 53 (''it should be one dollar''); Finnigan, 21Aug97 Tr at 188–99 (''They'll go right to $999 and that's the experience of every state.''); D'Imperio, Sept95 Tr at 130 (''I don't care if it's $10, fraud is fraud.''); Purvin, *id.* at 280 (''companies use that threshold to avoid regulation and consequently have their entry fee be under $500, which seems to me forces the amount of money that a prospective purchaser can lose within a very acceptable norm'').

[254] This approach is consistent with other Commission trade regulation rules. *See, e.g.,* Appliance Labeling Rule, 16 CFR at 305.17; Cooling-Off Rule, 16 CFR at 429.2; Mail Order Rule, 16 CFR at 435.3(b)(2).

[255] This provision is comparable to the severability provisions in other Commission trade regulation rules. *E.g.,* 900–Number Rule, 16 CFR at 308.8; TSR, 16 CFR at 310.9.

close of the 20-day rebuttal period, designating specific facts in dispute and a summary of their expected testimony. If requested to do so, the Commission will hold one or more informal public workshop conferences in lieu of hearings. After the close of the comment period, the Commission will publish a notice in the **Federal Register** stating whether hearings (or a public workshop conference in lieu of hearings) will be held and, if so, the time and place of the hearings and instructions for those wishing to present testimony or engage in cross-examination of witnesses.

Finally, after the conclusion of the rebuttal period, and any hearings or additional public workshop conferences, Commission staff will issue a Report on the Business Opportunity Rule (''Staff Report''). The Commission will announce in the **Federal Register** the availability of the Staff Report and will accept comment on the Staff Report for a period of 75 days.

Section G—Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[256]

Section H—Paperwork Reduction Act

The Commission has submitted this proposed Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget (''OMB'') for review under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3517. In this notice, the Commission proposes to promulgate a trade regulation rule governing business opportunity sales. The proposed Rule would cover those business opportunities currently covered by the Franchise Rule, as well as those not covered by the Franchise Rule, including work-at-home and multilevel marketing programs. The proposed Rule would require business opportunity sellers to disclose information and to maintain certain records relating to business opportunity sales transactions and refund requests.

The current public disclosure and recordkeeping burden associated with the Franchise Rule is 37,000 hours, approved under OMB Control No. 3084–0107. In the FTC's most recent submission for extension of the clearance for the Franchise Rule, the Commission staff estimated that there were 5,000 franchisors (2,500 business and product format franchises and 2,500 business opportunity sellers).[257] As discussed below, the proposed Rule would reduce the burden on business opportunity sellers by streamlining disclosure requirements to minimize compliance costs.[258]

The proposed Rule is designed to streamline and reduce substantially the quantity of information required to be disclosed by business opportunity sellers. The proposals would impact sellers differently, depending upon whether they are currently covered by the Franchise Rule. The Commission staff estimates that there are approximately 3,200 business opportunity sellers, comprised of some 2,500 vending machine, rack display, and related opportunity sellers, 550 work-at-home opportunity sellers, and 150 multilevel marketing companies.

For the 2,500 vending machine, rack display, and related opportunity sellers presently covered by the Franchise Rule, the proposed Rule would reduce the number of disclosures from 20 categories of information to five mandatory disclosures pertaining to earnings claims, lawsuits, refund policy, cancellation and refund requests, and references. For the 700 business opportunity sellers presently exempted from the Franchise Rule, the disclosures, as noted below, are streamlined to minimize compliance costs.

1. Reduced Mandatory Disclosures

The proposed Business Opportunity Rule contains five mandatory disclosures pertaining to earnings claims, lawsuits, refund policy, cancellation and refund requests, and references. With respect to earnings claims, business opportunity sellers must disclose whether or not they make earnings claims. However, the decision to make an earnings claim is optional. While the disclosures of references and earnings claims retain, for the most part, the current Franchise Rule requirements, the required disclosures for lawsuits and refund requests are reduced from the Franchise Rule.

a. Lawsuits

As noted above, the current Franchise Rule requires an extensive list of suits that must be disclosed including those involving allegations of fraud, unfair or deceptive business practices, embezzlement, fraudulent conversion, misappropriation of property, and restraint of trade. Franchisors also must disclose suits filed against them involving the franchise relationship. 16 CFR at 436.1(a)(4). In contrast, the proposed Rule's lawsuit disclosure requirements are limited to suits for misrepresentation, fraud, or unfair or deceptive business practices only.

b. Cancellation and Refund Requests

The current Franchise Rule requires detailed statistical information reflecting changes in the number of franchises during the previous year, specifically the number of:

(1) Franchises sold; (2) franchises voluntarily terminated or not renewed; (3) franchises otherwise reacquired by the franchisor; (4) franchises for which the franchisor refused renewal; (5) franchises cancelled or terminated; as well as the reasons for any reacquisitions, refusals to renew, or terminations. 16 CFR at 436.1(a)(16). In contrast, the proposed Rule requires only the disclosure of the number of sales in the last two years and the number of cancellation and refund requests received by the seller during the same period.

2. Incorporation of Existing Materials

The proposed Rule also reduces collection and dissemination costs by permitting sellers to reference in their disclosure documents materials already in their possession. For example, a seller need not repeat its refund policy in the text of the disclosure document, but may incorporate its contract or brochures, or other materials that already provide the necessary details.

3. Use of Electronic Dissemination of Information

The proposed Rule redefines the term ''written'' to include electronic media. Accordingly, all business opportunities covered by the proposed Rule are permitted to use the Internet and other electronic media to furnish disclosure

[256] *See* 15 U.S.C. 57a(i)(2)(A); 45 FR 50814 (1980); 45 FR 78626 (1980).

[257] 70 FR 51819 (Aug. 31, 2005).

[258] If the Commission ultimately issues a final rule for business opportunity sellers, the Commission staff will request that OMB adjust the clearance for the Franchise Rule because the Franchise Rule will no longer apply to business opportunity sellers.

documents. Allowing this distribution method could greatly reduce sellers' compliance costs over the long run, especially costs associated with printing and distributing disclosure documents. As a result of this proposal, the Commission expects sellers' compliance costs will decrease substantially over time.

4. Use of Computerized Data Collection Technology

Finally, because of advances in computerized data collection technology, the Commission staff anticipates that the costs of collecting information and recordkeeping requirements imposed by the Rule will be minimal. For example, a seller can easily maintain a spreadsheet of its purchasers, which can be sorted by location. This would enable a seller to comply easily with the proposed reference list requirement (at least 10 prior purchasers in the last three years who are located nearest the prospective purchaser, or, if there are not 10, then all prior purchasers). In the alternative, the proposed Rule permits a seller to maintain a national list of purchasers. Such a list could be posted on the seller's Web site, for example.

As a result of these proposals, the Commission staff estimates that compliance with the proposed Rule by business opportunity sellers, on average, will require one to three hours to prepare an initial disclosure document, and one to two hours per year to maintain the necessary records. Staff assumes that in many instances an attorney likely would prepare or update the disclosure document. Accordingly, staff estimates the total number of hours initially to comply with the proposed Rule to be approximately 16,000 (3,200 sellers × 5 hours), at a total initial labor cost of $4,000,000 (16,000 hours × $250). The Commission staff expects that the annual disclosure burden will diminish after the first year to one to two hours to prepare disclosures and one to two hours to retain records, resulting in approximately 12,800 hours (3,200 sellers × 4 hours) or fewer, for a total average cost of $3,200,000 (12,800 hours × $250), or less.

The Commission invites comments that will enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical utility;

2. Evaluate the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, usefulness, and clarity of the information to be collected; and

4. Minimize the burden of 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, for example, permitting electronic submission of responses.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

OMB will act on this request for review of the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days of publication. This does not affect the deadline for the public to comment to the FTC on the proposed regulation.

Section I—Regulatory Analysis

Section 22 of the FTC Act, 15 U.S.C. 57b, requires the Commission to issue a preliminary regulatory analysis when publishing a Notice of Proposed Rulemaking, but requires the Commission to prepare such an analysis for a rule amendment proceeding only if it: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. To the extent that this Document constitutes a Notice of Proposed Rulemaking, the Commission has set forth in Section J below, in connection with its Initial Regulatory Flexibility Analysis (''IRFA'') under the Regulatory Flexibility Act, and has discussed elsewhere in this Document: (1) The need for and objectives of the proposed Rule (see IRFA ¶ 2); (2) a description of reasonable alternatives that would accomplish the Rule's stated objectives consistent with applicable law (see IRFA ¶ 6); and a preliminary analysis of the benefits and adverse effects of those alternatives (see *id.*). Alternatively, to the extent that this proceeding proposes to amend the existing Franchise Rule, the Commission has preliminarily determined that the proposed amendments to the Franchise Rule will not have such an effect on the national economy, on the cost or prices of goods or services sold through business opportunities, or on covered businesses or consumers. As noted in the Paperwork Reduction Act discussion above, the Commission staff estimates each business affected by the Rule will likely incur only minimal compliance costs. Specifically, approximately 3,200 businesses will spend not more than $750 (3 hours × $250 each) to create an initial disclosure document and not more than $500 (2 hours × $250 each) to update the four required disclosures on an annual basis. To ensure that the Commission has considered all relevant facts, however, it requests additional comment on these issues.

Section J—Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an IRFA with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The FTC does not expect that the proposed Business Opportunity Rule will have a significant economic impact on a substantial number of small entities. The abbreviated disclosure and recordkeeping requirements of the proposed Business Opportunity Rule are the minimum necessary to give consumers the information they need to protect themselves and permit effective enforcement of the rule. As such, the economic impact of the proposed Rule will be minimal. In any event, the burdens imposed on small businesses are likely to be relatively small, and in the Commission's enforcement experience, insignificant in comparison to their gross sales and profits.

This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the

Commission has prepared the following analysis.

1. Description of the Reasons That Action by the Agency Is Being Considered

The Commission's law enforcement experience provides ample evidence that fraud is pervasive in the sale of many business opportunities marketed to consumers. The pre-sale disclosures provided by the proposed Business Opportunity Rule will give consumers the minimal information they need to protect themselves from fraudulent sales claims, while minimizing the compliance costs and burdens on sellers.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to provide consumers considering the purchase of a business opportunity with material information they need to investigate the offering thoroughly so they can protect themselves from fraudulent claims. The legal basis for the proposed Rule is Section 18 of the FTC Act, 15 U.S.C. 57a, which authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices in or affecting commerce that are unfair or deceptive within the meaning of section (5)(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

3. Description of and, Where Feasible, Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed Rule primarily applies to ''sellers'' of business opportunities, including vending, rack display, medical billing and work-at-home (*e.g.*, craft assembly, envelope stuffing) opportunities, as well as pyramid schemes masquerading as multilevel sales programs. The FTC staff believes that many of these sellers will fall into the category of small entities. Determining the precise number of small entities affected by the proposed Rule, however, is difficult due to the wide range of types of businesses engaged in business opportunity sales. The staff estimates that there are approximately 3,200 business opportunity sellers, including some 2,500 vending machine, rack display, and related opportunity sellers; 550 work-at-home opportunity sellers; and 150 multilevel marketing companies. Most established and some start-up business opportunities would likely be considered small businesses according to the applicable SBA size standards.[259] The FTC staff estimates that as many as 70% of business opportunities, as defined by the Rule, are small businesses. The Commission invites comments and information on this issue.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed Rule imposes disclosure and recordkeeping requirements, within the meaning of the Paperwork Reduction Act, on the ''sellers'' of business opportunities and their principals. Section 437.2 of the proposed Rule would require ''sellers'' of covered business opportunities to provide potential purchasers with a one-page disclosure document, as specified by section 437.3 and Appendix A, at least seven calendar days before they sign a contract or pay any money toward a purchase. If a seller elects to make an earnings claim, section 437.4 would require that written substantiation for the claim be provided to the purchaser in a separate ''earnings claim statement'' document. However, the proposed Rule would not require sellers to make an earnings claim, and thus any compliance costs incurred in connection with such claims are strictly optional.

Section 437.6 of the proposed Rule prescribes recordkeeping requirements necessary for effective enforcement of the Rule. Specifically, sellers of a covered business opportunity, and their principals, must retain for at least three years the following six types of documents: (1) Records of any oral cancellation or refund requests received from a purchaser; (2) each materially different version of all documents required by the Rule; (3) each purchaser's disclosure receipt; (4) each executed written contract with a purchaser; (5) each cancellation or refund request received from a purchaser; and (6) all substantiation upon which the seller relies for each earnings claim made. The proposed Rule requires that these records be made available for inspection by the Commission, but does not otherwise require production of the records. The Commission is seeking clearance from the Office of Management and Budget (''OMB'') for these requirements and the Commission's Supporting Statement submitted as part of that process will be made available on the public record of this rulemaking.

As discussed in section H above, FTC staff estimates that the total number of hours initially to comply with the proposed Rule to be approximately 16,000 (3,200 sellers × 5 hours), with a total initial legal and clerical cost of $4,000,000 (16,000 hours × $250). FTC staff expects that the annual burden will diminish after the first year, however, to approximately 12,800 hours (3,200 sellers × 4 hours) or fewer, for a total average of annual legal and clerical labor costs of $3,200,000 (12,800 hours × $250), or less.

5. Other Duplicative, Overlapping, or Conflicting Federal Rules

There are no other federal statutes, rules, or policies that would conflict with the proposed Business Opportunity Rule. The Commission's Franchise Rule, 16 CFR Part 436.1, is the only federal regulation currently applicable to some of the business opportunities covered by the proposed Rule. When the proposed Business Opportunity Rule takes effect, its requirements for business opportunity sellers will supercede the requirements of the Franchise Rule, so that any possible conflict between the two rules will be avoided.

The Commission notes, however, that it is aware that 22 states have statutes specifically governing the sale of business opportunities. The Commission therefore seeks comment and information about any state statutes or rules that may conflict with the proposed requirements, as well as any other state, local, or industry rules or policies that require covered entities to implement practices that conflict or comport with the requirements of the proposed Rule.

[259] Since October 2000, SBA size standards have been based on the North American Industry Classification System (''NAICS''), in place of the Standard Industrial Classification (''SIC'') system. In general, a company in a non-manufacturing industry is a small business if its average annual receipts are $6 million or less. *See http://www.sba.gov/size/indexguide.html.* Thus, the size standard for vending machine operators is $6 million in annual receipts (NAICS 454210), and the same size standard applies to other direct selling establishments (NAICS 454390), marketing consulting services (NAICS 541613), other management consulting services (NAICS 541618) and other business support services (NAICS 561499 and 561990). *See http://www.sba.gov/size/sizetable2002.html.*

6. Description of Any Significant Alternatives to the Proposed Rule That Would Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered, Such as: (1) Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities; (2) Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities; and (3) Any Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

The proposed Rule's disclosure and recordkeeping requirements are designed to impose the minimum burden on all affected business opportunity sellers, regardless of size. In formulating the proposed Rule, the Commission has taken a number of significant steps to minimize the burdens the proposed Rule would impose on large and small businesses. These include: (1) Limiting the required pre-sale disclosure to a one-page document, with check boxes provided to simplify disclosure responses; (2) allowing the disclosure to refer to information in other existing documents to avoid needless duplication; (3) permitting the disclosure document itself to be furnished in electronic form to minimize printing and distribution costs; and (4) employing specific prohibitions in place of affirmative disclosures whenever possible. Moreover, because many of the sellers covered by the proposed Rule are already required to comply with the Commission's Franchise Rule and the business opportunity laws in 22 states, FTC staff anticipates that the proposed Rule will drastically reduce their current compliance costs, while imposing exceedingly modest ongoing compliance costs on all covered sellers. Consequently, the Commission believes that the proposed Rule will not have a significant economic impact upon small businesses.

The proposed Rule would require business opportunity sellers to provide only five affirmative disclosures in a one-page disclosure document. This is a significant reduction from the 20 disclosures now required by the Commission's Franchise Rule, with which many business opportunity sellers are now obligated to comply. The proposed Rule limits required disclosures to information about the sellers' litigation history, refund policy, refund request history, and prior purchaser references. Because the proposed Rule does not require sellers to make information about potential earnings available to potential purchasers, such earnings claims are entirely optional. Thus, if sellers make no earnings claims whatsoever, they can avoid the proposed Rule's requirement that any person making an earnings claim provide a potential purchaser with an earnings claim representation in writing that provides substantiation for the claim.

Thus, the Commission does not believe that the proposed Rule will impose a significant economic impact on a substantial number of small businesses. Nonetheless, the Commission specifically requests comment on the question whether the proposed Rule imposes a significant impact upon a substantial number of small entities, and what modifications to the Rule the Commission could make to minimize the burden on small entities. Moreover, the Commission requests comment on the general question whether new technology or changes in technology can be used to reduce the burdens mandated by the Act.

In some situations, the Commission has considered adopting a delayed effective date for small entities subject to a new regulation in order to provide them with additional time to come into compliance. In this case, however, in light of the proposed Rule's flexible standard and modest compliance costs, the Commission believes that small entities should feasibly be able to come into compliance with the proposed Rule by the proposed effective date, six months following publication of the final Rule. Nonetheless, the Commission invites comment on whether small businesses might need additional time to come into compliance and, if so, why.

In addition, the Commission has the authority to exempt any persons or classes of persons from the Rule's application pursuant to section 18(g) of the FTC Act. The Commission therefore requests comment on whether there are any persons or classes of persons covered by the proposed Rule that it should consider exempting from the Rule's application pursuant to section 18(g). However, the Commission notes that the proposed Rule's purpose of protecting consumers against fraud could be undermined by the granting of a broad exemption to small entities.

7. Questions for Comment To Assist Regulatory Flexibility Analysis

a. Please provide information or comment on the number and type of small entities affected by the proposed Rule. Include in your comment the number of small entities that will be required to comply with the Rule's disclosure and recordkeeping requirements.

b. Please provide comment on any or all of the provisions in the proposed Rule with regard to: (a) The impact of the provision(s) (including benefits and costs to implement and comply with the Rule or Rule provision), if any; and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the proposed Rule on small entities in light of the above analysis. In particular, please provide the above information with regard to the disclosure and recordkeeping provisions of the proposed Rule set forth in sections 437.2, 437.3, 437.4 and 437.6, and describe any ways in which the proposed Rule could be modified to reduce any costs or burdens for small entities consistent with the proposed Rule's purpose. Costs to implement and comply with a Rule provision include expenditures of time and money for: Any employee training; attorney, computer programmer or other professional time; preparing relevant materials (*e.g.*, disclosure documents), and recordkeeping.

c. Please describe ways in which the Rule could be modified to reduce any costs or burdens on small entities, including whether and how technological developments could further reduce the costs of implementing and complying with the proposed Rule for small entities.

d. Please provide any information quantifying the economic costs and benefits of the proposed Rule on the entities covered, including small entities.

e. Please identify any relevant federal, state, or local rules that may duplicate, overlap or conflict with the proposed Rule.

Section K—Request for Comments

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed Business Opportunity Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

1. General Questions

Please provide comment, including relevant data, statistics, consumer complaint information, or any other evidence, on each different provision of the proposed Rule. Regarding each provision, please include answers to the following questions:

a. How prevalent is the practice the provision seeks to address?

b. What is the impact (including any benefits and costs), if any, on:

1. Prospective business opportunity purchasers;

2. Existing business opportunity purchasers; and

3. Business opportunity sellers (including small business opportunity sellers and start-up sellers)?

c. What alternative proposals should the Commission consider? How would these proposed alternatives affect the costs and benefits of the proposed Rule?

2. Questions on Specific Proposals

In response to each of the following questions, please provide: (1) Detailed comment, including data, statistics, consumer complaint information, and other evidence, regarding the issues addressed in the question; (2) comment as to whether the proposal does or does not provide an adequate solution to the problems it is intended to address; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on business opportunity sellers.

Definitions

1. Proposed section 437.1(d) would limit the definition of ''business opportunity'' to instances where a seller solicits a purchaser to enter into a new business (or new line or type of business). This limitation seeks to distinguish the sale of business opportunity ventures from the ordinary sale of goods and services. Is limiting the definition of ''business opportunity'' to solicitations to enter into a new business adequate to make this distinction? If not, what alternative limitation should the Commission consider? What would be the costs and benefits of each alternative?

2. Proposed section 437.1(d) contemplates that a business arrangement will constitute a ''business opportunity'' if the seller either promises business assistance or makes an earnings claim. Are both alternatives necessary? Are there business opportunities that offer assistance without making an earnings claim? Are there business opportunities that make earnings claims that do not offer assistance? Should the definition of ''business opportunity'' focus on the offer of assistance alone or on the making of earnings claims alone? What alternatives should the Commission consider? What would be the costs and benefits of each alternative?

3. Proposed section 437.1(d) contemplates that a business arrangement will constitute a ''business opportunity'' if the purchaser pays consideration to the seller, directly or indirectly through a third party. The proposed definition, however, does not contain a minimum payment threshold. The Commission believes that, in light of the limited compliance costs—far less than under the Franchise Rule—all business opportunity sellers (with the exception of franchisors under the Franchise Rule), should comply with the Rule. Further, the record shows that whatever threshold might be set forth in a Business Opportunity Rule, fraudulent business opportunity sellers will price their opportunities at an amount just under the threshold in order to avoid compliance. Nevertheless, should the Commission consider a monetary threshold and if so, why? At what level should the threshold be set? If so, how can the Commission ensure that fraudulent business opportunity sellers will not price their opportunities just under the threshold in order to avoid Rule coverage? What alternatives should the Commission consider? What would be the costs and benefits of each alternative?

4. Proposed section 437.1(c) would define the term ''business assistance,'' setting forth five examples. Are each of these examples warranted? What other examples, if any, might better capture the nature of business assistance offered by business opportunity sellers? What would be the costs and benefits of each alternative?

5. Proposed section 437.1(c) would include as an example of ''business assistance'' the tracking or paying, or purporting to track or pay, commissions or other compensation based upon the sale of goods or services or recruitment of other persons to sell goods or services. This example is intended to capture pyramid marketing programs that assist program participants in tracking commissions to be paid or by paying commissions to participants' downstream. Does this example adequately capture pyramid schemes? Is it too broad, sweeping in business arrangements other than pyramids? If so, what alternative, if any, should the Commission consider to capture pyramid programs? What would be the costs and benefits of each alternative?

6. Proposed section 437.1(k) would make clear that the Rule applies to persons already in business who are seeking to enter into a new line of business. Do persons already in business need the protection of the proposed Rule? Does this provision impose unwarranted costs? Should the Commission consider alternatives regarding persons already in business who are either looking to purchase a new business opportunity or to expand their line of business? If so, what would be the costs and benefits of each alternative?

Timing Provision

7. Proposed section 437.2 contemplates that a seller must furnish a prospective purchaser with a disclosure document at least seven calendar days before the earlier of the time that the prospective purchaser: (1) Signs any contract in connection with the business opportunity sale; or (2) makes a payment or provides other consideration to the seller, directly or indirectly through a third party, for the purchase or lease of goods or services. Is a seven calendar-day period warranted to enable prospective purchasers to investigate and make an informed investment decision? Is a seven calendar-day period necessary to enable prospective purchasers to review any earnings claims? Would a seven calendar-day review period impose unnecessary delay or excessive costs when the prospective purchaser is already in business? Should the review period be shortened to five or three days? What would be the costs and benefits of each alternative time period?

Liability

8. Proposed section 437.3 would provide that only a seller has the obligation to furnish a basic disclosure document. While a seller may hire brokers or others to arrange for sales, the seller ultimately has the obligation to ensure that disclosures are properly prepared and disseminated to prospective purchasers. Is it proper to limit liability for preparing and disseminating disclosure documents to the seller? Should other individuals or entities involved in a business opportunity sale also be liable for either failing to furnish disclosure documents or for the contents of an incomplete or inaccurate disclosure documents? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

The Disclosure Document

9. Proposed section 437.3(a) requires that disclosure documents be ''in the form and using the language set forth in

Appendix A.'' Is this instruction sufficient to inform business opportunity sellers on how to prepare a basic disclosure document? Should the Commission revise the proposed Rule specifically to reference each of the required boilerplate disclosures? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

10. The one-page disclosure document set forth in Appendix A is intended to provide prospective purchasers with material information with which to make an informed investment decision. Can the overall presentation of the information in the one-page disclosure document be improved? Are there specific sections that can be improved by simplifying the presentation to make it easier for prospective purchasers to understand? How could the presentation be improved? What would be the costs and benefits of each alternative?

11. The one-page disclosure document set forth in Appendix A is intended to assist prospective purchasers by describing the nature of the information disclosed. For example, where a seller checks the ''yes'' box in connection with earnings claims, it clarifies for prospective purchasers that the seller or its representative is furnishing sales, income, or profit data. At the same time, the one-page disclosure document sets forth legal standards, summarizing for sellers and prospective purchasers the more lengthy disclosure obligations found in the text of the Rule. Accordingly, the Commission has tried to balance, as much as possible, the use of clear language readily understandable by prospective purchasers with the need for clear legal standards applicable to sellers. Has the Commission succeeded in striking the appropriate balance? Are there areas where the understandability of the one-page disclosure document may be improved, without sacrificing clear legal standards? Are there specific sections where the proposed language does not accurately convey the substance of the corresponding Rule provision? What improvements should the Commission consider to the language found in the one-page disclosure document? What would be the costs and benefits of each alternative?

12. The disclosure document provides a space for the name of the ''Seller.'' In addition to any company or d/b/a name listed next to ''Seller,'' should ''Seller'' also include the principal officers' names? Should the addition of such names depend on whether or not the seller is a d/b/a? What are the costs and benefits of including both the company and the principal officers' names next to ''Seller''? Should previous business opportunities offered by the seller's principal officers be disclosed? What are the costs and benefits of including such information?

13. Proposed section 437.3(a)(3) would require sellers to furnish certain litigation information. Specifically, the seller would disclose information about itself, as well as any affiliates and prior businesses, any of the seller's officers, directors, sales managers (or other individuals who occupy a similar position or perform similar functions), and employees who are involved in business opportunity sales activities. The intent of this provision is to capture all individuals who function as officers, directors, or sales managers, even though they may not have a formal title. In addition, it also captures those employees who are involved in sales activities. Does this provision adequately capture the types of individuals whose litigation should be disclosed? Is the phrase ''any individual who occupies a similar position or performs a function similar to an officer, director, or sales manager of the seller'' adequate to identify those who act as or perform the functions of officers, directors, or sales managers? Similarly, is the language ''employees who are involved in business opportunity sales activities'' too broad? What alternative language, if any, should the Commission consider? What would be the costs and benefits of each alternative?

14. Proposed section 437.3(a)(3) would limit the types of suits that must be disclosed to civil and criminal actions involving misrepresentation, fraud, securities law violations, or unfair or deceptive practices within 10 years immediately preceding the date that the business opportunity is offered. Are these types of actions sufficient to enable a prospective purchaser to assess the risk of purchasing an opportunity from the seller? Should the list be expanded to include bankruptcy? Should it be expanded to include suits against the seller for breach of contract? How often do business opportunity purchasers sue sellers for breach of contract, as opposed to misrepresentation or fraud? Is 10 years a sufficient period to track prior litigation? Is a 10-year period too long? If so, what alternative time period, if any, should the Commission consider? What would be the costs and benefits of each alternative?

15. Proposed section 437.3(a)(3) would require a seller disclosing litigation to include the full caption of each action, including the names of the principal parties, case number, full name of the court, and the filing date. Should more detail be provided about legal actions? Should the business opportunity seller also have to provide information about any of the following topics: the final disposition of the action; the penalties imposed; the damages assessed; the terms of the settlement; or the terms of the order? What would be the costs and benefits of including such additional information?

16. Proposed section 437.3(a)(4) would require a seller to disclose whether or not the seller has a cancellation or refund policy. In addition, proposed section 437.3(a)(5) would require the seller to state the number of purchasers of the business opportunity during the two years prior to the date of the disclosure and the number of cancellation and refund requests submitted by prior purchasers during the same period. The purpose of this provision is to assist the prospective purchaser in assessing the viability of the offer and the likelihood of the seller's post-sale performance. The focus on cancellations and refunds assumes that a seller would be better able to disclose information about such requests that it receives than information about the current status of prior purchasers. Is this assumption correct? To what extent do business opportunity sellers track the current status of prior purchasers? Is cancellation or refund request information relevant in a business opportunity sale? Does such information correctly imply dissatisfaction or problems within a business opportunity system? Would such a disclosure requirement actually discourage sellers from offering cancellations or refunds? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

17. Proposed section 437.3(a)(6) would require each seller to disclose the name, city and state, and telephone number for at least 10 prior purchasers nearest to the prospective purchaser's location. The Commission believes the disclosure of this information is critical to enable a prospective business opportunity purchaser to verify the seller's claims and to conduct a due diligence investigation of the offering. Is this information proprietary for the seller? If so, do the benefits of such disclosure to prospective purchasers outweigh the costs to sellers? Are there other ways to identify prior purchasers? What alternatives, if any, should the Commission consider? What would be

the costs and benefits of each alternative?

18. As an alternative, proposed section 437.3(a)(6) would enable a seller to furnish prospective purchasers with a national list of prior purchasers. Is this a viable option? Would sellers be inclined to publish a single national list rather than individualized lists of purchasers ''nearest to the prospective purchaser's location?'' Under what circumstances should the Rule permit a seller to post a national list of purchasers on its Web site? What protections should be put in place to limit access to the list? What protections might be sufficient to prevent those who merely want to sell fraudulent business opportunities from accessing such a list? What other options, if any, should the Commission consider? Would these options enable the seller to select only those prior purchasers who are successful or who otherwise would give a favorable report on the seller? What would be the costs and benefits of each alternative?

19. Proposed section 437.3(b) would require the disclosure of contact information, raising privacy concerns. Accordingly, the Commission proposes that sellers include in the references section of the disclosure document the following: ''If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.'' Are there alternative methods that would protect prior purchasers' privacy? Should the Commission consider an opt-out provision, enabling purchasers to decline having their contact information listed in a disclosure document? Would sellers likely exploit an opt-out provision by inducing purchasers to opt out, thereby avoiding the obligation to disclose prior purchasers as references? Would sellers use an opt-out provision to create, in effect, a self-serving list of successful purchasers or shills? Are there alternative methods employed by the states that the Commission should consider?

20. Once the Rule becomes effective, sellers must disclose contact information for prior purchasers. However, individuals who have purchased a business opportunity before the Rule becomes effective probably will have received no notice that their contact information can be disclosed to other purchasers in the future. How should the Commission balance the goals of disclosing prior purchasers as references with the fact that, at least initially, some prior purchasers will not have received any privacy notice? Should the Commission phase in the use of references? For example, should the seller update its reference list on a monthly basis drawing only from those purchasers who have received a privacy notice? Is a monthly updating requirement feasible? What alternative updating requirement should the Commission consider? Would a monthly updating requirement disadvantage those purchasers who buy a business opportunity immediately after the Rule goes into effect, when no or few prior purchasers will have received the required privacy notice? What alternatives should the Commission consider? What would be the costs and benefits of each alternative?

21. Are there other disclosures that should be included in the disclosure document? Specifically, should any proposed initial purchaser price of the business opportunity and/or payments to be sent to third parties be listed on the disclosure document? Why or why not? What would be the costs and benefits of including such information?

Earnings Claims

22. Proposed section 437.4(a)(4) would set forth the required content of an earnings claims statement. It includes the name of the person making the claim, the date of the claim, the claim, the beginning and ending dates when the represented earnings were achieved, the number and percentage of all purchasers during the stated time frame who achieved at least the stated level of earnings, and a description of any characteristics of the purchasers who achieved the represented earnings that may be materially different from the characteristics of the prospective purchasers being offered the business opportunity. Is this information sufficient to enable a prospective purchaser to assess the validity of an earnings claim? What other substantiation, if any, should be required? Should a seller be able to make an earnings claim if it does not have complete and accurate information on the number and percentage of prior purchasers who have achieved the represented level of earnings? If so, under what conditions should such earnings claims be permitted? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

23. Proposed section 437.4(c) would address the dissemination of industry financial, earnings, or performance information. Specifically, a seller would be barred from using such information unless the seller has written substantiation demonstrating that the information reflects the typical or ordinary financial performance experience of purchasers of the business opportunity being offered for sale. Should a seller be required to disclose the number and percentage of its purchasers that have achieved at least the same level of performance as the industry figures? Would number and percentage information be sufficient to enable a prospective purchaser to assess the applicability of industry information to the opportunity being offered? Do business opportunity sellers collect performance data from purchasers? Is such information readily available? What other alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

Prohibited Acts and Practices

24. Proposed section 437.5 would set forth a number of prohibited acts or practices. Is the proposed list complete? Are there any other practices common among business opportunity sellers that should be prohibited? Are any of the proposed prohibitions unnecessary? What would be the costs and benefits of each proposed prohibition? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

25. Proposed section 437.5 would prohibit sellers from misrepresenting the business opportunity, directly or through third parties. Accordingly, a business opportunity could be held liable for misrepresentations made about the business opportunity through third parties, such as a locator or broker. Should third parties involved in the business opportunity sales process be held liable for misrepresenting the seller's disclosures? Proposed section 437.5 also does not address when a third party—such as a shill—makes his or her own misrepresentations outside of the disclosure document. The Commission believes that third parties can be held liable for their own misrepresentations under section 5 of the FTC Act. Is section 5 of the FTC Act sufficient to address independent misrepresentations made outside of a disclosure document by such third parties? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

Federal and State Relations

26. The proposed Rule would prohibit business opportunity sellers from adding any other information to the required disclosures, including information required by state law. This approach is different from the Franchise

Rule approach, which enables franchisors to include additional materials in a disclosure document that are required or permitted by state law. Because the proposed disclosure document comprises a single page (and any attachments), sellers can easily attach the federal disclosure document to any disclosure document required under state law, without imposing significant costs or burdens. In light of the vastly different laws governing business opportunities on the state level, this approach will also preserve the uniformity of federal disclosure documents. Is this approach proper? How can the Commission best accommodate divergent state business opportunity approaches? What alternatives, if any, should the Commission consider? What would be the costs and benefits of each alternative?

Record Retention

27. Proposed section 437.6 would require that records be kept for ''each oral or written cancellation or refund request received from a purchaser.'' How should oral cancellation or refund requests be kept? Is there certain information that should be preserved in a written form, such as name, address, amount of request, date, and resolution of the request? What would be the costs and benefits of requiring such record retention obligations?

Section L—Proposed Rule

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend 16 CFR Chapter I by adding part 437 to read as follows:

PART 437—BUSINESS OPPORTUNITY RULE

Sec.

437.1 Definitions.
437.2 The obligation to furnish written documents.
437.3 The disclosure document.
437.4 Earnings claims.
437.5 Other prohibited practices.
437.6 Record retention.
437.7 Franchise exemption.
437.8 Other laws, rules, orders.
437.9 Severability.

Appendix A to Part 437—Model Document

Authority: 15 U.S.C. 41–58.

§ 437.1 Definitions.

The following definitions shall apply throughout this part:

(a) *Action* means a criminal information, indictment, or proceeding; a civil complaint, cross claim, counterclaim, or third-party complaint in a judicial action or proceeding; arbitration; or any governmental administrative proceeding, including, but not limited to, an action to obtain or issue a cease and desist order, and an assurance of voluntary compliance.

(b) *Affiliate* means an entity controlled by, controlling, or under common control with a business opportunity seller.

(c) *Business assistance* means the offer of material advice, information, or support to a prospective purchaser in connection with the establishment or operation of a new business.

(1) Business assistance includes, but is not limited to:

(i) Providing, or purporting to provide, locations for the use or operation of equipment, displays, vending machines, or similar devices, on premises neither owned nor leased by the purchaser;

(ii) Providing, or purporting to provide, outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services;

(iii) Buying back, or purporting to buy back, any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides;

(iv) Tracking or paying, or purporting to track or pay, commissions or other compensation based on the purchaser's sale of goods or services or recruitment of other persons to sell goods or services; and

(v) Advising or training, or purporting to advise or train, the purchaser in the promotion, operation, or management of a new business, or providing, or purporting to provide, the purchaser with operational, managerial, technical, or financial guidance in the operation of a new business.

(2) Provided, however, that ''business assistance'' does not include a written product warranty or repair contract, or guidance in the use, maintenance, and/or repair of any product to be sold by the purchaser or of any equipment acquired by the purchaser.

(d) *Business opportunity* means a commercial arrangement in which:

(1) The seller solicits a prospective purchaser to enter into a new business;

(2) The prospective purchaser makes a payment or provides other consideration to the seller, directly or indirectly through a third party; and

(3) The seller, expressly or by implication, orally or in writing, either:

(i) Makes an earnings claim; or

(ii) Represents that the seller or one or more designated persons will provide the purchaser with business assistance.

(e) *Cancellation or refund request* means any request to cancel or rescind a business opportunity purchase, or any request to seek a refund, in whole or in part, for a business opportunity purchase, whether or not the purchaser has a contractual right to cancel, rescind, or seek a refund.

(f) *Designated person* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business, including, but not limited to, any person who finds or purports to find locations for equipment.

(g) *Disclose or state* means to give information in writing that is clear and conspicuous, accurate, concise, and legible.

(h) *Earnings claim* means any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits. Earnings claims include, but are not limited to:

(1) Any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and

(2) any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (*e.g.*, ''earn enough to buy a Porsche,'' ''earn a six-figure income,'' or ''earn your investment back within one year'').

(i) *Exclusive territory* means a specified geographic or other actual or implied marketing area in which the seller promises not to locate additional purchasers or offer the same or similar goods or services as the purchaser through alternative channels of distribution.

(j) *General media* means any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, Web site, and commercial bulk e-mail.

(k) *New business* means a business in which the prospective purchaser is not currently engaged, or a new line or type of business.

(l) *Person* means an individual, group, association, limited or general partnership, corporation, or any other entity.

(m) *Prior business* means:

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets, or

(2) Any business previously owned or operated by the seller, in whole or in part, by any of the seller's officers, directors, sales managers, or by any other individual who occupies a

position or performs a function similar to that of an officer, director, or sales manager of the seller.

(n) *Providing locations, outlets, accounts, or customers* means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; or training or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers.

(o) *Purchaser* means a person who buys a business opportunity.

(p) *Quarterly* means as of January 1, April 1, July 1, and October 1.

(q) *Seller* means a person who offers for sale or sells a business opportunity.

(r) *Written or in writing* means any document or information in printed form or in any form capable of being downloaded, printed, or otherwise preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; information on computer disk or CD–ROM; information sent via e-mail; or information posted on the Internet. It does not include mere oral statements.

§ 437.2 The obligation to furnish written documents.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act (''FTC Act'') for any seller to fail to furnish a prospective purchaser with the material information required by §§ 437.3(a) and 437.4(a) of this Rule in writing at least seven calendar days before the earlier of the time that the prospective purchaser:

(a) Signs any contract in connection with the business opportunity sale; or

(b) makes a payment or provides other consideration to the seller, directly or indirectly through a third party.

§ 437.3 The disclosure document.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of section 5 of the FTC Act, for any seller to:

(a) Fail to disclose to a prospective purchaser the following material information in a single written document in the form and using the language set forth in Appendix A to part 437:

(1) Identifying information. State the name, business address, and telephone number of the seller, the name of the salesperson offering the opportunity, and the date when the disclosure document is furnished to the prospective purchaser.

(2) Earnings claims. If the seller makes an earnings claim, check the ''yes'' box and attach the earnings statement required by section 437.4. If not, check the ''no'' box.

(3) Legal actions.

(i) If any of the following persons has been the subject of any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices within the 10 years immediately preceding the date that the business opportunity is offered, check the ''yes'' box:

(A) The seller;

(B) Any affiliate or prior business of the seller;

(C) Any of the seller's officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller; or

(D) Any of the seller's employees who are involved in business opportunity sales activities.

(ii) If the ''yes'' box is checked, disclose all such actions in an attachment to the disclosure document. State the full caption of each action (names of the principal parties, case number, full name of court, and filing date).

(iii) If there are no actions to disclose, check the ''no'' box.

(4) Cancellation or refund policy. If the seller offers a refund or the right to cancel the purchase, check the ''yes'' box. If so, state the terms of the refund or cancellation policy in an attachment to the disclosure document. If no refund or cancellation is offered, check the ''no'' box.

(5) Cancellation or refund requests. State the total number of purchasers of the same type of business opportunity offered by the seller during the two years prior to the date of disclosure. State the total number of oral and written cancellation requests during that period for the sale of the same type of business opportunity. For purposes of this disclosure, ''two years'' means the eight quarters immediately preceding the date of the disclosure document.

(6) References.

(i) State the name, city and state, and telephone number of all purchasers who purchased the business opportunity within the last three years. If more than 10 purchasers purchased the business opportunity within the last three years, the seller may limit the disclosure by stating the name, city and state, and telephone number of at least the 10 purchasers within the past three years who are located nearest to the prospective purchaser's location. Alternatively, a seller may furnish a prospective buyer with a list disclosing all purchasers nationwide within the last three years. If choosing this option, insert the words ''See Attached List'' without removing the list headings or the numbers 1 through 10, and attach a list of the references to the disclosure document.

(ii) Clearly and conspicuously, and in immediate conjunction with the list of references, state the following: ''If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.''

(7) Receipt. Attach a duplicate copy of the disclosure page to be signed and dated by the purchaser. The seller may inform the prospective purchaser how to return the signed receipt (for example, by sending to a street address, email address, or facsimile telephone number).

(b) Fail to update the disclosures required by paragraph (a) of this section at least quarterly to reflect any changes in the required information, including, but not limited to, any changes in the seller's refund or cancellation policy, the total number of purchasers, the number of cancellation requests, or the list of references; *provided, however*, that until a seller has 10 purchasers, the list of references must be updated monthly.

§ 437.4 Earnings claims.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of section 5 of the FTC Act, for the seller to:

(a) Make any earnings claim to a prospective purchaser, unless the seller:

(1) Has a reasonable basis for its claim at the time the claim is made;

(2) Has in its possession written materials that substantiate its claim at the time the claim is made;

(3) Makes the written substantiation available upon request to the prospective purchaser and to the Commission; and

(4) Furnishes to the prospective purchaser an earnings claim statement. The earnings claim statement shall be a single written document and shall state the following information:

(i) The title ''EARNINGS CLAIM STATEMENT REQUIRED BY LAW'' in capital, bold type letters;

(ii) The name of the person making the earnings claim and the date of the earnings claim;

(iii) The earnings claim;

(iv) The beginning and ending dates when the represented earnings were achieved;

(v) The number and percentage of all purchasers during the stated time period who achieved at least the stated level of earnings;

(vi) Any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that may differ materially from the characteristics of the prospective purchasers being offered the business opportunity; and

(vii) A statement that written substantiation for the earnings claim will be made available to the prospective purchaser upon request.

(b) Make any earnings claim in the general media, unless the seller:

(1) Has a reasonable basis for its claim at the time the claim is made;

(2) Has in its possession written material that substantiates its claim at the time the claim is made;

(3) States in immediate conjunction with the claim:

(i) The beginning and ending dates when the represented earnings were achieved; and

(ii) The number and percentage of purchasers during that time period who achieved the represented earnings.

(c) Disseminate industry financial, earnings, or performance information unless the seller has written substantiation demonstrating that the information reflects the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.

(d) Fail to notify any prospective purchaser in writing of any material changes affecting the relevance or reliability of the information contained in an earnings claim statement before the prospective purchaser signs any contract or makes a payment or provides other consideration to the seller, directly or indirectly, through a third party.

§ 437.5 Other prohibited practices.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of section 5 of the FTC Act for any seller, directly or indirectly through a third party, to:

(a) Disclaim, or require a prospective purchaser to waive reliance on, any statement made in any document or attachment that is required or permitted to be disclosed under this Rule;

(b) Make any claim or representation, orally, visually, or in writing, that is inconsistent with or contradicts the information required to be disclosed by §§ 437.3 (basic disclosure document) and 437.4 (earnings claims document) of this Rule;

(c) Include in any disclosure document or earnings claim statement any materials or information other than what is explicitly required or permitted by this Rule. For the sole purpose of enhancing the prospective purchaser's ability to maneuver through an electronic version of a disclosure document or earnings statement, the seller may include scroll bars and internal links. All other features (*e.g.*, multimedia tools such as audio, video, animation, or pop-up screens) are prohibited;

(d) Misrepresent the amount of sales, or gross or net income or profits a prospective purchaser may earn or that prior purchasers have earned;

(e) Misrepresent that any governmental entity, law, or regulation prohibits a seller from furnishing earnings information to a prospective purchaser;

(f) Fail to make available to prospective purchasers, and to the Commission upon request, written substantiation for the seller's earnings claims;

(g) Misrepresent how or when commissions, bonuses, incentives, premiums, or other payments from the seller to the purchaser will be calculated or distributed;

(h) Misrepresent the cost, or the performance, efficacy, nature or central characteristics of the business opportunity or the goods or services offered to a prospective purchaser;

(i) Misrepresent any material aspect of any assistance offered to a prospective purchaser;

(j) Misrepresent the likelihood that a seller, locator, or lead generator will find locations, outlets, accounts, or customers for the purchaser;

(k) Misrepresent any term or condition of the seller's refund or cancellation policies;

(l) Fail to provide a refund or cancellation when the purchaser has satisfied the terms and conditions disclosed pursuant to § 437.3(a)(4);

(m) Misrepresent a business opportunity as an employment opportunity;

(n) Misrepresent the terms of any territorial exclusivity or territorial protection offered to a prospective purchaser;

(o) Assign to any purchaser a purported exclusive territory that, in fact, encompasses the same or overlapping areas already assigned to another purchaser;

(p) Misrepresent that any person, trademark or service mark holder, or governmental entity, directly or indirectly benefits from, sponsors, participates in, endorses, approves, authorizes, or is otherwise associated with the sale of the business opportunity or the goods or services sold through the business opportunity;

(q) Misrepresent that any person:

(1) Has purchased a business opportunity from the seller or has operated a business opportunity of the type offered by the seller; or

(2) Can provide an independent or reliable report about the business opportunity or the experiences of any current or former purchaser.

(r) Fail to disclose:

(1) Any consideration promised or paid to any person identified as a purchaser or operator of a business opportunity of the type offered by the seller. Consideration includes, but is not limited to, any payment, forgiveness of debt, or provision of equipment, services, or discounts to the person or to a third party on the person's behalf;

(2) Any personal relationship or any past or present business relationship other than as the purchaser or operator of the business opportunity being offered by the seller.

§ 437.6 Record retention.

To prevent the unfair and deceptive acts or practices specified in this part, business opportunity sellers and their principals must prepare, retain, and make available for inspection by Commission officials copies of the following documents for a period of three years:

(a) Each materially different version of all documents required by this Rule;

(b) Each purchaser's disclosure receipt;

(c) Each executed written contract with a purchaser;

(d) Each oral or written cancellation or refund request received from a purchaser; and

(e) All substantiation upon which the seller relies for each earnings claim from the time each such claim is made.

§ 437.7 Franchise exemption.

The provisions of this part shall not apply to any business opportunity that:

(a) Constitutes a ''franchise,'' as defined in the Franchise Rule, 16 CFR part 436;

(b) Has a written contract; and

(c) Requires purchasers to make a payment that meets the minimum payment requirement set forth in the Franchise Rule (part 436 of this chapter).

§ 437.8 Other orders and preemption.

(a) If an outstanding FTC or court order applies to a person, but imposes requirements that are inconsistent with any provision of this regulation, the person may petition the Commission to amend the order. In particular, business opportunities required by FTC or court order to follow the Franchise Rule, 16 CFR part 436, may petition the Commission to amend the order so that the business opportunity may follow the provisions of the Business Opportunity Rule.

(b) The FTC does not intend to preempt the business opportunity sales practices laws of any state or local government, except to the extent of any conflict with the Rule. A law is not in conflict with this Rule if it affords prospective purchasers equal or greater protection, such as registration of disclosure documents or more extensive disclosures. All such disclosures, however, must be made in a separate state disclosure document.

§ 437.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

BILLING CODE 6750–01–P

Apppendix A to Part 437--Model Document

BUSINESS OPPORTUNITY DISCLOSURES

Seller: [Name]_____ [Address] _____
[Phone] _____ Salesperson:_____ Date: _____

The following information can help you in deciding whether to buy a business opportunity. Note, however, that no governmental agency has verified the information. To learn more about business opportunities, call the FTC at 1-877-FTC-HELP (877-382-4357) or visit the FTC's website at ftc.gov/bizopps/. Also, check with your state's Attorney General.

Yes No (Either the "YES" or "NO" box must be checked for the following three disclosures)

[ ] [ ] **EARNINGS**: The seller or its representatives states or implies a specific level of sales, income, or profit you can make or that current or former purchasers have earned. If so, the information must be set forth in an "Earnings Claims Statement" attached to this page. Read this statement carefully. You may wish to show this information to an advisor or accountant.

[ ] [ ] **LEGAL ACTIONS**: The seller, its key personnel, or its representatives involved in the sale of business opportunities have been the subject of a civil or criminal action involving misrepresentation, fraud, securities law violation, or unfair or deceptive practices within the past 10 years. **If so, the seller must attach a list of all such legal actions.**

[ ] [ ] **CANCELLATION OR REFUND POLICY**: The seller offers a cancellation or refund policy. **If so, the seller must attach a statement describing its policy.**

CANCELLATION OR REFUND REQUESTS: In the past two years, the seller sold the same type of business opportunity to ____ purchasers, and, of those, ____ purchasers asked to cancel their purchase or requested a refund.

REFERENCES: The seller must provide you with contact information for at least 10 of its purchasers located nearest to you (or, if there are fewer than 10, all purchasers). You may wish to contact them to verify the seller's claims. If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.

	Name	City	State	Zip	Telephone Number
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Received by: Date:

BILLING CODE 6750–01–C

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following attachments will not appear in the Code of Federal Regulations.

Attachment A: Rule Review Commenters

RR 1. Robert E. Mulloy, Jr. (''Mulloy'')
RR 2. Stanley M. Dub, Dworken & Bernstein (''Dub'')
RR 3. Marvin J. Migdol, Nationwide Franchise Marketing Services (''Migdol'')
RR 4. SCPromotions, Inc. (''SCPromotions'')
RR 5. R. Dana Pennell (''Pennell'')
RR 6. Robin Day Glenn (''Glenn'')
RR 7. Jack McBirney, McGrow Consulting (''McBirney'')
RR 8. SRA International (''SRA International'')
RR 9. Harold Brown, Brown & Stadfeld (''Brown'')
RR 10. Ronald N. Rosenwasser (''Rosenwasser'')
RR 11. Louis F. Sokol (''Sokol'')
RR 12. J. Howard Beales III, Professor, George Washington University (''Beales'')
RR 13. Peter Lagarias (''Lagarias'')
RR 14. Harold L. Kestenbaum (''Kestenbaum'')
RR 15. Walter D. Wilson, Better Business Bureau of Central Georgia, Inc. (''Wilson'')
RR 16. Connie B. D'Imperio, Color Your Carpet, Inc. (''D'Imperio'')
RR 17. Q.M. Marketing, Inc (''Q.M. Marketing'')
RR 18. David Gurnick, Kindel & Anderson (''Gurnick'')
RR 19. U-Save Auto Rental (''U-Save Auto Rental'')
RR 20. The Longaberger Co. (''Longaberger'')
RR 21. Direct Selling Association (''DSA'')
RR 22. American Bar Association, Section on Antitrust Law (''ABA AT'')
RR 23. Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
RR 24. Real Estate National Network (''RENN'')
RR 25. Attorney General Jim Ryan (''General Ryan''), State of Illinois
RR 26. Alan S. Nopar (''Nopar'')
RR 27. Snap-On, Inc. (''Snap-On'')
RR 28. Steven Rabenberg, Explore St. Louis (''Rabenberg'')
RR 29. Douglas M. Brooks, Martland & Brooks (''Brooks'')
RR 30. Robert N. McDonald (''Commissioner McDonald''), Securities Commissioner, State of Maryland
RR 31. Little Caesars (''Little Caesars'')
RR 32. International Franchise Association (''IFA'')
RR 33. Brownstein, Zeidman & Lore (''Brownstein Zeidman'')
RR 34. Jere W. Glover (''Glover''), Counsel for Advocacy, U.S. Small Business Administration (''SBA Advocacy'')
RR 35. Jan Meyers, Chair, House Committee on Small Business (''Representative Myers'')
RR 36. Neil A. Simon, Hogan and Hartson (''Simon'')
RR 37. Deborah Bortner (''Bortner''), Washington State Department of Financial Institutions, Securities Division
RR 38. American Franchisee Association (''AFA'')
RR 39. American Association of Franchisees & Dealers (''AAFD'')
RR 40. Warren Lewis, Lewis & Trattner (''Lewis'')
RR 41. Century 21 Real Estate Corp. (''Century 21'')
RR 42. John Hayden (''Hayden'')
RR 43. North American Securities Administrators Association (''NASAA'')
RR 44. Robert L. PeRRy (''Perry'')
RR 45. The State Bar of California, Business Law Section (''CA BLS'')
RR 46. Mike Gaston, Barkely & Evergreen (''Gaston'')
RR 47. The Southland Corp. (''Southland'')
RR 48. Medicap Pharmacies, Inc. (''Medicap'')
RR 49. Rochelle B. Spandorf (''Spandorf''), ABA Forum on Franchising, Andrew C. Selden (''Selden''), David J. Kaufman (''Kaufmann'')
RR 50. Joyce G. Mazero, Locke Pernell Rain Harrell (''Mazero'')
RR 51. Mark B. Forseth, Locke Pernell Rain Harrell (''Forseth'')
RR 52. Forte Hotels (''Forte Hotels'')
RR 53. R.A. Politte (''Politte'')
RR 54. Politte (*see supra* RR 53).
RR 55. Brown (*see supra* RR 9).
RR 56. Wieczorek (*see supra* RR 23).
RR 57. Scott Shane, Georgia Institute of Technology (''Shane'')
RR 58. Friday's (''Friday's'')
RR 59. Carl E. Zwisler, Keck, Mahin & Cate (''Zwisler'')
RR 60. Wieczorek (*see supra* RR 23)
RR 61. Enrique A. Gonzalez, Gonzalez Cavillo Y Forastierei (''Gonzalez'')
RR 62. Pepsico Restaurants (''Pepsico'')
RR 63. IFA (*see supra* RR 32)
RR 64. Atlantic Richfield Co (''ARCO'')
RR 65. David Clanton (''Clanton'')
RR 66. Leonard Swartz, Arthur Andersen & Co. (''Swartz'')
RR 67. John R.F. Baer, Keck, Mahin & Cate (''Baer'')
RR 68. Lynn Scott (''Scott'')
RR 69. Eversheds (''Eversheds'')
RR 70. Brownstein Zeidman (*see supra* RR 33)
RR 71. Penny Ward, Baker & McKenzie (''Ward'')
RR 72. Matthias Stein (''Stein'')
RR 73. Byron Fox, Hunton & Williams (''Fox'')
RR 74. Papa John's Pizza (''Papa Johns'')
RR 75. Harold L. Kestenbaum (*see supra* RR 14)

Rule Review September 1995 Public Workshop Conference

Panelists

Harold Brown, Brown & Stadfeld (''Brown'')
Sam Damico, Q.M. Marketing, Inc. (''Damico'')
Connie B. D'Imperio, Color Your Carpet, Inc. (''D'Imperio'')
Eric Ellman (''Ellman''), Direct Selling Assocation (''DSA'')
Mark B. Forseth, Locke Purnell Rain Harrell (''Forseth'')
Mike Gason, Barkely & Evergreen (''Gaston'')
Susan Kezios, American Franchisee Association (''AFA'') (''Kezios'')
William Kimball, Iowa Coalition for Responsible Franchising (''Kimball'')
Warren Lewis, Lewis & Trattner (''Lewis'')
Steven Maxey (''Maxey''), North American Securities Administrators Association (''NASAA'')
Joyce G. Mazero, Locke Purnell Rain Harrell (''Mazero'')
Barry Pineles (''Pineles''), U.S. Small Business Administration (''SBA Advocacy'')
Robert Purvin, American Association of Franchisees & Dealers (''AAFD'') (''Purvin'')
Steven Rabenberg, Explore St. Louis (''Rabenberg'')
Matthew R. Shay (''Shay''), International Franchise Association (''IFA'')
Neil A. Simon, Hogan & Hartson (''Simon'')
Robin Spencer (''Spencer''), representing American Franchisee Association
Leonard Swartz, Arthur Anderson & Co. (''Swartz'')
John Tifford, Brownstein Zeidman & Lore
Ronnie Volkening (''Volkening''), The Southland Corp. (''Southland'')
Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
William J. Wimmer (''Wimmer''), Iowa Coalition for Responsible Franchising

Public Participants

Peter Denzen (''Denzen'')

Bob Hessler, Wendy's (''Hessler'')
Chris Huke, SC Promotions (''Huke'')
Michael Jorgensen (''Jorgensen'')
Robert L. Perry (''Perry'')
Brian Schnell, Gray, Plant Mooty (''Schnell'')

March 1996 Public Workshop Conference

Panelists

Kay M. Ainsley, Ziebart Intl, Corp. (''Ainsley'')
John R.F. Baer, Keck, Mahin & Cate (''Baer'')
Michael Brennan, Rudnick & Wolfe (''Brennan'')
Joel R. Buckberg, HFA, Inc. (''Buckberg'')
David A. Clanton, Baker & McKenzie (''Clanton'')
Kenneth R. Costello, Loeb & Loeb (''Costello'')
Edward J. Fay, Kwik Kopy Corp. (''Fay'')
Mark B. Forseth, Locke Purnell Rain Harrell (''Forseth'')
Byron E. Fox, Hunton & Williams (''Fox'')
Bruce Harsh, International Trade Specialist, U.S. Department of Commerce (''Harsh'')
Arnold Janofsky, Precision Tune (''Janofsky'')
Susan P. Kezios (''Kezios''), American Franchisee Association (''AFA'')
Alex S. Konigsberg, QC (''Konigsberg''), Lapoint Rosenstein
Andrew P. Loewinger, Abraham Pressman & Bauer (''Loewinger'')
H. Bret Lowell, Brownstein Zeidman (''Lowell'')
John Melle, Office of U.S. Trade Representative (''Melle'')
Raymond L. Miolla, Burger King Corp. (''Miolla'')
Alex Papadakis, Hurt Sinisi Papadakis (''Papadakis'')
Matthew R. Shay (''Shay''), International Franchise Association (''IFA'')
Neil A. Simon, Hogan & Hartson (''Simon'')
Leonard Swartz, Arthur Anderson & Co. (''Swartz'')
Greg L. Walther, Outback Steakhouse Intl (''Walther'')
Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
Erik B. Wulff, Hogan & Hartson (''Wulff'')
Philip F. Zeidman (''Zeidman'')
Carl Zwisler, Keck, Mahin & Cate (''Zwisler'')

Public Participants

Jeff Brams, Sign-A-Rama and Shipping Connections (''Brams'')
Pamela Mills, Baker & McKenzie (''Mills'')

Attachment B: Advance Notice of Proposed Rulemaking Commenters

ANPR 1. Kevin Brendan Murphy, Mr. Franchise (''Murphy'')
ANPR 2. Murphy (*see supra* ANPR 1).
ANPR 3. Mike Bruce, The Michael Bruce Fund (''Bruce'')
ANPR 4. Harold Brown, Brown & Stadfeld (''Brown'')
ANPR 5. Frances L. Diaz (''Diaz'')
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ANPR 7. Diaz (*see supra* ANPR 5).
ANPR 8. Marian Kunihisa (''Kunihisa'')
ANPR 9. Kevin Bores, Domino's Pizza Franchisee (''Bores'')
ANPR 10. Terrence L. Packer, Supercuts Franchisee (''Packer'')
ANPR 11. John Delasandro (''Delasandro'')
ANPR 12. William Cory (''Cory'')
ANPR 13. Joseph Manuszak, Domino's Franchisee (''Manuszak'')
ANPR 14. Daryl Donafin, Taco Bell Franchisee (''Donafin'')
ANPR 15. David Muncie, National Claims Service, Inc. (''Muncie'')
ANPR 16. Patrick E. Meyers, The Quizno's Corp. (''Quizno's'')
ANPR 17. David Weaver, Domino's Pizza Franchisee (''Weaver'')
ANPR 18. Karen M. Paquet, Domino's Pizza Franchisee (''Paquet'')
ANPR 19. Gary R. Duvall Graham & Dunn (''Duvall'')
ANPR 20. Andrew J. Sherman, Greenberg & Tauris (''Sherman'')
ANPR 21. S. Beavis Stubbings (''Stubbings'')
ANPR 22. Jim & Evalena Gray, Pearle Vision Franchisee (''J&E Gray'')
ANPR 23. Ernest Higginbotham (''Higginbotham'')
ANPR 24. Henry C. Su & Bryon Fox (''Su'')
ANPR 25. John R.F. Baer, Keck, Mahin & Cate (''Baer'')
ANPR 26. Clay Small & Lowell Dixon, Nat'l Franchise Mediation Program Steering Committee (''NFMP'')
ANPR 27. Richard T. Catalano (''Catalano'')
ANPR 28. Neil Simon & Erik Wulff, Hogan & Hartson (''H&H'')
ANPR 29. Glenn A. Mueller, Domino's Pizza Franchisee (''Mueller'')
ANPR 30. Doug Bell et al. Supercuts Franchisees (''Supercut Franchisees'')
ANPR 31. Michael L. Bennett, Longaberger Co. (''Longaberger'')
ANPR 32. John Rachide, Domino's Pizza Franchisee (''Rachide'')
ANPR 33. David J. Kaufmann, Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
ANPR 34. Joseph N. Mariano, Direct Selling Association (''DSA'')
ANPR 35. Linda F. Golodner & Susan Grant, National Consumers League (''NCL'')
ANPR 36. Jere W. Glover & Jennifer A. Smith, U.S. Small Business Administration Office of Chief Counsel for Advocacy (''SBA Advocacy'')
ANPR 37. Robert Chabot, Domino's Pizza Franchisee (''Chabot'')
ANPR 38. Teresa Maloney, National Coalition of 7-Eleven Franchisees (''Maloney'')
ANPR 39. BLANK
ANPR 40. Harold L. Kestenbaum (''Kestenbaum'')
ANPR 41. Samuel L. Sibent, KFC Franchisee (''Sibent'')
ANPR 42. Oren C. Crothers, KFC Franchisee (''Crothers'')
ANPR 43. Matthew Jankowski, KFC Franchisee (''Jankowski'')
ANPR 44. Rodney A. DeBoer, KFC Franchisee (''DeBoer'')
ANPR 45. Liesje Bertoldi, KFC Franchisee (''L. Bertoldi)'
ANPR 46. Steve Bertoldi, KFC Franchisee (''S. Bertoldi'')
ANPR 47. Charles Buckner, KFC Franchisee (''Buckner'')
ANPR 48. Walter J. Knezevich, KFC Franchisee (''Knezevich'')
ANPR 49. Jeffrey W. Gray, KFC Franchisee (''J. Gray'')
ANPR 50. Fred Jackson, KFC Franchisee (''Jackson'')
ANPR 51. Ronald L. Rufener, KFC Franchisee (''Rufener'')
ANPR 52. Tim Morris, KFC Franchisee (''Morris'')
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ANPR 56. Dolores Iuliano, KFC Franchisee (''D. Iuliano'')
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ANPR 58. Saundra S. Harman, KFC Franchisee (''S. Harman'')
ANPR 59. Richard Braden, KFC Franchisee (''Barden'')
ANPR 60. K.F.C. of Pollys, KFC Franchisee (''Pollys'')
ANPR 61. Joan Fiore, McDonalds Franchisee (''Fiore'')
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ANPR 73. Pat Orzano, 7-Eleven Franchisee (''Orzano'')
ANPR 74. Linda Gaither, GNC Franchisee (''Li Gaither'')
ANPR 75. Kevin 100 (''Kevin 100'')
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ANPR 77. Robert A. Tingler, Office of the Attorney General, State of Illinois (''IL AG'')
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ANPR 86. Rick Gue, The Pampered Chef, (''Pampered Chef'')
ANPR 87. John M. Tifford, Coverall North America (''Coverall'')
ANPR 88. John M. Tifford, Merchandise Mart Properties (''Merchandise Mart'')
ANPR 89. Dirk C. Bloemendaal, Amway Corporation (''Amway'')
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ANPR 92. Winslow (*see supra* ANPR 84)
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ANPR 94. Andrew A. Caffey (''Caffey'')
ANPR 95. Entrepreneur Media, Inc. (''Entrepreneur'')
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ANPR 99. Dale E. Cantone, Maryland Division of Securities, Office of the Attorney General (''Md Securities'')
ANPR 100. Roger C. Haines, Scorecard Plus Franchisee (''Haines'')
ANPR 101. David E. Myklebust, Scorecard Plus Franchisee (''Myklebust'')
ANPR 102. Robert Larson (''Larson'')
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ANPR 105. Bertrand T. Unger, PR One (''Pr One'')
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ANPR 107. Gerald A. Marks, Marks & Krantz (''Marks'')
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ANPR 109. Everett W. Knell (''Knell'')
ANPR 110. Anne Crews, Mary Kay, Inc. (''Mary Kay'')
ANPR 111. Carl Letts, Domino's Pizza Franchisee (''Letts'')
ANPR 112. Kat Tidd (''Tidd'')
ANPR 113. Ted Poggi, National Coalition of Associations of 7-Eleven Franchisees (''NCA 7-Eleven Franchisees)
ANPR 114. Gary R. Duvall & Nadine C. Mandel (''Duvall & Mandel'')
ANPR 115. Sherry Christopher, Christopher Consulting, Inc. (''Christopher'')
ANPR 116. Carl C. Jeffers, Intel Marketing Systems, Inc. (''Jeffers'')
ANPR 117. Deborah Bortner, State of Washington, Department of Financial Institutions, Securities Divisions (''WA Securities'')
ANPR 118. Carmen D. Caruso, Noonan & Caruso (''Caruso'')
ANPR 119. Howard Bundy, Bundy & Morrill, Inc.(''Bundy'')
ANPR 120. Franchise & Business Opportunity Committee, North American Securities Administrations Association (''NASAA'')
ANPR 121. Tifford (*see supra* ANPR 78)
ANPR 122. Wieczorek (*see supra* ANPR 106)
ANPR 123. John & Debbie Lopez, Baskin & Robbins Franchisee (''Lopez'')
ANPR 124. Susan R. Essex & Ted Storey, California Bar, Business Law Section (''CA BLS'')
ANPR 125. Peter C. Lagarias, The Legal Solutions Group (''Lagarias'')
ANPR 126. James G. Merret, Jr. (''Merret'')
ANPR 127. W. Michael Garner, Dady & Garner (''Garner'')
ANPR 128. Jeff Brickner (''Brickner'')
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ANPR 130. Caron B. Slimak, Jacadi USA Franchisee (''Slimak'')
ANPR 131. Dr. Ralph Geiderman, Pearl Vision Franchisee (''Geiderman'')
ANPR 132. Felipe Frydmann, Minister of Economic & Trade Affairs, Embassy of the Argentine Republic (''Argentine Embassy'')
ANPR 133. Andrew C. Selden, Briggs & Morgan (''Selden'')
ANPR 134. Robert Zarco, Zarco & Pardo (''Zarco & Pardo'')
ANPR 135. Jason H. Griffing, Baskin & Robbins Franchisee (''Griffing'')
ANPR 136. Erik H. Karp, Witmer, Karp, Warner & Thuotte (''Karp'')
ANPR 137. William D. Brandt, Ferder, Brandt, Casebeer, Copper, Hoyt & French (''Brandt'')
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ANPR 139. A. Patel, Baskin & Robbins Franchisee (''A. Patel'')
ANPR 140. Joel R. Buckberg, Cendant Corporation (''Cendant'')
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ANPR 142. NCL (*see supra* ANPR 35)
ANPR 143. AFA (*see supra* ANPR 62)
ANPR 144. Catalano (*see supra* ANPR 27)
ANPR 145. DSA (*see supra* ANPR 34)
ANPR 146. Keating (*see supra* ANPR 139)
ANPR 147. Kathie & David Leap, Baskin & Robbins Franchisee (''Leap'')
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ANPR 150. R. Deilal, Baskin & Robbins Franchisee (''Deilal'')
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ANPR 152. Thomas Hung, Baskin & Robbins Franchisee (''Hung'')
ANPR 153. Jean Jones, Baskin & Robbins Franchisee (''Jones'')
ANPR 154. Hang, Baskin & Robbins Franchisee (''Hang'')
ANPR 155. Dilip Patel, Baskin & Robbins Franchisee (''D. Patel'')
ANPR 156. Terry L. Glase, Baskin & Robbins Franchisee (''Glase'')
ANPR 157. R.E. Williamson, Baskin & Robbins Franchisee (''Williamson'')
ANPR 158. R.M. Valum, Baskin & Robbins Franchisee (''Valum'')
ANPR 159. Rajendra Patel, Baskin & Robbins Franchisee (''R. Patel'')
ANPR 160. Jerry & Debbie Robinett, Baskin & Robbins Franchisee (''Robinett'')
ANPR 161. Ronald J. Rudolf, Baskin & Robbins Franchisee (''Rudolf'')
ANPR 162. Kamlesh Patel, Baskin & Robbins Franchisee (''K. Patel'')
ANPR 163. Nicholas & Marilyn Apostal, Baskin & Robbins Franchisee (''Apostal'')
ANPR 164. Patrick Sitin, Baskin & Robbins Franchisee (''Sitin'')
ANPR 165. Paul & Lisa SeLander, Baskin & Robbins Franchisee (''SeLander'')
ANPR 166. S. Bhilnym, Baskin & Robbins Franchisee (''Bhilnym'')
ANPR 167. Mike & Kathy Denino, Baskin & Robbins Franchisee (''Denino'')

ANPR Workshop Participants

Michael Bennett, Longaberger Company (''Bennett'')
Kennedy Brooks (''Brooks'')
John Brown, Amway Corporation (''J. Brown'')
Howard Bundy, Bundy & Morrill (''Bundy'')

Delia Burke, Jenkins & Gilchrist (''Burke'')
Andrew Caffey, Esq. (''Caffey'')
Dale Catone, Office of the Maryland Attorney General (''Cantone'')
Emilio Casillas, Washington State Securities Division (''Casillas'')
Richard Catalano, Esq. (''Catalano'')
Sherry Christopher, Esq. (''Christopher'')
Michael W. Chiodo, Domino's Franchisee (''Chiodo'')
Martin Cordell, Washington State Securities Division (''Cordell'')
Joseph Cristiano, Carvel Franchisee (''Cristiano'')
John D'Alessandro, Quaker State Lube Distributor (''D'Alessandro'')
Mark Deutsch, former franchisee (''Deutsch'')
Steve Doe, Franchisee (''Doe'')
Gary Duvall, Graham & Dunn (''Duvall'')
Eric Ellman, Direct Selling Association (''Ellman'')
Debbie Fetzer, Snap-On Franchisee (''Fetzer'')
David Finigan, Illinois Securities Department (''Finigan'')
Mark B. Forseth, Jenkens & Gilchrist (''Forseth'')
Richard W. Galloway, Domino's Pizza Franchisee (''Galloway'')
Elizabeth Garceau, Pro Design (''E. Garceau'')
Michael Garceau, Pro Design (''M. Garceau'')
Roger Gerdes, Microsoft Corp. (''Gerdes'')
Rick Geu, The Pampered Chef (''Geu'')
Judy Gitterman, Jenkens & Gilchrist (''Gitterman'')
Susan Grant, National Consumers League (''Grant'')
Bruce Hoar, Hanes Franchisee (''B. Hoar'')
Thomas Hoar, Hanes Franchisee (''T. Hoar'')
Nelson Hockert-Lotz, Domino's Pizza Franchisee (''Hockert-Lotz'')
Tee Houston-Aldridge, World Inspection Network (''Houston-Aldridge'')
Robert James, Florida Dept. of Agriculture & Consumer Services (''James'')
Carl Jeffers, Intel Marketing Systems (''Jeffers'')
Erik Karp, Witmer, Karp, Warner & Thuotte (''Karp'')
David Kaufmann, Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
Harold Kestenbaum, Hollenbrug, Bleven, Solomon, Ross (''Kestenbaum'')
Susan Kezios, American Franchisee Association (''Kezios'')
Mark Kirsch, Rudnick Wolfe, Epstien & Zeidman (''Kirsch'')
Charles Lay, Brite Site Franchisee (''Lay'')
Mike Ludlum, Entrepreneur Media (''Ludlum'')
Marge Lundquist, Franchisee (''Lundquist'')
Gerald Marks, Marks & Krantz (''Marks'')
Philip McKee, National Consumers League (''McKee'')
Dianne Mousley, Mike Schmidt's Phil. Hoagies Franchisee (''Mousley'')
Joseph Punturo, Office of the New York Attorney General (''Punturo'')
Mehran Rafizadeh, GNC Franchisee (''Rafizadeh'')
David R. Raymond, Esq. (''Raymond'')
Iris Sandow, Blimpie Franchisee (''Sandow'')
Philip Sanson, Illinois Securities Department (''Sanson'')
Matthew Shay, International Franchise Association (''IFA'')
David Silverman, Sportworld Int'l (''Silverman'')
Neil Simon, Hogan & Hartson (''Simon'')
Caron Slimak (''Slimak''), Jacadi USA Franchisee
J.H. Snow, Jenkens & Gilcrist (''Snow'')
Adam Sokol, Illinois Attorney General's Office (''Sokol'')
Kat Tidd, Esq. (''Tidd'')
John Tifford, Rudnick Wolfe, Epstien & Zeidman, (''Tifford'')
Robert Tingler, Franchise Bureau Chief, Illinois Attorney General's Office (''Tingler'')
Bertrand Unger, PR One (''Unger'')
Dr. Spencer Vidulich, Pearle Vision Franchisee (''Vidulich'')
Dick Way, PR One (''Way'')
Dennis Wieczorek, Rudnick & Wolfe (''Wieczorek'')
Erik Wulff, Hogan & Hartson (''Wulff'')
Barry Zaslav, Coverall North America (''Zaslav'')

Attachment C: Franchise Rule Notice of Proposed Rulemaking Commenters

FR–NPR 1. Patrick E. Meyers, The Quizno's Corporation (''Quizno's'')
FR–NPR 2. Steven A. Rosen, Frannet (''Frannet'')
FR–NPR 3. Robert Tingler, Franchise Bureau Chief, Illinois Attorney General (''IL AG'')
FR–NPR 4. Dennis E. Wieczorek, Piper Marbury Rudnick & Wolfe (''PMR&W'')
FR–NPR 5. Jack Schuessler, Wendy's Intl, Inc. (''Wendy's'')
FR–NPR 6. Curtis S. Gimson, Triarc Restaurant Group (''Triarc'')
FR–NPR 7. Eugene Stachowiak, McDonald's (''McDonalds'')
FR–NPR 8. David E. Holmes (''Holmes'')
FR–NPR 9. Erik B. Wulff, John F. Dienelt, Hogan & Hartson (''H&H'')
FR–NPR 10. Ronnie R. Volkening, 7-Eleven, Inc. (''7-Eleven'')
FR–NPR 11. John R.F. Baer, Robert T. Joseph, Alan H. Silberman, Sonnenschein Nath & Rosenthal (''Baer'')
FR–NPR 12. Morton A. Aronson, Neil A. Simon, David J. Kaufmann, National Franchise Council (''NFC'')
FR–NPR 13. Alaska Turner (''Turner'')
FR–NPR 14. Susan P. Kezios, American Franchisee Association (''AFA'')
FR–NPR 15. Warren L. Lewis, Lewis & Kolton (''Lewis'')
FR–NPR 16. John W. Regnery, Snap-On Inc. (''Snap-On'')
FR–NPR 17. Dale E. Cantone, Stephen W. Maxey, Joseph J. Punturo, NASAA Franchise and Business Opportunity Project Group (''NASAA'')
FR–NPR 18. Howard E. Bundy, Bundy & Morrill, Inc. (''Bundy'')
FR–NPR 19. Laurie Taylor (''Taylor'')
FR–NPR 20. Jonathan Hubbell, Prudential Real Estate Affiliates (''PREA'')
FR–NPR 21. David Gurnick, Arter & Hadden (''Gurnick'')
FR–NPR 22. Don J. DeBolt, Matthew R. Shay, International Franchise Association (''IFA'')
FR–NPR 23. L. Seth Stadfeld, Weston, Patrick, Willard & Redding (''Stadfeld'')
FR–NPR 24. Eric H. Karp, Witmer, Karp, Warner & Thuotte (''Karp'')
FR–NPR 25. Janet L. McDavid, American Bar Association, Section of Antitrust Law (''ABA AT'')
FR–NPR 26. Randall Loeb, NaturaLawn of America (''NaturaLawn'')
FR–NPR 27. Tony Rolland, National Franchisee Association (''NFA'')
FR–NPR 28. Andrew P. Loewinger, Buchanan Ingersoll (''BI'')
FR–NPR 29. Jeffrey E. Kolton, Frandata (''Frandata'')
FR–NPR 30. AFC Enterprises (''AFC'')
FR–NPR 31. Howard Morrill, Bundy & Morrill, Inc. (''Morrill'')
FR–NPR 32. Carl E. Zwisler, Jenkens & Gilchrist (''J&G'')
FR–NPR 33. Diane T. Nauer, TruServ Corporation (''TruServ'')
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1259/P.L. 109–213

To award a congressional gold medal on behalf of the Tuskegee Airmen, collectively, in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces. (Apr. 11, 2006; 120 Stat. 322)

S. 2116/P.L. 109–214

To transfer jurisdiction of certain real property to the Supreme Court. (Apr. 11, 2006; 120 Stat. 326)

S. 2120/P.L. 109–215

Milk Regulatory Equity Act of 2005 (Apr. 11, 2006; 120 Stat. 328)

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