Federal Register

10–29–09 Thursday
Vol. 74 No. 208 Oct. 29, 2009

Pages 55745–56086

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

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, November 10, 2009
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 74, No. 208

Thursday, October 29, 2009

Agency for International Development
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55809

Agriculture Department
See Food and Nutrition Service
See Food Safety and Inspection Service
See Rural Housing Service

Air Force Department
RULES
Privacy Act; Implementation, 55784–55789
PROPOSED RULES
Privacy Act; Implementation, 55796–55797
NOTICES
Privacy Act; Systems of Records, 55826

Antitrust Division
NOTICES
National Cooperative Research and Production Act of 1993: PXI Systems Alliance, Inc., 55858

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
CDC Grants for Public Health Research Dissertation (Panel E), Funding Opportunity, 55848–55849

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 55809–55810

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55817–55820
Testing and Certification of Lead Content in Children's Products; Availability, 55820
Third Party Testing for Certain Children's Products, 55820–55824

Defense Department
See Air Force Department
RULES
Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE:
Implementation of Changes to the Pharmacy Benefits Program; Double Coverage with Medicare Part D, 55771–55776
Privacy Act; Implementation, 55778–55784
TRICARE; Hospital-Based Psychiatric Partial Hospitalization Programs, 55776–55778
PROPOSED RULES
TRICARE Program; Morbid Obesity, 55792–55794
TRICARE; Non-Physician Referrals for Physical Therapy, Occupational Therapy, and Speech Therapy, 55794–55795
TRICARE; Elimination of Voluntary Disenrollment Lock-Out, 55796
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55824–55825
Meetings:
Military Leadership Diversity Commission, 55825–55826

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration
NOTICES
Importer of Controlled Substances; Applications, 55858

Education Department
RULES
Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 55972–56006
General and Non-Loan Programmatic Issues, 55902–55969
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55826–55828
Applications:
Disability and Rehabilitation Research Projects and Centers Program; Fiscal Year 2010 Funding Awards, 55828–55831

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 55831–55832

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, 56008–56056
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55837–55843
Clean Water Act Section 303(d):
Final Agency Action on 8 Total Maximum Daily Loads (TMDLs) in Arkansas, 55843
Draft Document Related to the Review of the National Ambient Air Quality Standards for Carbon Monoxide, 55843–55845

Executive Office of the President
See National Drug Control Policy Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
American Champion Aircraft Corp. Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, and 8GCBC Airplanes, 55765–55767
Boeing Model 747 Airplanes; and Boeing Model 757–200, –200PF, and –300 Series Airplanes, 55763–55765
Boeing Model 767–200, –300, –300F, and –400ER Series Airplanes, 55755–55757
Bombardier Model CL 600 2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 et al. Airplanes, 55757–55759
Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) Airplanes, et al., 55767–55770
Rolls-Royce Deutschland Ltd & Co KG Model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines, 55759–55761
Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes, 55761–55763
PROPOSED RULES
Class E Airspace; Proposed Modification:
Grand Junction, CO, 55791–55792
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Improvement Activities at the Sitka Rocky Gutierrez Airport, Sitka, AK; Record of Decision, 55890

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55845–55846

Federal Emergency Management Agency
RULES
Suspension of Community Eligibility for Failure to Enforce, 55789–55790

Federal Energy Regulatory Commission
RULES
Electronic Tariff Filings:
Correcting Amendments, 55770
NOTICES
Combined Notice of Filings, 55832–55833
Environmental Impact Statements; Availability, etc.:
East Tennessee Natural Gas, LLC; Northeastern Tennessee Project, 55833–55834
Public Service Company of Colorado, 55834–55835
Filings:
Black Oak Energy, L.L.C. et al., 55835
Initial Market–Based Rate Filings:
DeSoto County Generating Company, LLC, 55836
Energy Consulting Service, LLC, 55835
Geodyne Energy, LLC, 55835–55836
Intent to Waive Scoping:
Slatersville Hydro, LLC, 55836–55837
Membership of Performance Review Board for Senior Executives, 55837
Request Under Blanket Authorization:
Columbia Gas Transmission, LLC, 55837

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications:
Diabetes, 55890–55895

Federal Railroad Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Altamont Corridor Rail Project from Stockton to San Jose, CA, 55886–55890

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 55846
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 55846

Federal Trade Commission
NOTICES
Analysis of Proposed Consent Order:
The M Group, et al., 55846–55848

Fiscal Service
NOTICES
Surety Companies Acceptable on Federal Bonds:
Employers Insurance Company of Wausau et al., 55898–55899

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat for the Polar Bear in the United States, 56058–56086
NOTICES
Final Comprehensive Conservation Plan and Finding of no Significant Impact:
Cross Creeks National Wildlife Refuge, Stewart County, TN, 55851–55853
Renewal of the Wind Turbine Guidelines Advisory Committee, 55854

Food and Drug Administration
RULES
Investigational New Drug Applications; Technical Amendment, 55770–55771

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55804–55805

Food Safety and Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55806–55809

Foreign–Trade Zones Board
NOTICES
Application for Subzone:
Foreign-Trade Zone 25—Port Everglades, FL, 55812–55813
Applications, Hearings, Determinations, etc.:
Foreign-Trade Zone 114, Peoria, Ill., Area, 55813
Foreign-Trade Zone 17—Kansas City, KS, 55813–55814

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Findings of Scientific Misconduct, 55848

Homeland Security Department
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55849–55851

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55895–55898

International Trade Administration
NOTICES
Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews:
Wooden Bedroom Furniture from the People's Republic of China, 55810–55811
Antidumping:
Silicon Metal from the People's Republic of China, 55811–55812
Stainless Steel Bar From Brazil, 55812
Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review:
Stainless Steel Bar from India, 55814
Final Results of Expedited Third Sunset Review of Antidumping Duty Order:
Barium Chloride from the People's Republic of China, 55814–55815
Rescission of Antidumping Duty Administrative Review in Part:
Certain Welded Carbon Steel Standard Pipes and Tubes from India, 55817

International Trade Commission
NOTICES
Investigations:
Certain Active Comfort Footwear, 55855–55856
Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players and Products Containing Same, 55854–55855
Certain Inkjet Ink Supplies and Components, 55856–55857

Justice Department
See Antitrust Division
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Lodging of Consent Decree:
United States v. Louisiana Midland Transport Co., L.L.C. (Louisiana Midland), 55857–55858

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Public Land Orders:
Washington, 55853–55854

Legal Services Corporation
NOTICES
FY 2010 Competitive Grant Awards; Intent, 55863–55868
Meetings; Sunshine Act, 55868

National Credit Union Administration
RULES
Display of Official Sign; Temporary Increase in Standard Maximum Share Insurance Amount; etc., 55747–55755

National Drug Control Policy Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55868

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee, 55868–55869
National Council on the Humanities, 55869

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review Special Emphasis Panel, 55849
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 55849
National Institute of Diabetes and Digestive and Kidney Diseases; Diabetes Mellitus Interagency Coordinating Committee, 55849

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 55816–55817
New England Fishery Management Council, 55815
North Pacific Fishery Management Council, 55815–55816

Nuclear Regulatory Commission
NOTICES
Environmental Impact Statements; Availability, etc.:
Department of Health & Human Services, National Institute on Drug Abuse, Baltimore, MD, 55869–55871
Facility Operating Licenses, etc.:
Exelon Generation Co. LLC, Three Mile Island Nuclear Station Unit 1, et al., 55871–55872

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55858–55863

Pipeline and Hazardous Materials Safety Administration
PROPOSED RULES
Pipeline Safety:
Pipeline Damage Prevention Programs, 55797–55803

Postal Regulatory Commission
NOTICES
Meetings; Sunshine Act, 55872

Presidential Documents
ADMINISTRATIVE ORDERS
Sudan; Continuation of National Emergency (Notice of October 27, 2009), 55745

Public Debt Bureau
See Fiscal Service

Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55805–55806

Securities and Exchange Commission
NOTICES
Order of Suspension of Trading:
Planetgood Technologies, Inc., et al., 55872
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 55876–55878
International Securities Exchange, LLC, 55872–55873, 55879–55883
NASDAQ OMX BX, Inc., 55875–55876
NASDAQ Stock Market LLC, 55874–55875
New York Stock Exchange LLC, 55883–55884
Options Clearing Corp., 55878–55879

Susquehanna River Basin Commission
NOTICES
Projects Approved for Consumptive Uses of Water, 55884–55885

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits, etc., 55885–55886
Aviation Proceedings; Agreements Filed, 55886

Treasury Department
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Education Department, 55902–55969

Part III
Education Department, 55972–56006

Part IV
Environmental Protection Agency, 56008–56056

Part V
Interior Department, Fish and Wildlife Service, 56058–56086

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Notices:

Notice of October 27, 2009 55745

12 CFR

740.....55747

745.....55747

14 CFR

39 (7 documents) 55755, 55757, 55759, 55761, 55763, 55765, 55767

Proposed Rules:

71.....55791

18 CFR

35.....55770

21 CFR

312.....55770

32 CFR

199 (2 documents) 55771, 55776

311.....55778

322 (2 documents) 55779, 55780

323 (2 documents) 55781, 55782

326.....55783

806b (4 documents) 55784, 55785, 55787

Proposed Rules:

199 (3 documents) 55792, 55794, 55796

806b.....55796

34 CFR

600.....55902

668.....55902

673.....55972

674.....55972

675.....55902

682.....55972

685.....55972

686.....55902

690.....55902

692.....55902

40 CFR

63.....56008

44 CFR

64.....55789

49 CFR

Proposed Rules:

190.....55797

192.....55797

195.....55797

198.....55797

50 CFR

Proposed Rules:

17.....56058

Federal Register
Vol. 74, No. 208
Thursday, October 29, 2009

Presidential Documents

Title 3—

The President

Notice of October 27, 2009

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. On April 26, 2006, in Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency to deal with that threat, and ordered the blocking of property of certain persons connected to the conflict. On October 13, 2006, the President issued Executive Order 13412 to take additional steps with respect to the national emergency and to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, as expanded on April 26, 2006, and with respect to which additional steps were taken on October 13, 2006, must continue in effect beyond November 3, 2009. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
October 27, 2009.

[FR Doc. E9–26205
Filed 10–28–09; 8:45 am]
Billing code 3195–W9–P

Rules and Regulations

Federal Register

Vol. 74, No. 208

Thursday, October 29, 2009

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

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 740 and 745

RIN 3133–AD54; RIN 3133–AD55

Display of Official Sign; Temporary Increase in Standard Maximum Share Insurance Amount; Coverage for Mortgage Servicing Accounts; Share Insurance for Revocable Trust Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its share insurance rules to: reflect Congress's extension, until December 31, 2013, of the temporary increase in the standard maximum share insurance amount (''SMSIA'') from $100,000 to $250,000; and finalize the interim final rules on revocable trust accounts, mortgage servicing accounts, and NCUA's official sign issued in October 2008.

DATES: This rule is effective November 30, 2009.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

I. Supplementary Information

A. Overview

In October 2008, NCUA issued two interim final rules on four share insurance related matters: (1) The temporary increase in the SMSIA from $100,000 to $250,000 to December 31, 2009; (2) revisions to the rules on revocable trust accounts; (3) revisions to the rules on mortgage servicing accounts; and (4) NCUA's official sign. 73 FR 60616 (October 14, 2008); 73 FR 62856 (October 22, 2008). In this final rule, NCUA is amending its share insurance regulations to reflect Congress's extension of the temporary increase in the SMSIA from $100,000 to $250,000 through December 31, 2013, and is finalizing the referenced interim final rules on revocable trust accounts, mortgage servicing accounts, and NCUA's official sign.

B. Extension of Temporary Increase in the SMSIA

The Emergency Economic Stabilization Act of 2008 temporarily increased the SMSIA from $100,000 to $250,000, effective October 3, 2008, through December 31, 2009. Public Law 110–343 (October 3, 2008). On October 15, 2008, NCUA adopted an interim final rule amending its share insurance regulations to reflect this temporary increase. 73 FR 62856 (October 22, 2008). On May 20, 2009, the President signed the Helping Families Save Their Homes Act of 2009, which, among other provisions, extended the temporary increase in the SMSIA from December 31, 2009 to December 31, 2013. Public Law 111–22 (May 20, 2009). After December 31, 2013, the SMSIA will, by law, return to $100,000.

This final rule amends NCUA's share insurance regulation to indicate that the increase in the SMSIA from $100,000 to $250,000 is effective through December 31, 2013 in accordance with the above statutory provisions. Because the extension of the SMSIA is fairly long term, NCUA also has updated the share insurance coverage examples currently in the regulation and appendix to the regulation and included additional examples to reflect $250,000 as the SMSIA. NCUA believes this will help to avoid any confusion that might have resulted among credit unions and their members if the examples were to continue to use $100,000 as the SMSIA.

C. Share Insurance Coverage of Revocable Trust Accounts

On October 3, 2008, NCUA issued an interim final rule to make the coverage rules for revocable trust accounts easier to understand and apply. 73 FR 60616 (October 14, 2008). In particular, the interim rule eliminated the concept of ''qualifying beneficiaries.'' The elimination of the ''qualifying beneficiary'' concept was intended to achieve greater fairness by broadening the scope of eligible beneficiaries and facilitate share insurance determinations on revocable trust accounts. Also, the interim final rule provided a two-part share insurance coverage calculation method for revocable trust accounts. Under the rule, where a trust account owner has five times the SMSIA ($1,250,000) or less in revocable trust accounts at one NCUA-insured credit union, the owner is insured up to the SMSIA ($250,000) per beneficiary without regard to the exact beneficial interest of each beneficiary in the trust(s). For a revocable trust account owner with both more than $1,250,000 and more than five beneficiaries named in the trust(s), the interim final rule insures the owner for the greater of $1,250,000, or the aggregate total of all the beneficiaries' actual interests in the trust(s) limited to $250,000 for each beneficiary.

The interim final rule also sought to simplify the application of the share insurance rules to life-estate interests and irrevocable trusts springing from a revocable trust. It simplified the share insurance coverage rules to deem the value of each life estate interest to be the SMSIA amount. For example, where the owner/grantor creates a living trust account and provides a life estate interest for the owner's/grantor's spouse, in addition to specific bequests to named beneficiaries, the spousal interest is deemed to be the SMSIA. Another complication is presented when an irrevocable trust springs from a revocable trust upon the owner's/grantor's death. In that context under the prior rules, the coverage of the trust account often would decrease because NCUA's rules governing irrevocable trust accounts were stricter than the rules governing revocable trust accounts.[1] To prevent this decrease in

[1] For example, assume that account owner/grantor ''A'' establishes a living trust that names three children as beneficiaries. Assume also that the trust agreement specifies that the revocable trust becomes an irrevocable trust upon the owner's/grantor's death. In this example, during the life of the owner, the insurance coverage of an account in the name of the trust would be determined by multiplying the number of beneficiaries, 3 in this instance, by the SMSIA of $250,000. Thus, the account would be insured up to $750,000. Following the death of the owner, however, the coverage would change because the trust itself would change from a revocable trust to an irrevocable trust. Under the prior rules, the coverage of an irrevocable trust account would depend upon whether the interests of the beneficiaries were contingent. For example, it could be contingent upon the beneficiary graduating from college or contingent upon the discretion of the trustee. Assuming that all beneficial interests were contingent, the coverage of the account would be $250,000. Thus, in this example, the coverage

Continued

coverage, the interim final rule provided that irrevocable trust accounts would be governed by the same rules as revocable trust accounts when the irrevocable trust is created through the death of the owner/grantor of a revocable living trust.

NCUA received only three comments regarding the revocable trust account portion of the rule, none of which suggested any significant revisions.

This final rule closely follows the interim final rule, with minor revisions. Notably, in light of the statutory extension of the temporary increase in the SMSIA, the final rule reflects the new $250,000 SMSIA, the new $1,250,000 benchmark for revocable trust account coverage, and revised examples using both of these dollar values to enhance their usefulness. NCUA also has provided additional examples illustrating how the revised rules would apply. By law, December 31, 2013 is the ending date for the $250,000 SMSIA, after which the SMSIA will revert to $100,000. At that time, NCUA will revisit the need to revise these limits and examples.

This final rule, like the interim final rule, eliminates the concept of ''qualifying beneficiaries,'' and requires only that a revocable trust beneficiary be a natural person, or a charity or other non-profit organization. The final rule also incorporates the interim final rule's two-part calculation method for share insurance coverage of revocable trust accounts. While, as a result of the temporary increase in the SMSIA, the benchmark between the lower-dollar and higher-dollar revocable trust share insurance treatments has increased to $1,250,000, from $500,000 as set forth in the interim final rule, it is anticipated that the lower-balance treatment for revocable trust ownership interests falling below $1,250,000 at one credit union will likely capture most revocable trust accounts, and this should advance NCUA's goals of simplifying the treatment of unequal beneficial interests and quickening share insurance coverage determinations. The share insurance coverage calculation method for revocable trust ownership interests that are both above this $1,250,000 benchmark and involve more than five beneficiaries, consistent with the interim final rule, will ensure that reasonable limits remain on the maximum coverage available to revocable trust account owners and avoid the potential of unlimited coverage being afforded to such accounts through contrived trust structures. Moreover, consistent with the interim final rule, where a payable-on-death (POD) account owner names his or her living trust as a beneficiary of the POD account, for insurance purposes, NCUA will consider the beneficiaries of the trust to be the beneficiaries of the POD account.

D. Mortgage Servicing Accounts

Before October 2008, NCUA insured mortgage servicing accounts, previously known as custodial loan accounts, somewhat differently from how the Federal Deposit Insurance Corporation (FDIC) insured them. The interim final rule expanded share insurance coverage for this type of account by insuring the principal and interest portion of a mortgagor's payment separately from the mortgagor's individual accounts. The taxes and insurance premiums portion of a mortgagor's payment continues to be added together with the mortgagor's individual accounts and insured in the aggregate as it had been before the interim final rule.

Before October 2008, NCUA had considered all portions of a payment, including principal, interest, taxes, and insurance premiums, in such an account as the individually owned funds of the mortgagor/borrower. NCUA would aggregate payments with the owner's other individual accounts and insure them on a pass-through basis up to the SMSIA as a single ownership account. 12 CFR 745.3(a)(3). By contrast, FDIC considered the principal and interest portion of a payment in a mortgage servicing account as owned by and insured on a pass-through basis for the interest of the mortgagee/investor or security holder. FDIC considered the taxes and insurance premiums portion of a payment as owned by and insured on a pass-through basis for the interest of the mortgagor. FDIC added deposits for taxes and insurance premiums with other agency or nominee accounts where the mortgagor was the principal and insured them up to the standard insurance amount for single ownership accounts. 12 CFR 330.7(d).

In October 2008, FDIC simplified the manner in which it insures mortgage servicing accounts because securitization methods and vehicles for mortgages have become more layered and complex, making it more difficult and time-consuming for a servicer to identify and determine the share of any investor in a securitization and in the principal and interest funds on deposit at an insured depository institution. FDIC believed this simplification would also prevent unexpected losses to investors who have far in excess of the current $250,000 per-depositor insurance limit.

Specifically, FDIC determined it would provide insurance coverage on a per-mortgagor/borrower basis for both principal and interest payments and payments for taxes and insurance premiums. This is how NCUA already had been insuring mortgage servicing accounts. FDIC opted to insure a mortgagor's payment of principal and interest in a mortgage servicing account on a pass-through basis up to the current temporary $250,000 limit separate from any other accounts of that mortgagor. NCUA believes this treatment of principal and interest payments provides greater and fairer coverage for credit union members and decided to take the same approach in its share insurance rules. FDIC determined to insure a mortgagor's payment of taxes and insurance premiums in a mortgage servicing account on a pass-through basis but decided to add these funds to other individually owned funds held by that mortgagor at the same insured institution up to the current temporary $250,000 limit. This is how NCUA already had been addressing that situation.

NCUA received only one comment regarding the mortgage servicing accounts portion of the interim final rule. It supports the rule change. This final rule adopts the amendments made in the interim final rule without change.

E. Official Sign

NCUA stated in the interim final rule published on October 22, 2008 that the temporary increase in the SMSIA from $100,000 to $250,000 called into question the usefulness of NCUA's official sign, as depicted in Part 740 of NCUA's rules, which includes a statement that member shares are insured to at least $100,000. Obviously, that statement does not reflect the temporary coverage limit of $250,000. NCUA knows from recent experience in revising the official sign that requiring credit unions to replace the sign with a revised sign would be an expensive and burdensome process. NCUA recognized the need to balance that burden with the need and desire to inform members they have increased insurance coverage to $250,000. In that regard, NCUA revised its rules to provide insured credit unions with maximum flexibility. Specifically, under the interim final rule, insured credit unions had the option to: (1) Continue to display the current official sign in Part 740, reflecting the $100,000 limit, without penalty; (2) display any other version of the official sign distributed or approved by NCUA and appearing on NCUA's

would decrease from $750,000 to $250,000 following the death of the owner and following the expiration of NCUA's six-month grace period.

official Web site through December 31, 2013 that reflects the temporary increase to $250,000; or 3) alter by hand or otherwise the current official sign to make it reflect the increase to $250,000 provided the altered sign is legible and otherwise complies with Part 740. NCUA noted that an example of how an insured credit union could alter the sign by hand is to affix a sticker that reads ''$250,000'' over the portion of the current sign that reads ''$100,000.'' Also, insured credit unions that do not change or alter the official sign should inform members about the temporary increase in account insurance through additional signage, for example, posting a sign in their lobbies or a notice on their Web sites that through December 31, 2013, accounts are insured for $250,000.

NCUA received only one comment regarding the official sign portion of the interim final rule. That commenter supports the rule change. This final rule adopts the amendments made by the interim final rule without change other than to reflect the extended duration of the temporary SMSIA increase.

II. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule implements enhanced share insurance coverage and provides flexibility to credit unions. Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and, therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has determined that, for purposes of SBREFA, this is not a major rule.

List of Subjects

12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board, this 22nd day of October 2009.

Mary F. Rupp,
Secretary of the Board.

■ For the reasons discussed above, NCUA adopts as the interim rules published at 73 FR 60616 (October 14, 2008) and 73 FR 62856 (October 22, 2008) as final with the following changes:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

■ 1. The authority citation for Part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789.

■ 2. Section 740.4(b)(1) is amended by revising the last sentence to read as follows:

§ 740.4 Requirements for the official sign.

* * * * *

(b) * * *

(1) * * * To address the temporary increase through December 31, 2013 in the standard maximum share insurance amount as defined in § 745.1(e) of this chapter, insured credit unions may continue to display the official sign depicted in paragraph (b) of this section but should inform members of the increased coverage through additional signage indicating the temporary increase in coverage, display other versions of the official sign distributed or approved by NCUA and appearing on NCUA's official website, or alter by hand or otherwise the official sign depicted in paragraph (b) of this section for that purpose provided the altered sign is legible and otherwise complies with this part.

* * * * *

PART 745—SHARE INSURANCE AND APPENDIX

■ 3. The authority citation for Part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 4. Section 745.1(e) is revised to read as follows:

§ 745.1 Definitions.

* * * * *

(e) The term ''standard maximum share insurance amount,'' referred to as the ''SMSIA'' hereafter, means $250,000 from October 3, 2008, until December 31, 2013. Effective January 1, 2014, the SMSIA means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use $250,000 as the SMSIA.

■ 5. Section 745.3(a)(3) is revised to read as follows:

§ 745.3 Single ownership accounts.

(a) * * *

(3) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, up to the limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 22, 2008, for all existing and future mortgage servicing accounts.

* * * * *

■ 6. Section 745.4 is revised to read as follows:

§ 745.4 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured credit union) in

an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMSIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as payable-on-death accounts, in-trust-for accounts or Totten Trust accounts, and such formal trusts are commonly referred to as living trusts or family trusts. (**Example 1:** Account Owner ''A'' has a living trust account with four different beneficiaries named in the trust. A has no other revocable trust accounts at the same NCUA-insured credit union. The maximum insurance coverage would be $1,000,000, determined by multiplying 4 times $250,000 (the number of beneficiaries times the SMSIA). (**Example 2:** Account Owner ''A'' has a payable-on-death account naming his niece and cousin as beneficiaries, and A also has, at the same NCUA-insured credit union, another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $750,000. This is because the account owner has named only three different beneficiaries in the revocable trust accounts—his niece and cousin in the first, and the same niece and a friend in the second. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.) (**Example 3:** Account Owner ''A'' establishes a living trust account with a balance of $300,000, naming his two children ''B'' and ''C'' as beneficiaries. A also establishes, at the same NCUA-insured credit union, a payable-on-death account, with a balance of $300,000, also naming his children B and C as beneficiaries. The maximum coverage available to A is $500,000, determined by multiplying 2 times $250,000 (the number of different beneficiaries times the SMSIA). A is uninsured in the amount of $100,000. This is because all funds that an owner holds in both living trust accounts and payable-on-death accounts, at the same NCUA-insured credit union and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits.)

(b) *Required intention and naming of beneficiaries.* The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the title of the account or elsewhere in the account records of the credit union using commonly accepted terms such as, but not limited to, *in trust for, as trustee for, payable-on-death to,* or any acronym therefore, or by listing one or more beneficiaries in the account records of the credit union. In addition, for informal revocable trust accounts, the beneficiaries must be specifically named in the account records of the insured credit union. The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(c) *Definition of beneficiary.* For purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of beneficiary in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMSIA per owner. (**Example:** Account Owner ''A'' establishes a payable-on-death account naming a pet as beneficiary with a balance of $100,000. A also has an individual account at the same NCUA-insured credit union with a balance of $175,000. Because the pet is not a ''beneficiary,'' the two accounts are aggregated and treated as a single ownership account. As a result, A is insured in the amount of $250,000, but is uninsured for the remaining $25,000.)

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMSIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMSIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMSIA or the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of the SMSIA per different beneficiary. (**Example 1:** Account Owner ''A'' has a living trust with a balance of $1 million and names two friends, ''B'' and ''C'' as beneficiaries. At the same NCUA-insured credit union, A establishes a payable-on-death account, with a balance of $1 million naming his two cousins, ''D'' and ''E'' as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same NCUA-insured credit union, are aggregated for insurance purposes. Although A's aggregated balance of $2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of $1 million (4 beneficiaries times the SMSIA), and uninsured for the remaining $1 million.) (**Example 2:** Account Owner ''A'' has a living trust account with a balance of $1,500,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $125,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse. In this case, because the balance of the account exceeds $1,250,000 (5 times the SMSIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: $125,000 for each of the children (totaling $375,000), $15,000 for the friend, $175,000 for the charity, and $250,000 for the spouse (because the spouse's $935,000 is subject to the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $815,000. Thus, the maximum coverage afforded to the account owner would be $1,250,000, the greater of $1,250,000 or $815,000.)

(f) *Co-owned revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMSIA, subject to the limitation imposed in paragraph (e) of this section. (**Example 1:** A and B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same NCUA-insured credit union. The maximum coverage afforded to A and B would be $1,500,000, determined by multiplying the number of owners (2) times the SMSIA ($250,000) times the

number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $750,000 and B would be entitled to revocable trust coverage of $750,000.) (**Example 2:** A and B, two individuals, establish a payable-on-death account naming their two children, two cousins, and a charity as beneficiaries. The balance in the account is $1,750,000. Neither A nor B has any other revocable trust accounts at the same NCUA-insured credit union. The maximum coverage would be determined under paragraph (a) of this section by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $250,000, totaling $2,500,000. Because the account balance ($1,750,000) is less than the maximum coverage amount ($2,500,000), the account would be fully insured.) (**Example 3:** A and B, two individuals, establish a living trust account with a balance of $3.75 million. Under the terms of the trust, upon the death of both A and B, each of their three children is entitled to $600,000, B's cousin is entitled to $380,000, A's friend is entitled to $70,000, and the remaining amount ($1,500,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each co-owned account owner, would be the greater of $1,250,000 or the aggregate amount (as to each co-owner) of the interest of each different beneficiary named in the trust, to a limit of $250,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner A are: $750,000 for the children (each child's interest attributable to A, $300,000, is subject to the $250,000-per-beneficiary limitation), $190,000 for the cousin, $35,000 for the friend, and $250,000 for the charity (the charity's interest attributable to A, $750,000, is subject to the $250,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage totals $1,225,000. Thus, the maximum coverage afforded to account co-owner A would be $1,250,000, which is the greater of $1,250,000 or the aggregate of all the beneficial interests attributable to A (limited to $250,000 per beneficiary), which totaled slightly less at $1,225,000. Because B has equal ownership interest in the trust, the same analysis and coverage determination also would apply to B. Thus, of the total account balance of $3.75 million, $2.5 million would be insured and $1.25 million would be uninsured.)

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a co-owned revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under section 745.8 and shall not be insured under the provisions of this section. (**Example:** If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life estate interest for designated beneficiaries, NCUA shall value each such life estate interest as the SMSIA for purposes of determining the insurance coverage available to the account owner under paragraph (e) of this section. (**Example:** Account Owner ''A'' has a living trust account with a balance of $1,500,000. Under the terms of the trust, A provides a life estate interest for his spouse. Moreover, A's three children are each entitled to $275,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's granddaughter. In this case, because the balance of the account exceeds $1,250,000 (5 five times the SMSIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $250,000 for the spouse's life estate, $750,000 for the children (because each child's $275,000 is subject to the $250,000 per-beneficiary limitation), $15,000 for the friend, $175,000 for the charity, and $250,000 for the granddaughter (because the granddaughter's $310,000 remainder is limited by the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $1,440,000. Thus, the maximum coverage afforded to the account owner would be $1,440,000, the greater of $1,250,000 or $1,440,000.)

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 745.9–1 on the insurance coverage of irrevocable trust accounts, if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section. (**Example:** Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

■ 7. Section 745.8 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d) and (e), respectively, and adding a new paragraph (b) to read as follows:

§ 745.8 Joint ownership accounts.

* * * * *

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMSIA. (**Example:** ''A&B'' have a qualifying joint account with a balance of $150,000; ''A&C'' have a qualifying joint account with a balance of $200,000; and ''A&B&C'' have a qualifying joint account with a balance of $375,000. A's combined ownership interest in all qualifying joint accounts would be $300,000 ($75,000 plus $100,000 plus $125,000); therefore, A's interest would be insured in the amount of $250,000 and uninsured in the amount of $50,000. B's combined ownership interest in all qualifying joint accounts would be $200,000 ($75,000 plus $125,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $225,000 ($100,000 plus $125,000); therefore, C's interest would be fully insured.

* * * * *

■ 8. The Appendix to Part 745 is revised to read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

What Is the Purpose of This Appendix?

The following examples illustrate insurance coverage on accounts maintained in the same federally-insured credit union. They are intended to cover various types of ownership interests and combinations of accounts which may occur in connection with funds invested in insured credit unions. These examples interpret the rules for insurance of accounts contained in 12 CFR

part 745 and focus on those accounts for which examples are not provided in the regulatory text.

The examples, as well as the rules which they interpret, are predicated upon the assumption that: (1) Invested funds are actually owned in the manner indicated on the credit union's records and (2) the owner of funds in an account is a credit union member or otherwise eligible to maintain an insured account in a credit union. If available evidence shows that ownership is different from that on the institution's records, the National Credit Union Share Insurance Fund may pay claims for insured accounts on the basis of actual rather than ostensible ownership. Further, the examples and the rules which they interpret do not extend insurance coverage to persons otherwise not entitled to maintain an insured account or to account relationships that have not been approved by the NCUA Board as an insured account.

A. How Are Single Ownership Accounts Insured?

All funds owned by an individual member (or, in a community property state, by the husband-wife community of which the individual is a member) and invested in one or more individual accounts are added together and insured to the $250,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds or in the name of the member's agent or nominee. (§ 745.3(a)(1) and (2).) All such accounts are added together and insured as one individual account. Funds held in one or more accounts in the name of a guardian, custodian, or conservator for the benefit of a ward or minor are added together and insured up to $250,000. However, such an account or accounts will not be added to any other individual accounts of the guardian, custodian, conservator, ward, or minor for purposes of determining insurance coverage. (§ 745.3(b).) A mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by a mortgagor of principal and interest is insured for the cumulative balance paid into the account by the mortgagor, up to $250,000 for the mortgagor separately from other individual accounts of the mortgagor. A mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by a mortgagor of taxes and insurance premiums shall be added together with the mortgagor's other individual accounts and insured up to $250,000. (§ 745.3(a)(3).)

Example 1 Question: Members A and B, husband and wife, each maintain an individual account containing $250,000. What is the insurance coverage?

Answer: Each account is separately insured up to $250,000, for a total coverage of $500,000. The coverage would be the same whether the individual accounts contain funds owned as community property or as individual property of the spouses (§ 745.3(a)(1)).

Example 2 Question: Members H and W, husband and wife, reside in a community property state. H maintains a $250,000 account consisting of his separately-owned funds and invests $250,000 of community property funds in another account, both of which are in his name alone. What is the insurance coverage?

Answer: The two accounts are added together and insured to a total of $250,000. $250,000 is uninsured (§ 745.3(a)(1)).

Example 3 Question: Member A has $192,500 invested in an individual account, and his agent, Member B, invests $125,000 of A's funds in a properly designated agency account. B also holds a $250,000 individual account. What is the insurance coverage?

Answer: A's individual account and the agency account are added together and insured to the $250,000 maximum, leaving $67,500 uninsured. The investment of funds through an agent does not result in additional insurance coverage for the principal (§ 745.3(a)(2)). B's individual account is insured separately from the agency account (§ 745.3(a)(1)). However, if the account records of the credit union do not show the agency relationship under which the funds in the $125,000 account are held, the $250,000 in B's name could, at the option of the NCUSIF, be added to his individual account and insured to $250,000 in the aggregate, leaving $125,000 uninsured (§ 745.2(c)).

Example 4 Question: Member A holds a $250,000 individual account. Member B holds two accounts in his own name, the first containing $125,000 and the second containing $192,500. In processing the claims for payment of insurance on these accounts, the NCUSIF discovers that the funds in the $125,000 account actually belong to A and that B had invested these funds as agent for A, his undisclosed principal. What is the insurance coverage?

Answer: Since the available evidence shows that A is the actual owner of the funds in the $125,000 account, those funds would be added to the $250,000 individual account held by A (rather than to B's $192,500 account) and insured to the $250,000 maximum, leaving $125,000 uninsured. (§ 745.3(a)(2).) B's $192,500 individual account would be separately insured.

Example 5 Question: Member C, a minor, maintains an individual account of $750. C's grandfather makes a gift to him of $250,000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gift to Minors Act. C's father, also a member, maintains an individual account of $250,000. What is the insurance coverage?

Answer: C's individual account and the custodian account held for him by his father are each separately insured: The $250,000 maximum on the custodian account, and $750 on his individual account. The individual account held by C's father is also separately insured to the $250,000 maximum. (§ 745.3 (a)(1) and (b).)

Example 6 Question: Member G, a court-appointed guardian, invests in a properly designated account $250,000 of funds in his custody which belong to member W, his ward. W and G each maintain $25,000 individual accounts. What is the insurance coverage?

Answer: W's individual account and the guardianship account in G's name are each insured to $250,000 providing W with $275,000 in insured funds. G's individual account is also separately insured. (§ 745.3 (a)(1) and (b).)

Example 7 Question: Member A has three individual accounts at the same NCUA-insured credit union. Account #1 is a $250,000 individual account. Account #2 is a mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by Member A of principal and interest in the amount of $3,000. Account #3 is a mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by Member A of taxes and insurance premiums in the amount of $1,500. What is the insurance coverage?

Answer: Accounts # 1 and #3 are added together and insured up to $250,000, leaving $1,500 uninsured. Account #2 is separately insured up to $250,000.

B. How Are Accounts Held by Executors or Administrators Insured?

All funds belonging to a decedent and invested in one or more accounts, whether held in the name of the decedent or in the name of his executor or administrator, are added together and insured to the $250,000 maximum. Such funds are insured separately from the individual accounts of any of the beneficiaries of the estate or of the executor or administrator.

Example 1 Question: Member A, administrator of Member D's estate, sells D's automobile and invests the proceeds of $12,500 in an account entitled ''A Administrator of the estate of D.'' A has an individual account in that same credit union containing $250,000. Prior to his death, D had opened an individual account of $250,000. What is the insurance coverage?

Answer: The $12,500 is added to D's individual account and insured to $250,000, leaving $12,500 uninsured. A's individual account is separately insured for $250,000 (§ 745.5).

C. How Are Accounts Held by a Corporation, Partnership or Unincorporated Association Insured?

All funds invested in an account or accounts by a corporation, a partnership or an unincorporated association engaged in any independent activity are added together and insured to the $250,000 maximum. The term ''independent activity'' means any activity other than the one directed solely at increasing coverage. If the corporation, partnership or unincorporated association is not engaged in an independent activity, any account held by the entity is insured as if owned by the persons owning or comprising the entity, and the imputed interest of each such person is added for insurance purposes to any individual account which he maintains.

Example 1 Question: Member X Corporation maintains a $250,000 account.

The stock of the corporation is owned by members A, B, C, and D in equal shares. Each of these stockholders also maintains an individual account of $250,000 with the same credit union. What is the insurance coverage?

Answer: Each of the five accounts would be separately insured to $250,000 if the corporation is engaged in an independent activity and has not been established merely for the purpose of increasing insurance coverage. The same would be true if the business were operated as a bona fide partnership instead of as a corporation (§ 745.6). However, if X corporation was not engaged in an independent activity, then $62,500 (¼ interest) would be added to each account of A, B, C, and D. The accounts of A, B, C, and D would then each be insured to $250,000, leaving $62,500 in each account uninsured.

Example 2 Question: Member C College maintains three separate accounts with the same credit union under the titles: ''General Operating Fund,'' ''Teachers Salaries,'' and ''Building Fund.'' What is the insurance coverage?

Answer: Since all of the funds are the property of the college, the three accounts are added together and insured only to the $250,000 maximum (§ 745.6).

Example 3 Question: The men's club of X Church carries on various social activities in addition to holding several fund-raising campaigns for the church each year. The club is supported by membership dues. Both the club and X Church maintain member accounts in the same credit union. What is the insurance coverage?

Answer: The men's club is an unincorporated association engaged in an independent activity. If the club funds are, in fact, legally owned by the club itself and not the church, each account is separately insured to the $250,000 maximum (§ 745.6).

Example 4 Question: The PQR Union, a member of the ABC Federal Credit Union, has three locals in a certain city. Each of the locals maintains an account containing funds belonging to the parent organization. All three accounts are in the same insured credit union. What is the insurance coverage?

Answer: The three accounts are added together and insured up to the $250,000 maximum (§ 745.6).

D. How Are Accounts Held by Government Depositors Insured?

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the account holder. All funds belonging to a public unit and invested by the same custodian in a federally-insured credit union are categorized as either share draft accounts or share certificate and regular share accounts. If these accounts are invested in a federally-insured credit union located in the jurisdiction from which the official custodian derives his authority, then the share draft accounts will be insured separately from the share certificate and regular share accounts. Under this circumstance, all share draft accounts are added together and insured to the $250,000 maximum and all share certificate and regular share accounts are also added together and separately insured up to the $250,000 maximum. If, however, these accounts are invested in a federally-insured credit union located outside of the jurisdiction from which the official custodian derives his authority, then insurance coverage is limited to $250,000 for all accounts regardless of whether they are share draft, share certificate or regular share accounts. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured. If the same person is custodian of funds for more than one public unit, he is separately insured with respect to the funds of each unit held by him in properly designated accounts.

For insurance purposes, a ''political subdivision'' is entitled to the same insurance coverage as any other public unit. ''Political subdivision'' includes any subdivision of a public unit or any principal department of such unit: (1) The creation of which has been expressly authorized by state statute, (2) to which some functions of government have been allocated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control.

Example 1 Question: As Comptroller of Y Consolidated School District, A maintains a $275,000 account in the credit union containing school district funds. He also maintains his own $250,000 member account in the same credit union. What is the insurance coverage?

Answer: The two accounts will be separately insured, assuming the credit union's records indicate that the account containing the school district funds is held by A in a fiduciary capacity. Thus, $250,000 of the school's funds and the entire $250,000 in A's personal account will be insured (§ 745.10(a)(2) and § 745.3).

Example 2 Question: A, as city treasurer, and B, as chief of the city police department, each have $250,000 in city funds invested in custodial accounts. What is the insurance coverage?

Answer: Assuming that both A and B have official custody of the city funds, each account is separately insured to the $250,000 maximum (§ 745.10(a)(2)).

Example 3 Question: A is Treasurer of X County and collects certain tax assessments, a portion of which must be paid to the state under statutory requirement. A maintains an account for general funds of the county and establishes a separate account for the funds which belong to the State Treasurer. The credit union's records indicate that the separate account contains funds held for the State. What is the insurance coverage?

Answer: Since two public units own the funds held by A, the accounts would each be separately insured to the $250,000 maximum (§ 745.10(a)(2)).

Example 4 Question: A city treasurer invests city funds in each of the following accounts: ''General Operating Account,'' ''School Transportation Fund,'' ''Local Maintenance Fund,'' and ''Payroll Fund.'' Each account is available to the custodian upon demand. By administrative direction, the city treasurer has allocated the funds for the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to $250,000. Because the allocation of the city's funds is not by statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of $250,000 is not afforded to each account (§§ 745.1(d) and 745.10(a)(2)).

Example 5 Question: A, the custodian of retirement funds of a military exchange, invests $2,500,000 in an account in an insured credit union. The military exchange, a non-appropriated fund instrumentally of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $250,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $2,250,000 is uninsured (§ 745.10(a)(1)).

Example 6 Question: A is the custodian of the County's employee retirement funds. He deposits $2,500,000 in retirement funds in an account in an insured credit union. The ''beneficiaries'' of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $250,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $2,250,000 is uninsured (§ 745.10(a)(2)).

Example 7 Question: A county treasurer establishes the following share draft accounts in an insured credit union each with $250,000:
''General Operating Fund''
''County Roads Department Fund''
''County Water District Fund''
''County Public Improvement District Fund''
''County Emergency Fund''
What is the insurance coverage?

Answer: The ''County Roads Department,'' ''County Water District'' and ''County Public Improvement District'' accounts would each be separately insured to $250,000 if the funds in each such account have been allocated by law for the exclusive use of a separate county department or subdivision expressly authorized by State statute. Funds in the ''General Operating'' and ''Emergency Fund'' accounts would be added together and insured in the aggregate to $250,000, if such

funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§ 745.1(d) and 745.10(a)(2)).

Example 8 Question: A, the custodian of Indian tribal funds, lawfully invests $2,500,000 in an account in an insured credit union on behalf of 15 different tribes; the records of the credit union show that no tribe's interest exceeds $250,000. A, as official custodian, also invests $2,500,000 in the same credit union on behalf of 100 individual Indians, who are not members; each Indian's interest is $10,000. What is the insurance coverage?

Answer: Because each tribe is considered a separate public unit, the custodian of each tribe, even though the same person, is entitled to separate insurance for each tribe (§ 745.10(a)(5)). Since the credit union's records indicate no tribe has more than $250,000 in the account, the $2,500,000 would be fully insured as 15 separate tribal accounts. If anyone tribe had more than a $250,000 interest in the funds, it would be insured only to $250,000 and any excess would be uninsured.

However, the $2,500,000 invested on behalf of the individual Indians would not be insured since the individual Indians are neither public units nor, in the example, members of the credit union. If A is the custodian of the funds in his capacity as an official of a governmental body that qualified as a public unit, then the account would be insured for $250,000, leaving $2,250,000 uninsured.

Example 9 Question: A, an official custodian of funds of a state of the United States, lawfully invests $500,000 of state funds in a federally-insured credit union located in the state from which he derives his authority as an official custodian. What is the insurance coverage?

Answer: If A invested the entire $500,000 in a share draft account, then $250,000 would be insured and $250,000 would be uninsured. If A invested $250,000 in share draft accounts and another $250,000 in share certificate and regular share accounts, then A would be insured for $250,000 for the share draft accounts and $250,000 for the share certificate and regular share accounts leaving nothing uninsured (§ 745.10(a)(2)). If A had invested the $500,000 in a federally-insured credit union located outside the state from which he derives his authority as an official custodian, then $250,000 would be insured for all accounts regardless of whether they were share draft, share certificate or regular share accounts, leaving $250,000 uninsured (§ 745.10(b)).

E. How Are Trust Accounts and Retirement Accounts Insured?

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, which is valid under state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to $250,000 separately from other accounts held by the trustee, the settlor (grantor), or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the $250,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–10 of the Federal Estate Tax Regulations (26 CFR 20.2031–10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed $250,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. In connection with each trust account, the credit union's records must indicate the name of both the settlor and the trustee of the trust and must contain an account signature card executed by the trustee indicating the fiduciary capacity of the trustee. In addition, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee, and the settlor or beneficiary must be a member of the credit union. If there are two or more settlors or beneficiaries, then either all the settlors or all the beneficiaries must be members of the credit union.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very small, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrevocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account.

IRA and Keogh accounts are separately insured, each up to $250,000. Although credit unions may serve as trustees or custodians for self-directed IRA, Roth IRA and Keogh accounts, once the funds in those accounts are taken out of the credit union, they are no longer insured.

In the case of an employee retirement fund where only a portion of the fund is placed in a credit union account, the amount of insurance available to an individual participant on his interest in the account will be in proportion to his interest in the entire employee retirement fund. If, for example, the member's interest represents 10% of the entire plan funds, then he is presumed to have only a 10% interest in the plan account. Said another way, if a member has a vested interest of $10,000 in a municipal employees retirement plan and the trustee invests 25% of the total plan funds in a credit union, the member would be insured for only $2,500 on that credit union account. There is an exception, however. The member would be insured for $10,000 if the trustee can document, through records maintained in the ordinary course of business, that individual beneficiary's interests are segregated and the total vested interest of the member was, in fact, invested in that account.

Example 1 Question: Member S invests $250,000 in trust for B, the beneficiary. S also has an individual account containing $250,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§ 745.3(a)(1) and 745.9–1).

Example 2 Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the beneficiaries must be members to establish this type of account. Since D, E and S are not members, this account cannot legally be established or insured.

Example 3(a) Question: Member T invests $5,000,000 in trust for ABC Employees Retirement Fund. Some of the participants are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each participant to a maximum of $250,000 per participant regardless of credit union member status. T's member status is also irrelevant. Participant interests not capable of evaluation shall be added together and insured to a maximum of $250,000 in the aggregate (§ 745.9–2).

Example 3(b) Question: T is trustee for the ABC Employees Retirement Fund containing $1,000,000. Fund participant A has a determinable interest of $90,000 in the Fund (9% of the total). T invests $500,000 of the Fund in an insured credit union and the remaining $500,000 elsewhere. Some of the participants of the Fund are members of the credit union and some are not. T does not segregate each participant's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to the determinable interest of each participant, adjusted in proportion to the Fund's investment in the credit union, regardless of the membership status of the participants or trustee. A's insured interest in the account is $45,000, or 9% of $500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in

the same proportion as his interest in the overall plan. All other participants would be similarly insured. Participants' interests not capable of evaluation are added together and insured to a maximum of $250,000 in the aggregate (§ 745.9–2).

Example 4 Question: Member A has an individual account of $250,000 and establishes an IRA account and accumulates $250,000 in that account. Subsequently, A becomes self-employed and establishes a Keogh account in the same credit union and accumulates $250,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured as follows: the individual account for $250,000, the maximum for that type of account; the IRA account for $250,000, the maximum for that type of account; and the Keogh account for $250,000, the maximum for that type of account. (§§ 745.3(a)(1) and 745.9–2).

Example 5 Question: Member A has a self-directed IRA account with $70,000 in it. The FCU is the trustee of the account. Member transfers $40,000 into a blue chip stock; $30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full $70,000 in A's IRA account is insured. The $40,000 is no longer insured once it is moved out of the FCU. The $30,000 remaining in the FCU is insured (§ 745.9–2).

[FR Doc. E9–25921 Filed 10–28–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0314; Directorate Identifier 2008–NM–196–AD; Amendment 39–16066; AD 2009–22–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, and –400ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, –300F, and –400ER series airplanes. This AD requires an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective December 3, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 3, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail me.boecom@boeing.com; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 767–200,–300, –300F, and –400ER series airplanes. That NPRM was published in the **Federal Register** on April 7, 2009 (74 FR 15681). That NPRM proposed to require an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Include an Additional Part Number for Serviceable MOV Actuators

ABX Air asks that the NPRM include part number (P/N) MA30A1001 as a serviceable actuator acceptable for installation. ABX states that the NPRM would not allow serviceable actuators having part number MA30A1001 to be installed. ABX adds that requiring installation of only new MOV actuators having P/N MA30A1001 would impose an undue burden on operators.

We agree to include installation of serviceable MOV actuators having P/N MA30A1001 in this AD. The intent of the AD is to replace MOV actuators having P/N MA20A1001–1 with a new or serviceable replacement part. We have revised paragraph (h) of this AD to allow installation of serviceable MOV actuators having P/N MA30A1001.

Request To Include Revision 1 of the Reference Service Bulletin

Boeing asks that paragraphs (c), (g)(1), (g)(2), and (h) of the NPRM be changed to include Revision 1 of Boeing Alert Service Bulletin 767–28A0090, in addition to the original issue, dated July 3, 2008, referred to for the applicability and accomplishing the actions in the NPRM. Boeing states that operators will be burdened with tracking incorporation of Revision 1 as an alternative method of compliance if it is not included in the final rule.

We do not agree to include Revision 1 of the referenced service bulletin in this AD, since a revision to Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008, has not yet been issued. Boeing has informed us that the revision to Boeing Alert Service Bulletin 767–28A0090, when issued, will not have additional work to be performed and will not expand the scope of the AD. Since Boeing Alert Service Bulletin 767–28A0090 is expected to be revised after issuance of this AD, we might consider approving the revised service bulletin as an alternative method of compliance (AMOC), as provided by paragraph (i)(1) of this AD.

Request To Revise the Costs of Compliance Section

Boeing also asks that we consider revising the Costs of Compliance section specified in the NPRM to project more accurate cost estimates. Boeing states that the cost estimates do not seem accurate. Boeing adds that the parts costs for the replacement are substantial, and, when the replacement parts costs are added to the costs of labor, estimated work-hours, and the total number of airplanes affected, the cost estimates would be substantially higher than the estimate in the NPRM.

We agree that the work-hours for the inspection should be higher than estimated in the NPRM. We have determined that it takes between 2 and 4 work-hours to perform the inspection,

depending on airplane configuration. We have changed the Costs of Compliance section (below) to expand the work-hour estimate.

We do not agree that the parts cost for replacement should be included. The data in the Costs of Compliance section are limited only to the cost of actions actually required by the AD. The cost analysis in AD rulemaking actions does not include the costs of ''on-condition'' actions (*e.g.,* ''repair or replace, if necessary'') or replacement parts that are necessary when doing those on-condition actions. Regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition. Therefore, we have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 397 airplanes of U.S. registry. We also estimate that it takes between 2 and 4 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be between $63,520 and $127,040, or between $160 and $320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–22–13 Boeing: Amendment 39–16066. Docket No. FAA–2009–0314; Directorate Identifier 2008–NM–196–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Subject

(f) Air Transport Association (ATA) of America Code 28: Fuel.

Inspection and Related Investigative/ Corrective Actions

(g) Within 60 months after the effective date of this AD, do the actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) Inspect the motor operated valves (MOVs) in the main and center fuel tanks to determine if any MOV having part number (P/N) MA20A1001–1 is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(2) Do all applicable related investigative and corrective actions specified in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008, except as provided by paragraph (h) of this AD.

Alternative Part Numbers

(h) Where Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008, specifies replacing any actuator having P/N MA20A1001–1 with a new actuator having P/N MA30A1001, a serviceable actuator having any of the following part numbers is also acceptable as a replacement part: MA30A1001; MA20A2027 (S343T003–56); MA11A1265–1 (S343T003–41); or AV–31–1 (S343T003–111).

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008, to

do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25916 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0399; Directorate Identifier 2008–NM–226–AD; Amendment 39–16060; AD 2009–22–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

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

A change in dimensions of the fuse blocks in the Auxiliary Power Unit (APU) Start Contactor Assembly (ASCA) box assembly can cause an incorrect interface between the bus bars and fuses. This condition can result in an increase in temperature, which could damage the ASCA box and/or compromise the availability of battery bus supply.

The unsafe condition could result in the ignition of a fire in the ASCA box. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 3, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 3, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 30, 2009 (74 FR 19902). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A change in dimensions of the fuse blocks in the Auxiliary Power Unit (APU) Start Contactor Assembly (ASCA) box assembly can cause an incorrect interface between the bus bars and fuses. This condition can result in an increase in temperature, which could damage the ASCA box and/or compromise the availability of battery bus supply.

The unsafe condition could result in the ignition of a fire in the ASCA box. The required actions include inspecting the ASCA boxes to determine the part number; and for certain ASCA boxes, doing a detailed inspection of the fuse block date code, and replacing the fuse block with new hardware if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Change Compliance Time for Replacement

American Eagle Airlines (AEA) requests that the compliance time in paragraph (f)(1) of the NPRM for replacing the fuse blocks be changed from ''before further flight'' to within 1,500 flight hours after the effective date of this AD. AEA explains that the new compliance time will give operators the benefit of knowing how much down-time will be needed to replace the fuse blocks, while keeping to the restrictions of 1,500 flight hours required for inspecting the ASCA box.

We disagree with the request. While we recognize that changing the compliance time for replacing the fuse blocks from ''before further flight'' to within 1,500 flight hours after the effective date of this AD benefits the operators in their planning, we find that, to achieve an adequate level of safety for the affected airplanes, fuse blocks known to be un-airworthy must be replaced before further flight. We have made no change to this AD in this regard.

Request To Allow a Records Check in Lieu of Inspection To Determine Part Number

AEA requests that a records check be allowed, if sufficient records exist, to comply with the inspection of the ASCA box to determine the part numbers. AEA explains that the records check would potentially prevent unnecessary inspections.

We agree. We have determined that a review of the airplane maintenance records is acceptable in lieu of the inspection to determine the part number of the ASCA boxes if the part number of the ASCA boxes can be conclusively determined from that review. We have revised paragraph (f)(1) of this AD accordingly.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD affects 108 products of U.S. registry. We also estimate that it takes about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to U.S. operators to be $43,200, or $400 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–22–09 Bombardier (Formerly Canadair): Amendment 39–16060. Docket No. FAA–2009–0399; Directorate Identifier 2008–NM–226–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), serial numbers 10112 through 10199 inclusive, and 10201 through 10206 inclusive.

(2) Bombardier Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900), serial numbers 15007 through 15026 inclusive, 15030, and 15031.

Subject

(d) Air Transport Association (ATA) of America Code 49: Airborne Auxiliary Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A change in dimensions of the fuse blocks in the Auxiliary Power Unit (APU) Start Contactor Assembly (ASCA) box assembly can cause an incorrect interface between the bus bars and fuses. This condition can result in an increase in temperature, which could damage the ASCA box and/or compromise the availability of battery bus supply.

The unsafe condition could result in the ignition of a fire in the ASCA box. The required actions include inspecting the ASCA boxes to determine the part number; and for certain ASCA boxes, doing a detailed inspection of the fuse block date code, and replacing the fuse block with new hardware if necessary.

Actions and Compliance

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

(1) Within 1,500 flight hours after the effective date of this AD, inspect the ASCA box to determine the part number and, for ASCA boxes having part number (P/N) BA670–53328–1 or BA670–53328–951, perform a detailed inspection of the fuse block date code, in accordance with Bombardier Service Bulletin 670BA–49–012, Revision A, dated August 28, 2008. Before further flight, replace all fuse blocks that have a date code between K23 (0323) through M08 (0508) inclusive, in accordance with Bombardier Service Bulletin 670BA–49–012, Revision A, dated August 28, 2008. A review of airplane maintenance records is acceptable in lieu of the inspection to determine the part number of the ASCA boxes if the part number of the ASCA boxes can be conclusively determined from that review.

(2) Inspections and replacement actions are also acceptable for compliance with the requirements of paragraph (f)(1) of this AD, if done before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–49–012, dated June 28, 2007.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Systems and Flight Test Branch, ANE–172, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF–2008–34, dated December 2, 2008; and Bombardier Service Bulletin 670BA–49–012, Revision A, dated August 28, 2008; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 670BA–49–012, Revision A, dated August 28, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25648 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0045; Directorate Identifier 2007–NE–53–AD; Amendment 39–16041; AD 2009–21–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

Repair Scheme BRG3086 Issue 1 instructs the repair of the High-Pressure (HP) Compressor Front Drum Assembly Damping Grooves. This repair has an impact on the life of the HP Compressor Front Drum Assembly.

We are issuing this AD to prevent failure of front HP compressor rotors, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective December 3, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199.

Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356, or go to: *http://www.rolls-royce.com/deutschland/en/default.htm,* for a copy of the service information referenced in this AD.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 12, 2009 (74 FR 7004). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Repair Scheme BRG3086 Issue 1 instructs the repair of the HP Compressor Front Drum Assembly Damping Grooves. This repair has an impact on the life of the HP Compressor Front Drum Assembly. This emergency airworthiness directive has been raised to mandate certain specific CAUTION notes related to specific subtasks of the BR715 Time Limits Manual (TLM) T–715–3BR instructing a reduced life for certain Serial Numbers (SN) of the HP Compressor Front Drum Assemblies Part No. BRH20070 after repair BRG3086 Issue 1 has been applied and Part No. BRR21918 after repair BRG3086 Issue 1 has been applied. Results for each individual repair case are listed in the latest revision of Non-Modification Service Bulletin SB–BR700–72–A900437.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Since we issued the proposed AD, we found it necessary to add a column to Table 1 for affected HP compressor rotor front disc assemblies operating under the C1–30 derated design engine mission.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously.

Differences Between This AD and the MCAI or Service Information

We have found it necessary to differ from the MCAI as follows:

- We don't require operators to amend the Time Limits Manual.
- We don't allow the operators to show compliance by using RRD ASB SB–BR700–72–A900437, initial issue, dated February 26, 2007. Some of the affected parts are not included in the initial issue of the ASB.
- We have incorporated in this AD, the life reduction Table for the HPC drum assemblies, by serial number (SN), that are specified in RRD ASB SB–BR700–72–A900437, Revision 2, dated September 17, 2009.
- HPC drum assembly, P/N BRH20070 is not affected by the AD; since only certain HPC drums with P/N BRR21918 were affected in

accordance with RRD ASB SB–BR700–72–A900437, Revision 2, dated September 17, 2009.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 14 engines installed on airplanes of U.S. registry. We also estimate that it will take about 10 work-hours per engine to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $100,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,411,200.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–21–04 Rolls-Royce Deutschland Ltd & Co KG (formerly BMW Rolls-Royce GmbH and BMW Rolls-Royce Aero Engines): Amendment 39–16041. Docket No. FAA–2009–0045; Directorate Identifier 2007–NE–53–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. These engines are installed on, but not limited to, McDonnell Douglas 717–200 airplanes.

Reason

(d) Repair Scheme BRG3086 Issue 1 instructs the repair of the High-Pressure (HP) Compressor Front Drum Assembly Damping Grooves. This repair has an impact on the life of the HP Compressor Front Drum Assembly.

We are issuing this AD to prevent failure of front HP compressor rotors, which could result in an uncontained engine failure and damage to the airplane.

Actions and Compliance

(e) Remove the following HP Compressor drum assemblies from operation before reaching the life limit specified in Table 1 of this AD.

TABLE 1—FLIGHT CYCLE LIFE BY PART NUMBER, SERIAL NUMBER, AND MISSION FOR AFFECTED HP COMPRESSOR ROTOR FRONT DISC ASSEMBLIES

Disc assembly part No.	Serial No.	A1–30 design	B1–30 and C1–30 designs	A1–30 Hawaiian	C1–30 Tropical and derated tropical	C1–30 Derated design
BRR21918	1,107	6,600	4,500	4,500	3,800	6,600
BRR21918	1,120	6,800	4,700	4,700	4,000	6,800
BRR21918	1,122	7,000	4,900	4,900	4,100	7,000
BRR21918	1,144	7,300	5,000	5,000	4,200	7,300
BRR21918	1,154	6,800	4,700	4,700	4,000	6,800
BRR21918	1,163	6,800	4,700	4,700	4,000	6,800
BRR21918	1,166	6,500	4,500	4,500	3,800	6,500
BRR21918	1,194	6,900	4,800	4,800	4,000	6,900
BRR21918	1,217	7,000	4,900	4,900	4,100	7,000
BRR21918	1,232	7,200	5,000	5,000	4,200	7,200
BRR21918	1,255	7,300	5,100	5,100	4,300	7,300
BRR21918	1,259	7,500	5,200	5,200	4,400	7,500
BRR21918	1,271	7,300	5,100	5,100	4,300	7,300
BRR21918	1,292	7,300	5,100	5,100	4,300	7,300

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to MCAI Emergency Airworthiness Directive 2007–0050–E, dated February 26, 2007, and Rolls-Royce Deutschland Ltd & Co KG Alert Service Bulletin SB–BR700–72–A900437, Revision 2, dated September 17, 2009, for related information. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356, or go to: *http://www.rolls-royce.com/deutschland/en/default.htm,* for a copy of this service information.

(h) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 1, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–25942 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0654; Directorate Identifier 2008–NM–083–AD; Amendment 39–16058 AD 2009–22–07]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

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

ACTION: Final rule.

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

There have been reported incidents of brinelling to the self-sealing coupling Part Number (P/N) 9304000–303 (Nipple Assembly). The wear is visible in the groove of the nipple, caused by the socket locking balls. During tear down investigations of self-sealing coupling P/N 9304000–305 (Socket Assembly), internal socket wear has been observed. Wear that exceeds the allowable limits could lead to reduced oil flow, and further wear could contribute to separation of the Self-Seal Coupling, making the engine inoperable and subsequent shut down. As secondary damage, the generator may fail, releasing oil into the nacelle and increasing the possibility of fire.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 3, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 3, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 21, 2009 (74 FR 35828). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been reported incidents of brinelling to the self-sealing coupling Part Number (P/N) 9304000–303 (Nipple Assembly). The wear is visible in the groove of the nipple, caused by the socket locking balls. During tear down investigations of self-sealing coupling P/N 9304000–305 (Socket Assembly), internal socket wear has been observed. Wear that exceeds the allowable limits could lead to reduced oil flow, and further wear could contribute to separation of the Self-Seal Coupling, making the engine inoperable and subsequent shut down. As secondary damage, the generator may fail, releasing oil into the nacelle and increasing the possibility of fire.

For the reason described above, this Airworthiness Directive (AD) requires the inspection of the affected nipple- and socket assemblies and, if wear is found outside the specified limits, replacement of worn parts.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $480, or $80 per product.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

We determined that this 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 this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–22–07 Saab AB, Saab Aerosystems: Amendment 39–16058. Docket No. FAA–2009–0654; Directorate Identifier 2008–NM–083–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category, serial numbers 004 through 063 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 79: Engine oil.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There have been reported incidents of brinelling to the self-sealing coupling Part Number (P/N) 9304000–303 (Nipple Assembly). The wear is visible in the groove of the nipple, caused by the socket locking balls. During tear down investigations of self-sealing coupling P/N 9304000–305 (Socket Assembly), internal socket wear has been observed. Wear that exceeds the allowable limits could lead to reduced oil flow, and further wear could contribute to separation of the Self-Seal Coupling, making the engine inoperable and subsequent shut down. As secondary damage, the generator may fail, releasing oil into the nacelle and increasing the possibility of fire.

For the reason described above, this Airworthiness Directive (AD) requires the inspection of the affected nipple- and socket assemblies and, if wear is found outside the specified limits, replacement of worn parts.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD: Inspect the affected nipple assembly part number (P/N) 9304000–303 and socket assembly P/N 9304000–305 for signs of damage, wear, and leaking of the nipple and socket, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours.

(2) If any wear is found during any inspection required by paragraph (f)(1) of this AD that is beyond the limits specified in Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007, prior to further flight, replace the part with a new or serviceable unit having the same part number, in accordance with Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007.

(3) If any leak or damage is found during any inspection required by paragraph (f)(1) of this AD, prior to further flight, replace the part with a new or serviceable unit having the same part number in accordance with step 2.C.(1)(a)*6* or step 2.C.(1)(a)*10,* as applicable, of Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007.

(4) Replacement of parts does not constitute terminating action for the inspection requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0030, dated February 15, 2008; and Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007; for related information.

Material Incorporated by Reference

(i) You must use Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by

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

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25660 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1326; Directorate Identifier 2008–NM–141–AD; Amendment 39–16059; AD 2009–22–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes; and Boeing Model 757–200, –200PF, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747 airplanes and certain Boeing Model 757–200, –200PF, and –300 series airplanes. This AD requires replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and requires replacing the control switches of cargo doors 1 and 2 of Model 757 series airplanes. This AD results from reports of problems associated with the uncommanded operation of cargo doors. We are issuing this AD to prevent injuries to persons and damage to the airplane and equipment.

DATES: This AD is effective December 3, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 3, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747 airplanes and certain Boeing Model 757–200, –200PF, and –300 series airplanes. That NPRM was published in the **Federal Register** on December 23, 2008 (73 FR 78672). That NPRM proposed to require replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and replacing the control switches of cargo doors 1 and 2 of Model 757 series airplanes.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the four commenters.

Support for the NPRM

Boeing concurs with the content of the NPRM.

Request for Inclusion of Airplane Maintenance Manual (AMM) 52–34–30

American Airlines (AA) requests that we revise paragraph (f)(2) of the NPRM to allow another method to comply with the AD for Model 757 series airplanes. As proposed, the NPRM would require replacing the control switches of cargo doors 1 and 2 of Model 757 series airplanes, in accordance with Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007, which specifies a brush coat to the switch terminals with BMS5–37 or BMS5–45 Class A sealant after all wires are connected. Since AA uses the AMM for instructions for replacement, and the AMM does not specify the brush coat to the switch terminals with BMS5–37 or BMS5–45 Class A sealant after all wires are connected, AA requests that we revise the NPRM to state that the control switches of cargo doors 1 and 2 can be replaced in accordance with either the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007, or the removal and installation steps found in the AMM.

AA states that it initiated a replacement program for the cargo switches mentioned in the previous paragraph in accordance with the AMM. Approximately one year after the initiation of the replacement program, Boeing released Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007, which introduced the requirement to ''[b]rush coat the switch terminals with BMS5–37 or BMS5–45 Class A sealant after all wires are connected.'' AA notes that this requirement was not and is not presently found in the AMM procedure.

We disagree with the request to allow doing the removal and installation procedures in the AMM as a method of compliance with paragraph (f)(2) of this AD. In order to address the identified unsafe condition, operators will have to do additional actions that are not found in the AMM, including the brush coat to the switch terminals with BMS5–37 or BMS5–45 Class A sealant after all wires are connected. Paragraph (g) of this AD provides operators the opportunity to request an alternative method of compliance (AMOC) for the requirements of paragraph (f)(2), if data are presented that justify the request. We have not changed the AD in this regard.

Request for Documentation

FedEx requests that we revise the NPRM to identify the maintenance document that will be the appropriate source of service information for the immediate replacement of a toggle switch in the event an ''uncommanded operation'' is found prior to the next 6-year mark (the proposed repetitive interval specified in the NPRM).

We partially agree. We agree that operators should replace the switch in the event of an uncommanded operation and note that Boeing Special Attention Service Bulletins 747–52–2286, dated September 28, 2007; and 757–52–0090, dated September 21, 2007; provide adequate information to accomplish switch replacement. We disagree with the request to revise this AD because

this AD does not mandate replacement in the event of an uncommanded operation; this AD requires repetitive replacements within specified intervals. If operators replace the switch using another method, they may ask for approval of an AMOC if they also submit data that justify a different method and provide an adequate level of safety. We have not changed the AD in this regard.

Request for Determination of Reliability

FedEx questions whether cargo toggle switch part number (P/N) 8837K2 or P/N MS25307–272, which is specified in paragraphs 2.C.2. of Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007, paragraphs 2.C.2., is more reliable.

We infer that the commenter would like us to permit installation of P/N 8837K2 so that it is not necessary for an operator to request approval of an AMOC in order to install P/N 8837K2. We disagree. The operator did not provide justification that P/N 8837K2 provides an equivalent level of safety. However, according to the provisions of paragraph (g) of the final rule, we may approve a request to allow a different compliance method if the request includes data that prove that the new method would provide an acceptable level of safety.

Request for Credit

Continental Airlines requests that we revise the NPRM to provide credit for accomplishment of the AD when replacement of the affected cargo door switches is incorporated into a carrier's routine maintenance program. The commenter notes that its replacement schedule coincides with that specified in the NPRM.

We acknowledge the commenter's request. A replacement done in accordance with Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; or 757–52–0090, dated September 21, 2007; as applicable; before the effective date of this AD is acceptable for compliance with the AD, as indicated by the phrase ''unless already done'' in paragraph (e) of this AD. However, the commenter does not identify the service information used in the routine maintenance program to do the replacement.

If actions done previously align with the applicable Boeing service bulletin, the operator will be given credit. In addition, we may approve a request for an alternative method of compliance (AMOC) for replacement of the control switches if the request includes data that prove that the new method would provide an acceptable level of safety. We have not changed the AD in this regard.

Explanation of Change to NPRM

We have changed the phrase ''6 years'' to 72 months in paragraph (f) of this AD to provide a time frame that specifies the compliance with greater detail.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that the change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 765 airplanes of U.S. registry. We also estimate that it takes about 2 to 3 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts cost about $130 to $195 per airplane. Based on these figures, we estimate the cost of this AD to U.S. operators to be up to $332,775, or between $290 and $435 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–22–08 Boeing: Amendment 39–16059. Docket No. FAA–2008–1326; Directorate Identifier 2008–NM–141–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; and Boeing Model 757–200, –200PF, and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

Unsafe Condition

(d) This AD results from reports of problems associated with the uncommanded operation of cargo doors. We are issuing this AD to prevent injuries to persons and damage to the airplane and equipment.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Replacement

(f) Within 24 months after the effective date of this AD, replace the control switches as specified in paragraph (f)(1) or (f)(2) of this AD, as applicable. Repeat the replacements thereafter at intervals not to exceed 72 months.

(1) For Model 747 airplanes: Replace the control switches of the forward, aft, and nose cargo doors, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007.

(2) For Model 757 series airplanes: Replace the control switches of cargo doors 1 and 2, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* ATTN: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; or Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25666 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0745; Directorate Identifier 2009–CE–036–AD; Amendment 39–16053; AD 2009–22–02]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corp. Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, and 8GCBC Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all American Champion Aircraft Corp. Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, and 8GCBC airplanes, manufactured prior to 1989 and equipped with folding rear seat backs. This AD requires inspection of the rear seat back hinge areas for cracking and excessive elongation of the rear seat hinge bolt hole and, if cracking or excessive elongation is found, replacement of the rear seat frame. We are issuing this AD to detect and correct cracking of the rear seat back hinge area and excessive elongation of the rear seat hinge bolt hole, either of which could result in failure of the seat back. This failure could lead to a rear-seated pilot or passenger inadvertently interfering with the control stick while attempting to not roll to the rear of the airplane upon seat back failure. Consequently, this failure could result in loss of control.

DATES: This AD becomes effective on December 3, 2009.

On December 3, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Ave., Rochester, Wisconsin 53167; telephone: (262) 534–6315; fax: (262) 534–2395; Internet: *http://www.amerchampionaircraft.com/Technical/Technical.html.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2009–0745; Directorate Identifier 2009–CE–036–AD.

FOR FURTHER INFORMATION CONTACT: Wess Rouse, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

On August 7, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all American Champion Aircraft Corp. Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, and 8GCBC airplanes, manufactured prior to 1989 and equipped with folding rear seat backs. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 13, 2009 (74 FR 40781). The NPRM proposed to require inspection of the rear seat back hinge areas for cracking and excessive elongation of the rear seat hinge bolt hole and, if cracking or excessive elongation is found, replacement of the rear seat frame.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 2,000 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
.5 work-hour × $80 per hour = $40	Not applicable	$40	$80,000

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1.5 work-hours × $80 per hour = $120	Remanufactured seat $200 New standard seat $645 New wide seat $765	Remanufactured seat $320. New standard seat $765. New wide seat $885.

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 AD.

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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0745; Directorate Identifier 2009–CE–036–AD'' in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding the following new AD:

2009–22–02 American Champion Aircraft Corp.: Amendment 39–16053; Docket No. FAA–2009–0745; Directorate Identifier 2009–CE–036–AD.

Effective Date

(a) This AD becomes effective on December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 7ECA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, and 8GCBC airplanes, all serial numbers, that are:

(1) Manufactured prior to 1989;

(2) Equipped with folding rear seat backs; and

(3) Certificated in any category.

Unsafe Condition

(d) This AD results from an occurrence of the rear seat frame failing in flight. We are issuing this AD to detect and correct cracking of the rear seat back hinge area and excessive elongation of the rear seat hinge bolt hole, which could result in failure of the rear seat back. This failure could lead to a rear-seated pilot or passenger inadvertently interfering with the control stick while attempting to not roll to the rear of the airplane upon seat back failure. Consequently, this failure could result in loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the rear seat back hinge area for cracking and elongation of the rear seat hinge bolt hole.	Within the next 25 hours time-in-service (TIS) after December 3, 2009 (the effective date of this AD) and repetitively thereafter at intervals not to exceed every 100 hours TIS or every 12 months, whichever occurs first.	Follow American Champion Aircraft Corp. Service Letter No. 431, dated July 20, 2009.

Actions	Compliance	Procedures
(2) If cracking or excessive elongation of the rear seat bolt hole is found during any inspection required in paragraph (e)(1) of this AD, replace the seat frame with a factory remanufactured seat frame, a new part number (P/N) 7–1500 (standard) seat frame, or a new P/N 7–1501 (wide) seat frame. Replacement of the seat frame terminates the repetitive inspection requirements of this AD.	Before further flight after the inspection where cracking or excessive elongation of the rear seat bolt hole is found.	Follow American Champion Aircraft Corp. Service Letter No. 431, dated July 20, 2009.
(3) You may at any time replace the rear seat frame with a factory remanufactured seat frame, a new part number (P/N) 7–1500 (standard) seat frame, or a new P/N 7–1501 (wide) seat frame to terminate the repetitive inspection requirements of this AD.	Not applicable	Follow American Champion Aircraft Corp. Service Letter No. 431, dated July 20, 2009.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wess Rouse, Aerospace Engineer, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; fax: (847) 294–7834. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use American Champion Aircraft Corp. Service Letter No. 431, dated July 20, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact American Champion Aircraft Corporation, P.O Box 37, 32032 Washington Ave., Rochester, Wisconsin 53167; telephone: (262) 534–6315; fax: (262) 534–2395; Internet: *http://www.amerchampionaircraft.com/Technical/Technical.html.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 13, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25258 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0998; Directorate Identifier 2009–NM–198–AD; Amendment 39–16065; AD 2009–22–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule; request for comments.

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

The heating capability of several [angle of attack] AOA transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

* * * * *

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in ineffective response to aerodynamic stall and reduced controllability of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 13, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 13, 2009.

We must receive comments on this AD by December 14, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–35, dated August 31, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The heating capability of several [angle of attack] AOA transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.
>
> Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).
>
> This [Canadian] directive mandates a periodic inspection of the inrush current to verify the AOA heating capability and replacement of the inaccurately calibrated AOA transducers.

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in ineffective response to aerodynamic stall and reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–27–051, dated May 14, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the risk of having a degraded transducer is higher with units that have more than 7,500 total flight hours accumulated. Degraded AOA transducers can result in inaccurate activation of the stall warning, stick shaker, or stick pusher, which could result in ineffective response to aerodynamic stall and reduced controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0998; Directorate Identifier 2009–NM–198–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD 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 this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–22–12 Bombardier, Inc. (Formerly Canadair): Amendment 39–16065.

Docket No. FAA–2009–0998; Directorate Identifier 2009–NM–198–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category, that are equipped with Thales angle of attack (AOA) transducers having part number C16258AA.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

The heating capability of several [angle of attack] AOA transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

This [Canadian] directive mandates a periodic inspection of the inrush current to verify the AOA heating capability and replacement of the inaccurately calibrated AOA transducers.

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in ineffective response to aerodynamic stall and reduced controllability of the airplane.

Actions and Compliance

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

(1) Within the applicable compliance times specified in Table 1 of this AD: Measure the inrush current of both AOA transducers, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009.

TABLE 1—INITIAL MEASUREMENT

For any AOA transducer that, as of the effective date of this AD, has accumulated—	Do the initial inrush current measurement—
Less than 6,500 total flight hours	Before the AOA transducer has accumulated 7,500 total flight hours.
More than or equal to 6,500 total flight hours but less than 7,500 total flight hours.	Within 500 flight hours after the effective date of this AD but before the AOA transducer has accumulated 8,000 total flight hours.
More than or equal to 7,500 total flight hours	Within 250 flight hours after the effective date of this AD.

(2) If, during any measurement required by paragraph (f)(1) of this AD, an AOA transducer is found to have an inrush current less than 1.60 amps (''degraded'' transducer), before further flight replace the transducer with a new or serviceable transducer, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009. Do the measurement specified in paragraph (f)(1) of this AD for that replacement transducer at the times specified in (f)(2)(i) or (f)(2)(ii) of this AD.

(i) At the applicable time specified in Table 2 of this AD if the degraded transducer was replaced with a serviceable transducer that is not new; or

(ii) Within 2,000 flight hours after replacement if the degraded transducer was replaced with a new one.

(3) If, during any measurement required by paragraph (f)(1) of this AD, an AOA transducer is found to have an inrush current more than or equal to 1.60 amps, repeat the measurement specified in paragraph (f)(1) of this AD thereafter at intervals not to exceed the applicable interval specified in Table 2 of this AD.

TABLE 2—REPETITIVE MEASUREMENT INTERVALS

If the last inrush current measurement of the serviceable AOA transducer is—	Then repeat the measurement—
More than or equal to 1.90 amps	Within 2,000 flight hours after the last measurement.
More than or equal to 1.80 amps but less than 1.90 amps	Within 1,500 flight hours after the last measurement.
More than or equal to 1.70 amps but less than 1.80 amps	Within 1,000 flight hours after the last measurement.
More than or equal to 1.60 amps but less than 1.70 amps	Within 500 flight hours after the last measurement.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: This AD does not require the one-time inspection for serial numbers and on-condition replacement in Paragraph 1. of the MCAI. The planned compliance times for this action would allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. Therefore, we are considering further rulemaking to address this issue.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Wing Chan, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–35, dated August 31, 2009; and Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 16, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25917 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–5–000; Order No. 714]

Electronic Tariff Filings; Correction

October 23, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published in the **Federal Register** of Wednesday, October 3, 2008 (73 FR 57515). The regulations relate to the obligation to file rate schedules, tariffs and certain service agreements and to the withdrawals and amendments of rate schedules, and tariff or service agreement filings.

DATES: Effective on October 29, 2009.

FOR FURTHER INFORMATION CONTACT: Andre Goodson, 888 First St., NE., Washington, DC 20426, (202) 502–8560, *Andre.Goodson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern the filing of rate schedules, tariffs, and service agreements under the Federal Power Act.

Need for Correction

In Order No. 714, the instructions for the amendatory language contained errors that resulted in the publication of incorrect language in the **Federal Register** for sections 35.1 and 35.17. In particular, the published regulations do not reflect that they are applicable to rate schedules, tariffs, and service agreements.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements, Electricity, Incorporation by reference.

■ Accordingly, 18 CFR part 35 is corrected by making the following correcting amendments:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791A–825R, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 35.1, paragraphs (b) and (c) are revised to read as follows:

§ 35.1 Application; obligation to file rate schedules, tariffs and certain service agreements.

* * * * *

(b) A rate schedule, tariff, or service agreement applicable to a transmission or sale of electric energy, other than that which proposes to supersede, cancel or otherwise change the provisions of a rate schedule, tariff, or service agreement required to be on file with this Commission, shall be filed as an initial rate in accordance with § 35.12.

(c) A rate schedule, tariff, or service agreement applicable to a transmission or sale of electric energy which proposes to supersede, cancel or otherwise change any of the provisions of a rate schedule, tariff, or service agreement required to be on file with this Commission (such as providing for other or additional rates, charges, classifications or services, or rules, regulations, practices or contracts for a particular customer or customers) shall be filed as a change in rate in accordance with § 35.13, except cancellation or termination which shall be filed as a change in accordance with § 35.15.

* * * * *

■ 3. In § 35.17, the heading and paragraphs (c) and (d) are revised to read as follows:

§ 35.17 Withdrawals and amendments of rate schedule, tariff or service agreement filings.

* * * * *

(c) *Withdrawal of suspended rate schedules, tariffs, or service agreements, or parts thereof.* Where a rate schedule, tariff, or service agreement, or part thereof has been suspended by the Commission, it may be withdrawn during the period of suspension only by special permission of the Commission granted upon application therefor and for good cause shown. If permitted to be withdrawn, any such rate schedule, tariff, or service agreement may be refiled with the Commission within a one-year period thereafter only with special permission of the Commission for good cause shown.

(d) *Changes in suspended rate schedules, tariffs, or service agreements, or parts thereof.* A public utility may not, within the period of suspension, file any change in a rate schedule, tariff, or service agreement, or part thereof, which has been suspended by order of the Commission except by special permission of the Commission granted upon application therefor and for good cause shown.

* * * * *

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25972 Filed 10–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. FDA–2009–N–0464]

Investigational New Drug Applications; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its investigational new drug application (IND) regulations to add an address for applicants to submit INDs for in vivo bioavailability and bioequivalence studies in humans. INDs for these studies that are intended to support abbreviated new drug applications (ANDAs) should be sent directly to the

Office of Generic Drugs. This action is being taken to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective October 29, 2009.

FOR FURTHER INFORMATION CONTACT: Peter Chen, Center for Drug Evaluation and Research (HFD–615), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8436.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in part 312 (21 CFR part 312) to clarify where ANDA applicants should submit INDs for in vivo bioavailability and bioequivalence studies in humans. This document adds the address for the Office of Generic Drugs in § 312.140(a)(1).

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to add an address for the submission of INDs related to ANDAs.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

■ 2. Section 312.140 is amended by revising paragraph (a)(1) to read as follows:

§ 312.140 Address for correspondence.

(a) * * *

(1) *For drug products regulated by CDER.* Send the IND submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266; except send an IND submission for an in vivo bioavailability or bioequivalence study in humans to support an abbreviated new drug application to the Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, Metro Park North II, 7500 Standish Pl., Rockville, MD 20855.

* * * * *

Dated: October 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26095 Filed 10–28–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–HA–0149; RIN 0720–AB01]

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE; Implementation of Changes to the Pharmacy Benefits Program; Double Coverage With Medicare Part D

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: TRICARE eligible beneficiaries, who are entitled to Medicare Part A on the basis of age, disability, or end-stage renal disease, maintain their TRICARE eligibility when they are enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out-of-pocket costs incurred by the person. This final rule prescribes double coverage payment procedures and makes revisions to TRICARE rules to accommodate beneficiaries who are eligible under both Medicare and TRICARE, and who participate in Medicare's outpatient prescription drug program under Medicare Part D. These revisions are necessary because of the requirements contained in the Centers for Medicare and Medicaid Services (CMS) final rule for the Medicare Prescription Drug Benefit, Part D plans with other prescription drug coverage.

This final rule also establishes requirements and procedures for implementation of the improvements to the TRICARE Pharmacy Benefits Program directed by section 714 of the Ronald W. Reagan National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2005 (NDAA FY 05) (Pub. L.108–365). The rule clarifies that the cost-sharing requirements for Medicare-eligible beneficiaries may not be in excess of the cost-sharing requirements applicable to other retirees, their dependents, former spouses and survivors. Additionally, the rule authorizes the Department of Defense (DoD) Pharmacy and Therapeutics Committee (P&T) to make a separate and additional determination of the relative clinical and cost effectiveness of pharmaceutical agents that provide greater value than other uniform formulary agents in that therapeutic class. This rule also describes the transition process that will occur as the uniform formulary is developed and uniform service facilities move to a uniform formulary, consistent with their scope of practice.

DATES: *Effective Date:* This final rule is effective November 30, 2009.

FOR FURTHER INFORMATION CONTACT: RADM Thomas McGinnis, TRICARE Management Activity, Pharmaceutical Operations Directorate, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:

I. Double Coverage With Medicare Part D

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), (Pub. L. 108–173), amended Title XVIII of the Social Security Act by establishing a new Part D: the Voluntary Prescription Drug Benefit Program (henceforth, Medicare Part D). The Department of Health and Human Services, CMS, published their Final Rule on January 28, 2005 (70 FR 4193–4585). The addition of a prescription drug benefit to Medicare represents a landmark change to the Medicare program, and became available to beneficiaries beginning on January 1, 2006.

The Floyd D. Spence NDAA for FY 2001 (Pub. L. 106–398), established the TRICARE Senior Pharmacy Program under section 711 (which was effective April 1, 2001). The Act, also under section 712 (which was effective October 1, 2001), continued TRICARE eligibility for beneficiaries entitled to Medicare Part A on the basis of age, provided they also are enrolled in Medicare Part B. This program has come to be known as TRICARE for Life (TFL). Under section 701 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), codified at Title 10, U.S.C., Section 1074g, the Department established its new pharmacy benefits program for all TRICARE beneficiaries (as implemented by 32 CFR 199.21). The full implementation of the pharmacy benefit program was not effective until May 3, 2004; however, changes in pharmacy cost shares were effective with the implementation of TRICARE Senior Pharmacy on April 1, 2001.

In implementing TRICARE Senior Pharmacy, DoD stated that the double

coverage rules in 32 CFR 199.8 are applicable to services provided to all beneficiaries under the retail pharmacy network, retail pharmacy non-network, or TRICARE Mail Order programs. In implementing TFL, DoD explained the double coverage rules under 10 U.S.C. 1086(d)(3). The statute states that if a TRICARE-Medicare dual-eligible beneficiary receives medical or dental care for which payment may be made under Medicare and TRICARE, the amount payable for that care by TRICARE shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of (i) the amount paid for that care under Medicare; and (ii) the total of all amounts paid or payable by third party payers other than Medicare. The amount payable by TRICARE may not exceed the total amount that would be paid under TRICARE, if payment for the care were made solely under TRICARE. TFL did not expand the scope of benefits available to this group of beneficiaries beyond the scope of TRICARE benefits available to other retirees and their families. The critical fact is whether the service or supply is payable by both Medicare and TRICARE. For health care services for which payment may be made under both Medicare and TRICARE, TRICARE will pay, up to the beneficiary's legal liability, the actual out-of-pocket costs incurred by the beneficiary, less any payments made by Medicare or other sources of insurance. Actual out-of-pocket costs incurred by the beneficiary include the initial deductible, which is for services payable by Medicare and TRICARE, but for the fact that the beneficiary has not met the deductible amount, and any subsequent beneficiary cost shares. However, if a health care service or supply is a benefit payable only by Medicare, but not by TRICARE, then Medicare has sole responsibility for payment of the health care service or supply, as defined by Medicare, and the beneficiary has the responsibility to pay any corresponding Medicare cost-share or deductible. Likewise, if a health care service or supply is a benefit payable only by TRICARE, but not Medicare, then TRICARE has sole responsibility for payment of the health care service and supply, and the beneficiary has the responsibility to pay any corresponding TRICARE cost-shares or deductible. Finally, if a health care service or supply is neither a benefit payable by Medicare or TRICARE, the beneficiary pays the total cost.

TRICARE has applied the double coverage rules of 32 CFR 199.8 to the Pharmacy Benefits Program under Sec. 199.21(m), and said to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare health maintenance organization (HMO) plans are double coverage plans and will be the primary payer. This rule was written prior to Medicare providing a prescription drug benefit under Medicare Part D, and CMS's final rule on the Medicare Prescription Drug Coverage, Section 423.464(f)(l)(iv), military coverage, including TRICARE coverage under chapter 55 of title 10, U.S.C., qualifies as other prescription drug coverage with which a Part D plan must coordinate benefits.

Medicare Part D plans are offered by private insurance companies that contract with CMS. Part D benefits may be offered by a stand-alone prescription drug plan sponsor, a Medicare Advantage Organization offering qualified prescription drug coverage, a Program for All-Inclusive Care for the Elderly (PACE) organization offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage (collectively referred to as a ''Part D plan sponsor''). Each Part D plan sponsor submits a bid to CMS for plan benefit packages, which results in, among other things, the offering of Part D plans with varying monthly premiums and benefits designs. Part D plan sponsors may offer a defined standard benefit, which is the type of benefit used as an example in this preamble, or an actuarially equivalent standard benefit. Part D plan sponsors may also offer alternative prescription drug coverage, which may consist of basic alternative coverage or enhanced alternative coverage. Therefore depending on the Part D plan that a beneficiary chooses, monthly premiums, coinsurances, co-pays, deductibles and benefit design may vary from plan to plan. Under the Medicare Prescription Drug, Improvement and Modernization Act (MMA), certain low-income beneficiaries may be eligible for reduced premiums and cost-sharing for their drug coverage. In some cases, beneficiaries pay no premium and nominal cost-sharing. Other beneficiaries have a reduced premium and lower cost-sharing.

The standard Medicare Part D plan benefit includes several phases of beneficiary spending, as described below.

Premiums. Statute requires a beneficiary to pay a monthly premium to participate in the plan. A beneficiary who wants to participate in a standard Medicare Part D plan is solely responsible for payment of any premium that is not otherwise subsidized under the program. Beneficiary premiums do not count toward any required beneficiary cost-sharing to reach the deductible, coverage gap, or catastrophic limit (described below).

Deductibles. Under the Medicare Part D defined standard benefit, the beneficiary is responsible for paying an out-of-pocket deductible ($275 in 2008) that adjusts annually according to the annual percentage increase in spending on covered Part D drugs. For purposes of meeting the deductible, both spending by the beneficiary and spending by TRICARE on behalf of the beneficiary (*i.e.*, the TRICARE wraparound coverage) qualify.

Cost-sharing between deductible and coverage gap. After the deductible is met, the standard Part D plan sponsors are responsible for 75 percent of the actual cost of the covered Part D drug, and the beneficiary is responsible for 25 percent of the actual cost of the covered Part D drug, until the beneficiary reaches the coverage gap. TRICARE wraparound coverage qualifies as beneficiary cost-sharing between the deductible and coverage gap.

Coverage gap. To reach the coverage gap, the beneficiary must reach a statutorily-specified amount of total drug spending. Total beneficiary spending needed to meet the coverage gap is defined as beneficiary out-of-pocket spending, or TRICARE spending on behalf of the beneficiary, and spending by the Part D plan sponsor. In 2008, a beneficiary reaches the coverage gap when he has incurred $2,510 in total drug spending and remains in the gap until he has incurred $4,050 in beneficiary out-of-pocket spending. Individuals who qualify for the low-income subsidies pay lower cost-sharing amounts before they reach the coverage gap. In the coverage gap, the beneficiary is responsible for 100 percent of the cost of the drug, although the beneficiary by law is entitled to receive the plan's negotiated price. Individuals who qualify for low-income subsidies do not have a coverage gap.

Catastrophic threshold. To reach the catastrophic threshold defined in the standard benefit, the beneficiary must have incurred total spending defined in statute as true out-of-pocket spending (TrOOP) ($4,050 in 2008). In the catastrophic phase, the beneficiary is responsible for the greater of 5 percent of the cost of the drug, or, in 2008, $2.25 for a generic/preferred multi-source drug or $5.60 for other drugs. In the catastrophic phase of the defined standard benefit, the Part D plan sponsor and Medicare are responsible for what is not paid by the beneficiary

up to the Part D plan sponsor's negotiated price.

Under 42 CFR 423.100, incurred costs means costs incurred by the Part D enrollee for covered Part D drugs: (1) That are not paid for under the Part D plan as a result of application of any annual deductible or other cost-sharing rules for covered Part D drugs prior to the Part D enrollee satisfying annual out-of-pocket threshold amount under section 423.104(d)(5)(iii); and, (2) that are paid for by the Part D enrollee or on behalf of the enrollee by another person, and the enrollee or other person is not reimbursed through insurance or otherwise, a group health plan or other third party arrangement. Because TRICARE falls under the definition of ''or otherwise,'' which refers to ''government-funded health programs,'' wraparound payments made by TRICARE for covered Part D drugs on behalf of an enrollee eligible for both Part D and TRICARE do not count towards beneficiary incurred costs. Therefore, for purposes of reaching the catastrophic limit, only TrOOP counts as beneficiary spending. Although TRICARE supplementary coverage counts toward meeting the deductible and the initial coverage limit, it does not count toward meeting the catastrophic threshold.

Generally, a Part D plan is primary payer under 42 CFR 423.464, coordination of benefits with other providers of prescription drug coverage, which includes military coverage (including TRICARE) under chapter 55 of title 10, U.S.C. A Part D plan under section 423.464(f)(2) must exclude expenditures for covered Part D drugs made by TRICARE for purposes of determining whether a Part D enrollee has satisfied the out-of-pocket threshold, which for 2008 is $4,050.

As a result of these provisions implementing Medicare Part D, TRICARE double coverage rules must be modified. If a TRICARE-Medicare beneficiary enrolls in a Part D plan that adds prescription coverage to their Medicare plan, the Medicare Part D plan is generally primary payer and TRICARE is secondary payer. TRICARE will pay the beneficiary's out-of-pocket costs for Medicare and TRICARE covered medications, including the initial deductible and Medicare Part D cost-share. TRICARE will not pay the beneficiary's out-of-pocket cost associated with any monthly premium required to enroll in and participate in the Medicare Part D plan.

In the coverage gap, the Part D plan is generally still the primary payer. Thus, assuming the beneficiary is accessing a pharmacy under contract with his or her Part D plan, the pharmacy would bill the Part D plan, which would respond by indicating that it is responsible for $0, at which point the pharmacy would bill TRICARE. When the beneficiary becomes responsible for 100 percent of the drug costs in the coverage gap, the beneficiary may use the TRICARE pharmacy benefit as the secondary payer. TRICARE will cost share during the coverage gap to the same extent as it does under Section 199.21 for beneficiaries not enrolled in a Medicare Part D plan. The beneficiary is responsible for the applicable TRICARE pharmacy cost-sharing amounts (and deductible if using a retail non-network pharmacy). During the coverage gap, TRICARE is incurring the cost of the drugs during the Medicare Part D coverage gap and not the beneficiary. Thus none of the costs of drugs borne by TRICARE will be applied to meeting the beneficiary's annual Medicare Part D TrOOP threshold. Generally, however the beneficiary's own TRICARE pharmacy benefit cost-share will accrue to meeting his annual Medicare Part D TrOOP spending because this cost-sharing is an actual out-of-pocket expense to the beneficiary. Any actual out-of-pocket expense incurred by the beneficiary also will apply toward the TRICARE fiscal year catastrophic cap.

Similarly, if the TRICARE-Medicare dual-eligible beneficiary enrolls in a Medicare Advantage drug plan, the beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan. The Medicare Advantage plan will generally be the primary payer, and TRICARE will be the secondary payer. If the Medicare Advantage plan has a Part D drug benefit, TRICARE will pay secondary described above.

II. Legislative Changes for TRICARE-Medicare Dual-Eligible Beneficiaries

Section 701 of the NDAA for FY 2000 (Pub. L. 106–65), codified at Title 10, U.S.C., Section 1074g, directs the Department to establish an effective, efficient, integrated pharmacy benefits program. The Department published the final rule on the Pharmacy Benefits Program on April 1, 2004 (69 FR 17035–17052) implementing the pharmacy benefits program, effective May 3, 2004. Congress in section 714 of the Ronald W. Reagan NDAA for FY05 has directed certain improvements to the TRICARE pharmacy benefits program.

Section 714(a) directs that for a TRICARE-Medicare dual-eligible beneficiary, the cost-sharing requirements under the pharmacy benefits program may not be greater than the cost-sharing requirements applicable to all other beneficiaries covered by 10 U.S.C. 1086, which are beneficiaries who are retirees, their authorized dependents, survivors, and certain former spouses. Under 10 U.S.C. 1074g(a)(6), the Department may establish cost-sharing requirements for the pharmacy benefits program, which may be established as a percentage or fixed dollar amount, for generic, formulary, and non-formulary pharmaceutical agents. For non-formulary agents, cost-sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries who are dependents of active duty members of the uniformed services, and 25 percent for beneficiaries who are retirees, their authorized dependents, survivors, and certain former spouses.

In the TRICARE Pharmacy Benefits Program final rule, the Department published the cost share amounts for pharmaceutical agents based upon two factors: (1) The agent's status as generic, formulary, or non-formulary; and (2) the venue in which the agent was obtained, that is, military treatment facility (MTF), TRICARE Mail Order Program (TMOP), retail network pharmacy, or retail non-network pharmacy. The Department is authorized under 10 U.S.C. 1074g(a)(6) to have two non-formulary cost-shares based upon the status of the beneficiary, no more than 20 percent for active duty family members and no more than 25 percent for all others (other than active duty members who have no cost share). The Department chose to have one non-formulary cost-share equal to no more than 20 percent of the anticipated aggregated cost of non-formulary agents that is $22 for non-formulary agents obtained in the TMOP or retail network pharmacies, and $22 or 20 percent (whichever is greater) for non-formulary agents obtained in retail non-network pharmacies. *(For more information on TRICARE Pharmacy Benefit Program cost shares, see Section 199.21(i)).* Section 714(a) emphasizes that if the Department were to move to a two-tier non-formulary cost-share based upon the status of the beneficiary, the Department may not have a higher cost-share for TRICARE–Medicare dual-eligible beneficiaries than for other retirees, their authorized dependents, survivors, and certain former spouses.

This final rule adds to section 199.21 a provision incorporating into the regulation the new statutory requirement.

III. Legislative Changes To Improve the Uniform Formulary Process

Under 10 U.S.C. 1074g(a)(2)(E)(i), pharmaceutical agents included on the uniform formulary on the basis of relative clinical effectiveness and cost effectiveness are required to be available to beneficiaries through facilities of the uniformed services, consistent with the scope of health care services offered in such facilities. Section 714(b) of the Ronald Reagan NDAA for FY05 directs the Department to allow the DoD Pharmacy and Therapeutics (P&T) Committee to make additional relative clinical and cost effectiveness determinations for MTFs. This change in the law means that MTFs are not required to include on their formularies every pharmaceutical agent in a therapeutic class that is on the uniform formulary that is consistent with the scope of health care services offered in the MTF. This final rule incorporates into section 199.21 a provision reflecting the change in the statute.

IV. Transition to the Uniform Formulary

The DoD P&T Committee is required under section 199.21 to make recommendations concerning which pharmaceutical agents should be on the uniform formulary and the Basic Core Formulary (BCF), and may now make recommendations concerning which agents should be on the Extended Core Formulary (ECF). The BCF contains the minimum set of pharmaceutical agents that each MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager (PCM) enrollment sites. The ECF contains the minimum set of pharmaceutical agents that each MTF pharmacy must have on it formulary to support an extended care scope of practice if the MTF P&T Committee has authorized agents in that class based upon the scope of practice at that facility.

The DoD P&T Committee will review the classes in a methodical but expeditious manner, taking into consideration circumstances that may include, but are not limited to: DoD national contracting, or DoD and the Department of Veterans Affairs (VA) national joint contracting or other agreements with pharmaceutical manufacturers; approval of a new drug by the FDA; approval of a new indication for an existing drug; changes in the clinical use of existing drugs; new information concerning the safety, effectiveness or clinical outcomes of existing drugs; price changes; shifts in market share; scheduled review of a therapeutic class; and requests from DoD P&T Committee members, MTF, or other Military Health System (MHS) officials. During the transition period from the previous methodology of formulary management involving only the MTFs and the TMOP, previous decisions by the DoD P&T Committee or committed use requirements contracts executed by DoD, or jointly by DoD and VA, shall continue in effect. This is necessary to comply with the statutory requirements of 38 U.S.C. 8111 and 10 U.S.C. 1104 relating to resource sharing between DoD and VA, and allow time to incorporate the impact of uniform formulary management into those agreements. As therapeutic classes are reviewed under the new formulary management process and pharmaceutical agents are designated for formulary or non-formulary status, this transition methodology shall apply.

The P&T Committee will meet at least quarterly to review new and existing drugs and drug classes, and recommended pharmaceutical agents for inclusion on or exclusion from the uniform formulary after evaluating their relative clinical and cost effectiveness. Pending review of a pharmaceutical agent or class, previous decisions by the predecessor to the P&T Committee regarding national contracts, agreements, formulary status, BCF status, pre-authorization requirements and quantity limits shall remain in effect. The P&T Committee will eventually evaluate all applicable drug classes at which time the transition period will be complete.

During this transition period, pharmaceutical agents in drug classes not yet evaluated by the P&T Committee will continue to be available from the TMOP and the TRICARE Retail Pharmacy (TRRx) network at either the generic or formulary (brand) cost share. MTFs may evaluate for inclusion on the MTF formulary pharmaceutical agents in drug classes that do not already have BCF status, or have not yet been evaluated by the P&T Committee. BCF listed agents must be on the formulary at all full-service MTF pharmacies at all times.

Public Comments

A proposed rule (71 FR 78110–78115) was published on December 28, 2006, and provided a 60-day comment period. Only one comment related to the rule was received and is responsed to below. Other comments unrelated to this rule were submitted by a national association representing retail drugstores. These comments were directed toward suggested overall program changes that would favor use of retail pharmacies.

Comment: Limiting Military Treatment Facility (MTF) Formularies

A pharmaceutical manufacturer commented that it understood DoD to be limiting MTF formularies to only those drugs on the basic core formulary (BCF) or the extended core formulary (ECF), and if so, this action would limit other uniform formulary items availability at MTFs, drive up government costs, and increase beneficiary costs.

Point of Clarification and Response

DoD does not intend to change the current process by which MTFs create local formularies. MTFs must carry BCF items, and may augment those items based on the scope of health care services provided at the respective MTF. Therapeutic classes reviewed by the DoD P&T Committee will contain pharmaceutical agents that carry either a BCF or ECF designation. All pharmaceutical agents in therapeutic classes that the Committee has not reviewed have the presumption of inclusion on the Uniform Formulary and are available to augment local MTF formularies. These pharmaceutical agents remain available options for MTF Commanders to add to their formularies in accordance with their local MTF P&T Committee process.

Comment: A national association representing retail drugstores offered comments unrelated to this rule regarding co-payments, recommendations for DoD to adopt electronic coordination of benefits, and stated that DoD should more diligently pursue it's authority to purchase pharmaceuticals at Federal discounts for dispensing in the retail network pharmacies.

Response: None of these comments are related to this rule. DoD's copay structure is defined in law and is not affected by this rule. DoD implemented electronic coordination of benefits in 2007 and has successfully adjudicated millions of third party claims through this process. Regarding comments toward pursuit of Federal discounts for retail prescriptions, the FY08 National Defense Authorization Act included new legislative authority for DoD to access Federal discounts for retail prescriptions. A Final Rule implementing the legislation has been issued.

V. Regulatory Procedures

Executive Order (EO) 12866 directs agencies to assess all costs and benefits available, regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget (OMB) if it meets any one of a number of specified conditions, including: having an annual effect on the national economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. DoD has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action as it addresses novel policy issues relating to implementation of coordination of medical benefits programs for covered beneficiaries of the uniformed services under TRICARE and the Medicare Prescription Drug Benefit.

The double coverage payment procedures will implement the statutory designation of Medicare as primarily responsible for payment of prescription drug costs for TRICARE-Medicare dual-eligible beneficiaries who have prescription drug coverage under Medicare Part D during the double coverage period described in this rule. It is estimated that the cost avoidance for the DoD Medicare Eligible Retiree Health Care Fund will be approximately $1800 per beneficiary. As of January 2008, approximately 123,000 dual-eligible beneficiaries were enrolled in the Medicare Part D program, resulting in a decrease in the Medicare-Eligible Retiree Health Care (MERHC) fund liability of $22,140,000. Benefits of the final rule include implementation of the Congressional requirement for primary payment responsibility between the two programs. The rule has been determined not to be major under the Congressional Review Act.

This final rule does not contain a Federal mandate that may result in the expenditure by State, local or tribunal governments, in aggregate, or by the private sector of $100 million or more in any one year.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities. This rule does not require a regulatory flexibility analysis as it would have no significant economic impact on a substantial number of small entities.

This final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 55). In order to determine which dual-eligible beneficiaries are participating in Medicare Part D, TRICARE will rely on the Defense Eligibility Enrollment Reporting System (DEERS) to identify which beneficiaries are enrolled in Medicare Part D through existing data sharing agreements with CMS and will not need to collect additional information from them.

We have examined the impact(s) of the final rule under EO 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, health care, health insurance, military personnel, pharmacy benefits.

■ Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.8 is amended by adding paragraph (d)(1)(iii)(C) and revising paragraph (d)(1)(vi) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) For Medicare beneficiaries who enroll in Medicare Part D, the Part D plan is primary and TRICARE is secondary payer. TRICARE will pay the beneficiary's out-of-pocket costs for Medicare and TRICARE covered medications, including the initial deductible and Medicare Part D cost-sharing amounts up to the initial coverage limit of the Medicare Part D plan. The Medicare Part D plan, although the primary plan, pays nothing during any coverage gap period. When the beneficiary becomes responsible for 100 percent of the drug costs under a Part D coverage gap period, the beneficiary may use the TRICARE pharmacy benefit as the secondary payer. TRICARE will cost share during the coverage gap to the same extent as it does under Section 199.21 for beneficiaries not enrolled in Medicare Part D plan. The beneficiary is responsible for the applicable TRICARE pharmacy cost-sharing amounts (and deductible if using a retail non-network pharmacy). Part D plan sponsors may offer a defined standard benefit, or an actuarially equivalent standard benefit. Part D plan sponsors may also offer alternative prescription drug coverage, which may consist of basic alternative coverage or enhanced alternative coverage. Therefore depending on the Part D plan that a beneficiary chooses, monthly premiums, coinsurances, co-pays, deductibles and benefit design may vary from plan to plan. TRICARE payment of the beneficiary's initial deductible, if any, along with payment of any beneficiary cost share count towards total spending on drugs, and may have the effect of moving the beneficiary more quickly through the initial phase of coverage to the coverage gap. Irrespective of the phase of the benefit in which a beneficiary may be, if a beneficiary is accessing a pharmacy under contract with his or her Part D plan, the provider will bill the Part D plan first, then TRICARE. If the beneficiary chooses to use his or her TRICARE pharmacy benefit during a coverage gap under Part D, the beneficiary may do so, but the beneficiary is responsible for the TRICARE cost-shares.

* * * * *

(vi) Effect on enrollment in Medicare Advantage Prescription Drug (MA–PD) plan. In the case of a beneficiary enrolled in a MA–PD plan who receives items or services for which payment may be made under both the MA–PD plan and CHAMPUS/TRICARE, a claim for the beneficiary's normal out-of-pocket costs under the MA–PD plan may be submitted for CHAMPUS/TRICARE payment. However, consistent with paragraph (c)(4) of this section, out-of-pocket costs do not include costs associated with unauthorized out-of-system care or care otherwise obtained under circumstances that result in a denial or limitation of coverage for care that would have been covered or fully covered had the beneficiary met applicable requirements and procedures. In such cases, the CHAMPUS/TRICARE amount payable is limited to the amount that would have been paid if the beneficiary had received care covered by the Medicare Advantage plan. If the TRICARE-Medicare beneficiary enrolls in a MA–PD drug plan, it generally will be governed by Medicare Part C, although

plans that offer a prescription drug benefit must comply with Medicare Part D rules. The beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan before seeking CHAMPUS/TRICARE payment. CHAMPUS/TRICARE payment for such beneficiaries may not exceed that which would be payable for a beneficiary under paragraph (d)(1)(iii)(C) of this section.

* * * * *

■ 3. Section 199.21 is amended by adding new paragraphs (g)(4) and (i)(2)(xi), and by revising paragraphs (h)(2)(ii) and (m), to read as follows:

§ 199.21 Pharmacy benefits program.

* * * * *

(g) * * *

(4) *Transition to the Uniform Formulary.* Beginning in Fiscal Year 2005, under an updated charter for the DoD P&T Committee, the committee shall meet at least quarterly to review therapeutic classes of pharmaceutical agents and make recommendations concerning which pharmaceutical agents should be on the Uniform Formulary, the Basic Care Formulary (BCF), and Extended Core Formulary (ECF). The P&T Committee will review the classes in a methodical, but expeditious manner. During the transition period from the previous methodology of formulary management involving only the MTFs and the TMOP Program, previous decisions by the predecessor DoD P&T Committee concerning MTF and Mail Order Pharmacy Program formularies shall continue in effect. As therapeutic classes are reviewed under the new formulary management process, the processes established by this section shall apply.

(h) * * *

(2) * * *

(ii) *Availability of formulary pharmaceutical agents at military treatment facilities (MTF).* Pharmaceutical agents included on the uniform formulary are available through facilities of uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the P&T Committee of the relative clinical effectiveness and cost effectiveness, based on costs to the Program associated with providing the agents to beneficiaries. The BCF is a subset of the uniform formulary and is a mandatory component of formularies at all full-service MTF pharmacies. The BCF contains the minimum set of pharmaceutical agents that each full-service MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. Limited-service MTF pharmacies (e.g., specialty pharmacies within an MTF or pharmacies servicing only active duty military members) are not required to include the entire BCF on their formularies, but may limit their formularies to those BCF agents appropriate to the needs of the patients they serve. An ECF may list preferred agents in drug classes other than those covered by the BCF. Among BCF and ECF agents, individual MTF formularies are determined by local P&T Committees based on the scope of health care services provided at the respective MTFs. All pharmaceutical agents on the local formulary of full-service MTF pharmacies must be available to all categories of beneficiaries.

* * * * *

(i) * * *

(2) * * *

(xi) For a Medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by 10 U.S.C. 1086.

* * * * *

(m) *Effect of other health insurance.* The double coverage rules of section 199.8 of this part are applicable to services provided under the pharmacy benefits program. For this purpose, the Medicare prescription drug benefit under Medicare Part D, prescription drug benefits provided under Medicare Part D plans are double coverage plans and such plans will be the primary payer, to the extent described in section 199.8 of this part. Beneficiaries who elect to use these pharmacy benefits shall provide DoD with other health insurance information.

* * * * *

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26037 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

RIN 0720–AB28; DoD–2008–HA–0073

32 CFR Part 199

TRICARE; Hospital-Based Psychiatric Partial Hospitalization Programs

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule will provide that TRICARE approval of a hospital is sufficient for its psychiatric partial hospitalization program (PHP) to be an authorized TRICARE provider. Upon implementation of this provision, separate TRICARE certification of hospital-based psychiatric PHPs would no longer be required. This rule will establish uniform requirements for recognizing a hospital-based PHP as an authorized TRICARE provider.

DATES: *Effective Date:* This rule is effective November 30, 2009.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone, (303) 676–3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 30, 2008, (73 FR 79726), the Office of the Secretary of Defense published for public comment a proposed rule regarding TRICARE certification standards for psychiatric PHPs. The rule proposed that TRICARE no longer impose its unique certification standards upon hospital-based psychiatric PHPs. Rather, TRICARE approval of a hospital shall be sufficient to establish the hospital as an authorized provider of its PHP services to TRICARE beneficiaries.

II. Review of Public Comments

We received two comments on the proposed rule. One commenter applauded the agency for its decision to find that TRICARE approval of a hospital is sufficient for its psychiatric partial hospitalization program to be an authorized provider. We appreciate the comment.

A second commenter recommended that DoD eliminate TRICARE's unique requirements for hospital-based PHPs. We note that the proposed rule put forward eliminating the unique requirements for hospital based PHPs and recognizing a hospital-based PHP as

an authorized provider. This final rule adopts the provision.

This same commenter also urged DoD to revise its PHP reimbursement regulations by implementing a temporary military contingency payment adjustment (TMCPA) for PHP consistent with its policy for other outpatient services as described in 32 CFR 199.14. We refer the commenter to the final rule published in the **Federal Register** on December 10, 2008 (73 FR 74954), that discusses the Outpatient Prospective Payment System (OPPS). The OPPS allows for a temporary transitional payment adjustment (TTPA) and a TMCPA to buffer the financial impact of the new prospective payment system. The Department's rationale for adopting the TTPA was to ease the transition from the prior reimbursement system to the prospective payment-type of reimbursement and to give hospitals time to adjust and budget for potential revenue reductions. We note that the OPPS, TTPA, and TMCPA apply to PHP services.

Finally, the commenter also urged DoD to critically examine its payment structure for hospital-based PHP, with a strong attention to payment adequacy for hospital-based PHP. The commenter also stated that reviewing our payment structure will assure greater access to quality hospital-based PHPs. We respond by noting that we believe access and reimbursement will be enhanced by adopting the provision in this rule which provides that TRICARE approval of a hospital is sufficient for its PHP to be an authorized TRICARE provider. Upon implementation of this provision, separate TRICARE certification of hospital-based psychiatric PHPs shall no longer be required; consequently, access will be enhanced. Additionally, with our adoption of the Medicare full-day rate for partial hospitalization and allowing payment of professional services outside the per diem rate, with some exceptions, we feel the overall PHP payment (i.e., the TRICARE OPPS per diem plus payment for certain professional services) is comparable to the per diem rates currently in effect under TRICARE policy. In addition, the TMCPAs would also apply to ensure adequate access to PHP services. Again, for further information on PHP reimbursement and OPPS, we refer the reader to the final rule published in the **Federal Register** on December 10, 2008 (73 FR 74954). It should be noted, however, that neither the proposed rule nor this final rule address the reimbursement provisions of section 199.14.

III. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

Executive Order 12866 requires a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. This final rule is not a significant regulatory action. Nor is it subject to the Congressional Review Act.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires each Federal agency to prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this final rule does not contain a federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Therefore, this final rule is not subject to this requirement.

Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' requires an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this final rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.6 is amended by revising paragraphs (b)(4)(xii)(A)(*2*)(*i*) and (b)(4)(xii)(E)(*7*) introductory text to read as follows:

§ 199.6 TRICARE—authorized providers.

* * * * *

(b) * * *

(4) * * *

(xii) * * *

(A) * * *

(*2*) Eligibility. (*i*) Every free-standing psychiatric partial hospitalization program must be certified pursuant to TRICARE certification standards. Such standards shall incorporate the basic standards set forth in paragraphs (b)(4)(xii)(A) through (D) of this section, and shall include such additional elaborative criteria and standards as the Director, TRICARE Management Activity, determines are necessary to implement the basic standards. Each psychiatric partial hospitalization program must be either a distinct part of an otherwise-authorized institutional provider or a free-standing program. Approval of a hospital by TRICARE is sufficient for its partial hospitalization program to be an authorized TRICARE provider. Such hospital-based partial hospitalization programs are not required to be separately certified pursuant to TRICARE certification standards.

* * * * *

(E) * * *

(*7*) Free-standing partial hospitalization programs shall certify that:

* * * * *

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26038 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0043]

32 CFR Part 311

Privacy Act; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense shall exempt those records contained in DWHS E06, Enterprise Correspondence Control System (ECCS), when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The Privacy Act system of records notice has already been published on August 19, 2009 (74 FR 41870).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 323

Privacy.

■ Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OSD PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93–579, Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 311.8 is amended to add paragraph (b)(16) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(b) * * *

(16) System identifier and name: DWHS E06, Enterprise Correspondence Control System (ECCS).

(i) *Exemption:* During the staffing and coordination of actions to, from, and within components in conduct of daily business, exempt materials from other systems of records may in turn become part of the case record in this document control system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a (j)(2) and (k)(1) through (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The

exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26030 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0147]

32 CFR Part 322

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Services, DoD.

ACTION: Final rule with request for comment.

SUMMARY: The National Security Agency/Central Security Services (NSA/CSS) is adding an exemption rule for the system of records GNSA 25, ''NSA/CSS Travel Records.'' The Privacy Act system of records notice has already been published on June 8, 2009 (74 FR 27116).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and/RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6). It has been determined that Privacy Act rules for the Department of Defense do not have a significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35). It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''. It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''. It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 322

Privacy.

■ Accordingly, 32 CFR part 322 is amended as follows:

PART 322—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICES PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 322.7 is amended by adding paragraph (r) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(r) GNSA 25.

(1) *System name:* NSA/CSS Operations Travel Records.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(3) *Authority:* 5 U.S.C. 552a(k)(2)(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable

information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26039 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0148]

32 CFR part 322

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The National Security Agency/Central Security Service is adding an exemption rule for the system of records GNSA 26, ''NSA/CSS Accounts Receivable, Indebtedness and Claims.'' The Privacy Act system of record notice has already been published on August 19, 2009 (74 FR 41872).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number, RIN number and title, by any of the following methods.

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR part 322

Privacy.

■ Accordingly, 32 CFR part 322 is amended as follows:

PART 322—[AMENDED]

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 322.7 is amended by adding and reserving paragraph (r), and adding paragraph (s) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(s) GNSA 26.

(1) *System Name:* NSA/CSS Accounts Receivable, Indebtedness and Claims.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to

the information exempt to the extent that disclosure would reveal the identify of a confidential source. **NOTE:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(3) Authority: 5 U.S.C. 552a(k)(2)(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26040 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0006]

32 CFR Part 323

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Defense Logistics Agency (DLA) is updating the DLA Privacy Act Program Rules, 32 CFR part 323, by replacing the (k)(2) exemption with a (k)(5) exemption to more accurately describe the basis for exempting the records. The Privacy Act system of records notice, S500.20, entitled ''Defense Logistics Agency Criminal Incident Reporting System Records'', has already been published on January 22, 2009 (74 FR 4006).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 323

Privacy.

■ Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DLA PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (b) of Appendix H to 32 CFR part 323 is revised to read as follows:

Appendix H to Part 323—DLA Exemption Rules

* * * * *

b. ID: S500.20 (Specific exemption).

1. *System name:* Defense Logistics Agency Criminal Incident Reporting System Records.

2. *Exemption:* i. Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principal function any activity pertaining to the enforcement of criminal laws.

ii. The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a(c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

3. *Authority:* 5 U.S.C. 552a(j)(2).

4. *Reasons:* i. From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

ii. From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefor necessitate the exemptions of this system of records from the requirements of the other cited provisions.

iii. From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

iv. From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal investigation.

v. From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

vi. From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

vii. From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

viii. From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

ix. From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26051 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0008]

32 CFR Part 323

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Defense Logistics Agency shall exempt those records contained in S510.30, Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records, when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records. The Privacy Act system of records notice has already been published on January 22, 2009 (74 FR 4009).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 323

Privacy.

■ Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DLA PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Appendix H to 32 CFR part 323 is amended to add paragraph g. to read as follows:

Appendix H to Part 323—DLA Exemption Rules

* * * * *

g. ID: S510.30 (Specific/General Exemption)

1. *System name:* Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

2. *Exemption:* During the processing of a Freedom of Information Act/Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Defense Logistics Agency hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

3. *Authority:* 5 U.S.C. 552a (k)(1) through (k)(7).

4. *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26052 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0149]

32 CFR Part 326

Privacy Act; Implementation

AGENCY: National Reconnaissance Office, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of Defense is updating the National Reconnaissance Office Privacy Act Program Rules, 32 CFR 326, by adding the (k)(2)and (k)(5), exemptions to accurately describe the basis for exempting the records. The Privacy Act system of records notice, QNRO–27, entitled ''Legal Records'', has already been published on April 30, 2008 (73 FR 23429).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Privacy Official at (703) 227–9128.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 326

Privacy.

■ Accordingly, 32 CFR part 326 is amended as follows:

PART 326—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 326.17 is amended by adding paragraph (k) to read as follows:

§ 326.17 Exemptions.

* * * * *

k. QNRO–27.

1. System name: Legal Records.

2. Exemption: Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

3. Authority: 5 U.S.C. 552a (k)(2) and (k)(5).

4. Reasons: i. From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

ii. From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

iii. From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

iv. From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

v. From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26050 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0009]

32 CFR Part 806b

Privacy Act; Implementation

AGENCY: Department of Air Force, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of Air Force is updating the Department of Air Force Privacy Act Program Rules, 32 CFR part 806b, by adding the (k)(2) exemption to accurately describe the basis for exempting the records. The Privacy Act system of records notice, F051 AFJA E, entitled ''Judge Advocate General's Professional Conduct Files'', has already been published on December 31, 2008 (73 FR 80372).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

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

• *Mail:* Federal Docket management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Intructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: Executive Order 12866, ''Regulatory Planning and Review''. It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (e) of Appendix D to 32 CFR part 806b is amended by adding paragraph (22) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *

(22) System identifier and name: F051 AFJA E, Judge Advocate General's Professional Conduct Files.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26032 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0021]

32 CFR Part 806b

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of the Air Force is updating the Department of Air Force Privacy Act Program Rules, 32

CFR part 806b, by adding the (k)(3) exemption to accurately describe the basis for exempting the records. The Privacy Act system of records notice, F032 AFCESA C, entitled ''Civil Engineer System-Explosive Ordnance Records'', has already been published on March 17, 2009 (74 FR 11356).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b, is amended as follows:

PART 806b—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (e) of Appendix D to 32 CFR part 806b is amended by adding paragraph (25) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *

(25) System identifier and name: F032 AFCESA C, Civil Engineer System-Explosive Ordnance Records.

(i) *Exemption:* Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3056, may be exempt pursuant to 5 U.S.C. 552a(k)(3) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(3).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26033 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0019]

32 CFR Part 806b

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of the Air Force is updating the Department of the Air Force Privacy Act Program Rules, 32 CFR part 806b, by adding the (k)(5) exemption to accurately describe the basis for exempting the records. The Privacy Act system of records notice, F036 AETC X, entitled ''College Scholarship Program'', was published on July 7, 2008 (73 FR 38411). The same notice was amended on August 22, 2008 (73 FR 49659) requesting a System ID change.

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (e) of Appendix D to 32 CFR part 806b is amended by adding paragraph (24) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *

(24) System identifier and name: F036 AETC X, College Scholarship Program.

(i) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability * * * the identity of a confidential source. Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) and (d) and when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26036 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0011]

32 CFR Part 806b

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of Air Force is updating the Department of Air Force Privacy Act Program Rules, 32 CFR part 806b, by adding the (k)(2) exemption to accurately describe the basis for exempting the records. The Privacy Act system of records notice, F033 USSC A, entitled ''Information Technology and Control Records'', has already been published on March 3, 2008 (73 FR 11400).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''.

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (e) of Appendix D to 32 CFR part 806b is amended by adding paragraph (23) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *

(23) System identifier and name F033 USSC A, Information Technology and Control Records.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and

to protect privacy and physical safety of witnesses and informants.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26031 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8093]

Suspension of Community Eligibility for Failure To Enforce

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: FEMA is suspending one community because of its failure to enforce its floodplain management regulations under the National Flood Insurance Program (NFIP). If documentation is received from the community before the effective suspension date, indicating it has brought its floodplain management program into compliance with the NFIP requirements, FEMA will withdraw the suspension by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of the community's scheduled suspension is the date listed in the fourth column of the following table.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Directorate, 1800 South Bell Street, Arlington, VA 20598–3072, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance that is generally not otherwise available. In return, communities agree to adopt and implement local floodplain management regulations that contribute to protecting lives and reducing the risk of property damage from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective administration and enforcement processes.

The community listed in this notice no longer complies with the NFIP requirements set forth at 44 CFR part 59 *et seq.* Under 44 CFR 59.24(c), a community will be suspended from the NFIP for failing to adequately enforce its floodplain management regulations. Accordingly, FEMA is suspending the Village of Chauncey, Athens County, Ohio, (''the Village'') on the effective date in the fourth column of the table. As of that date, the purchase of new flood insurance policies or the renewal of existing flood insurance policies under the NFIP will no longer be available.

FEMA will not suspend the Village, however, if the community submits the documentation required under 44 CFR 59.24(c) to show that it has corrected the deficiencies and remedied the violations identified in the Show Cause letter to the maximum extent possible. This documentation must be received by FEMA before the actual suspension date. If the Village successfully demonstrates its compliance with NFIP regulations, FEMA will continue its eligibility for the sale of NFIP insurance. FEMA will then publish in the **Federal Register** a notice withdrawing the suspension of the community. In the interim, if you wish to determine whether FEMA has suspended the Village on the suspension date, please contact the FEMA Region V office at (312) 408–5207. Additional information may also be found at *http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/suspension.shtm.*

FEMA identified the special flood hazard areas (SFHAs) in this community by publishing a Flood Insurance Rate Map. The effective date of this map is indicated in the last column of the table. By law, no Federally regulated entity may provide financial assistance for acquisition or construction purposes for property located in a SFHA unless the community in which the property is located is participating in the NFIP (42 U.S.C. 4106). The prohibition against certain types of Federal disaster assistance also becomes effective for the Village of Chauncey, Ohio, on the date shown in the fourth column.

The Administrator finds that notice and public comment procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule has been adequately notified. The community received a Probationary Letter on February 14, 2008, and was put on Probation June 14, 2008; and a 30-day show cause letter was sent July 29, 2009. FEMA addressed these notifications to the Mayor of the Village Council indicating that we will suspend the Village unless the Village takes the required corrective actions and remedial measures before the effective suspension date. Because we have made these notifications, this final rule may take effect within less than 30 days.

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

Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that special consideration be given to the effects of proposed regulations on small entities. This rule does not require a Notice of Proposed Rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

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

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

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

State	Location	Community No.	Date certain Federal assistance no longer available in special flood hazard area and the sale of flood insurance no longer available in the community	Current effective map date
Region V				
Ohio	Chauncey, Village of, Athens County	390017	November 6, 2009	January 17, 1986.

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

Dated: October 15, 2009.

Deborah Ingram,

Acting Deputy Assistant Administrator, Mitigation Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–25863 Filed 10–28–09; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 74, No. 208
Thursday, October 29, 2009

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 71

[Docket No. FAA–2009–0941; Airspace Docket No. 09–ANM–17]

Proposed Modification of Class E Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Grand Junction Regional, Grand Junction, CO. Additional controlled airspace is necessary to facilitate vectoring of Instrument Flight Rules (IFR) traffic from Grand Junction Regional, Grand Junction, CO to en route. The FAA is proposing this action to enhance the safety and management of aircraft operations at Grand Junction Regional, Grand Junction, CO. This action also would update the airport name from Grand Junction, Walker Field.

DATES: Comments must be received on or before December 14, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0941; Airspace Docket No. 09–ANM–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0941 and Airspace Docket No. 09–ANM–17) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0941 and Airspace Docket No. 09–ANM–17''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

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

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Grand Junction Regional, Grand Junction, CO. Additional controlled airspace extending upward from 1,200 feet above the surface is necessary to accommodate vectoring IFR aircraft departing Grand Junction Regional, Grand Junction, CO to en route airspace. This would also update the airport name from Grand Junction, Walker Field, Grand Junction, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1,

Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Grand Junction Regional, Grand Junction, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

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

* * * * *

ANM CO E5 Grand Junction, CO [Modified]

Grand Junction Regional, Grand Junction, CO
(Lat. 39°07′21″ N., long. 108°31′36″ W.)
Grand Junction VORTAC
(Lat. 39°03′34″ N., long. 108°47′33″ W.)
Grand Junction Localizer
(Lat. 39°07′04″ N., long. 108°30′48″ W.)

That airspace extending upward from 700 feet above the surface within 7 miles northwest and 4.3 miles southeast of the Grand Junction VORTAC 247° and 067° radials extending from 11.4 miles southwest to 12.3 miles northeast of the VORTAC, and within 1.8 miles south and 9.2 miles north of the Grand Junction VORTAC 110° radial extending from the VORTAC to 19.2 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface within a 30.5-mile radius of the Grand Junction VORTAC, within 6.5 miles each side of the Grand Junction VORTAC 099° radial extending from the 30.5-mile radius to 58 miles east of the VORTAC, and within 4.3 miles each side of the Grand Junction VORTAC 166° radial extending from the 30.5-mile radius to 33.1 miles south of the VORTAC, and within 4.3 miles northeast and 4.9 miles southwest of the Grand Junction ILS localizer northwest course extending from the 30.5-mile radius to the intersection of the localizer northwest course and the Grand Junction VORTAC 318° radial.

* * * * *

Issued in Seattle, Washington, on October 15, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–26096 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0057]

RIN 0720–AB24

TRICARE Program; Morbid Obesity

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes to amend the TRICARE regulation on surgery for morbid obesity to allow benefit consideration for the newest bariatric surgical procedures that are considered appropriate medical care. The amendment also removes language that limits the types of surgical procedures to treat co-morbid conditions associated with morbid obesity, revises the TRICARE Program definition of morbid obesity, and retains the TRICARE Program exclusion of non-surgical interventions related to morbid obesity, obesity and/or weight reduction. These changes are necessary to allow coverage for other surgical procedures that reduce or resolve co-morbid conditions associated with morbid obesity and the use of the Body Mass Index (BMI), which is the more accurate measure for excess weight to estimate relative risk of disease. Additionally, as new technologies or procedures evolve from investigational into generally accepted norms for medical practice, beneficiaries are entitled to TRICARE coverage of the new technology or procedures.

DATES: Comments must be received on or before December 28, 2009. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones (303) 676–3401.

SUPPLEMENTARY INFORMATION:

I. Background

This document contains proposed regulation amending the requirements and procedures in 32 CFR, part 199 relating to surgery for morbid obesity, under section 2 (Definitions) and section 4 (Basic Program Benefits) of the regulation. On December 27, 1982, the DoD published a final rule in the **Federal Register** (47 FR 57491–57493) that restricted surgical intervention for morbid obesity to gastric bypass, gastric stapling, or gastroplasty method (excluding all other types) when the primary purpose of surgery is to treat a severe related medical illness or medical condition. The severe medical conditions or illness associated with morbid obesity included diabetes mellitus, hypertension, cholecystitis, narcolepsy, Pickwickian Syndrome (and other severe respiratory disease), hypothalamic disorders, and severe arthritis of the weight-bearing joints. The DoD also limited program payments to two categories of patients: (1) Those that weigh 100 pound over their ideal weight with a specific severe medical condition; and (2) those who are 200 percent or more over their ideal weight with no medical complications required. Program payment was made available as well for special consideration of those unique cases in which the patient received an intestinal bypass, or other surgery for obesity and, because of complications, required a

second surgery. Payment is allowed even though the patient's condition may not technically meet the definition of morbid obesity because of the weight that was already lost following the initial surgery. All other surgeries including non-surgical treatment related to morbid obesity, obesity, and/or weight reduction are excluded.

The DoD did not revise the definition of morbid obesity, which is based on the Metropolitan Life Table and used then by other major health care plan, as well as reflected the 1982 general opinion regarding which cases justify surgical intervention. The DoD decided, at the time, that it was necessary to be very specific in benefit parameters due to fiscal responsibility and to ensure that Program beneficiaries were not being exposed to less than fully developed medical technology or procedures.

II. Explanation for Proposed Provisions

Overview

At the time the current regulation was written, gastric bypass, gastric stapling, and gastroplasty methods were the recognized surgeries for morbid obesity. In recent years, other bariatric surgical procedures have been used more and more frequently, and some have a substantial body of literature to support their safety and efficacy. Rather than list the specific surgical procedures that may be covered under the TRICARE Program and the clinical conditions for which coverage may be extended, this proposed rule authorizes benefit consideration for those bariatric surgical procedures that have moved from the unproven status to the position of nationally accepted medical practice, as determined by the Program standard of reliable evidence.

Also during development of the current regulation for morbid obesity, overweight and obesity were typically measured with height-weight tables (such as the Metropolitan Life Table). The regulation (as currently written) restricts eligibility for bariatric surgery to individuals who exceed their ideal weight for height by 100 pounds with an associated severe medical condition, or 200 percent or more over their ideal body weight with no associated medical condition required. This proposed amendment changes the Program definition of morbid obesity to reflect the nationally accepted medical use of the BMI, rather than the typical assessed height-weight table (*i.e.,* the Metropolitan Life Table), to determine an individual's eligibility for bariatric surgical treatment. The BMI is the more accurate measure for excess weight to estimate relative risk of disease. Since there now are more than 30 major diseases associated with obesity, the Director, TMA, or a designee, will issue specific criteria for co-morbid conditions exacerbated or caused by (morbid) obesity.

This proposed rule does not expand the TRICARE benefit for morbid obesity surgery. However, it does make the specific procedures that are covered, as well as the clinical conditions for which coverage may be extended, a matter of policy. In other words, new bariatric surgery procedures may be added to the TRICARE benefit structure as such procedures are proven safe and effective and are established as nationally accepted medical practice as determined by the Program standard of reliable evidence.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the DoD, with the Department of Health and Human Services, and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

III. Response to Comments

Because of the large number of public comments generally received 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 major comments in the preamble to that document. 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.

IV. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this proposed rule is not a significant regulatory action. This rule does not:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal 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 this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Set forth in the proposed rule are minor revisions to the existing regulation. The DoD does not anticipate a significant impact on the Program. The change from height-weight tables to the BMI should have a minimal impact on the number of beneficiaries eligible for surgery.

Public Law. 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, Federalism

It has been certified that this proposed rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

1. The States;

2. The relationship between the National Government and the States; or

3. The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, and Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended to read as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2, paragraph (b) is amended by adding the definition of

''Bariatric Surgery'' and revising the definition of ''Morbid Obesity'' to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Bariatric Surgery. Surgical procedures performed to treat co-morbid conditions associated with morbid obesity. Bariatric surgery is based on two principles:

(1) Divert food from the stomach to a lower part of the digestive tract where the normal mixing of digestive fluids and adsorption of nutrients cannot occur (i.e., Malabsorptive surgical procedures); or

(2) Restrict the size of the stomach and decrease intake (i.e., Restrictive surgical procedures).

* * * * *

Morbid obesity. A body mass index (BMI) equal to or greater than 40 kilograms per meter squared (kg/m^2), or a BMI equal to or greater than 35 kg/m^2 in conjunction with high-risk co-morbidities, which is based on the guidelines established by the National Heart, Lung and Blood Institute Federal on the Identification and Management of Patients with Obesity.

Note: Body mass index is equal to weight in kilograms divided by height in meters squared.

* * * * *

3. Section 199.4 is amended by revising paragraphs (e)(15) and (g)(28) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(15) *Morbid obesity.* The TRICARE morbid obesity benefit is limited to those bariatric surgical procedures for which the safety and efficacy has been proven comparable or superior to conventional therapies and is consistent with the generally accepted norms for medical practice in the United States medical community.

(i) *Conditions for coverage.* (A) Payment for bariatric surgical procedures are determined by the requirements specified in paragraph (g)(15) of this section, and as defined in § 199.2(b) of this part.

(B) Covered bariatric surgical procedures are payable only when the patient has completed growth (18 years of age or documentation of completion of bone growth) and has met one of the following selection criteria:

(*1*) The patient has a BMI that is equal to or exceeds 40 kg/m^2 and has previously been unsuccessful with medical treatment for obesity.

(*2*) The patient has a BMI of 35 to 39.9 kg/m^2, has at least one high-risk co-morbid condition associated with morbid obesity, and has previously been unsuccessful with medical treatment for obesity.

Note: The Director, TMA, or a designee, shall issue guidelines for review or the specific high-risk co-morbid conditions, exacerbated or, caused by obesity.

(ii) *Treatment of complications.* (A) Payment may be extended for repeat bariatric surgery when medically necessary to correct or treat complications from the initial bariatric surgery (a takedown). For instance, the surgeon in many cases will do a gastric bypass or gastroplasty to help the patient avoid regaining the weight that was lost. In this situation, payment is authorized even though the patient's condition technically may not meet the definition of morbid obesity because of the weight that was already lost following the initial surgery.

(B) Payment is authorized for otherwise covered medical services and supplies directly related to complications of obesity when such services and supplies are an integral and necessary part of the course of treatment that was aggravated by the obesity.

(iii) *Exclusions.* CHAMPUS payment may not be extended for weight control services, weight control/loss programs, dietary regimens and supplements, appetite suppressants and other medications; food or food supplements, exercise and exercise programs, or other program and equipment that are primarily intended to control weight or for the purpose of weight reduction, regardless of the existence of co-morbid conditions.

* * * * *

(g) * * *

(28) *Obesity, weight reduction.* Service and supplies related ''solely'' to obesity or weight reduction or weight control whether surgical or nonsurgical; wiring of the jaw or any procedure of similar purpose, regardless of the circumstances under which performed (except as provided in paragraph (e)(15) of this section).

* * * * *

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26042 Filed 10–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2009–HA–0098]

RIN 0720–AB36

TRICARE: Non-Physician Referrals for Physical Therapy, Occupational Therapy, and Speech Therapy

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to authorize certified physician assistants and certified nurse practitioners (non-physicians) to engage in referrals of beneficiaries to the managed care support system for physical therapy, occupational therapy, and speech therapy.

DATES: Comments received at the address indicated below by December 28, 2009 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Glenn Corn, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676–3566.

SUPPLEMENTARY INFORMATION: This proposed rule will permit services of an otherwise TRICARE-authorized individual paramedical provider, Physical Therapists (PT), Occupational Therapists (OT), and Speech Therapists (ST) to be paid on a fee-for-service basis if based on a referral from a certified physician assistant or certified nurse practitioner. This change will also align

TRICARE with Medicare's allowance of ''non-physician providers'' to provide, certify, or supervise therapy services. The language of 32 CFR 199.4(c)(3)(x) states that PT and OT may be cost shared when services are prescribed and monitored by a physician and 32 CFR 199.6(c)(3)(iii)(K) states that the services of PT, OT, and ST can be paid on a fee-for-service basis if the beneficiary is referred by a physician for the treatment of a medically diagnosed condition and a physician provides continuing oversight. In the Military Treatment Facility (MTF) setting, certified physician assistants work under the supervision of a physician. Until recently, the mechanical process of entering referrals into the electronic system allowed the MTF to reflect which physician was overseeing these referrals. However, with the implementation of the National Provider Identifier Standard as required by the Health Insurance Portability and Accountability Act, and the changes to the electronic system, the responsible physician is no longer allowed to be annotated on the referral. Additionally, a review of the processes used by Medicare found that Medicare no longer restricts the referral for PT, OT, and ST to only physicians, but now allows non-physician providers to make these referrals. After consideration, the Department of Defense has determined that this model should be proposed within the Military Health System so that a certified physician assistant or certified nurse practitioner may be allowed to issue such referrals.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

Section 801 of title 5, United States Code, and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this proposed rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by revising paragraph (c)(3)(x)(A) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(x) * * *

(A) The services are prescribed and monitored by a physician, certified physician assistant or certified nurse practitioner.

* * * * *

3. Section 199.6 is amended by revising paragraph (c)(3)(iii)(K) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(K) *Other individual paramedical providers.*

(*1*) The services of the following individual professional providers of care to be considered for benefits on a fee-for-service basis may be provided only if the beneficiary is referred by a physician for the treatment of a medically diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(*i*) Licensed registered nurses.

(*ii*) Audiologists.

(*2*) The services of the following individual professional providers of care to be considered for benefits on a fee-for-service basis may be provided only if the beneficiary is referred by a physician, a certified physician assistant or certified nurse practitioner and a physician, a certified physician assistant or certified nurse practitioner must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

(*i*) Licensed registered physical therapist and occupational therapist.

(*ii*) Licensed registered speech therapists (speech pathologists).

* * * * *

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26049 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2009–HA–0097]

RIN 0720–AB35

TRICARE; Elimination of Voluntary Disenrollment Lock-Out

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule eliminates the 1 year lock-out for non-Active Duty members who disenroll from TRICARE Prime before their annual enrollment renewal date.

DATES: Comments must be received on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin at (703) 681–0039; TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The TRICARE benefit was directed by Congress in section 1097 of the National Defense Authorization Act for Fiscal Year 1995. For further information on TRICARE, the reader may refer to the final rule regarding TRICARE published in the **Federal Register** on October 5, 1995.

Administrative Change

When TRICARE Prime was implemented, it was envisioned that TRICARE Prime enrollees would transfer their enrollment when they moved to a new location. The reality is that some enrollees, such as college students, move several times a year. When TRICARE Prime is available at their new location, they transfer enrollment. However, TRICARE Prime might not be available at the gaining location, so they voluntarily disenroll in advance of their annual enrollment date. This automatically triggers a one year lock-out. This proposed rule eliminates the lock-out for active duty family members and allows TRICARE Prime enrollment when they relocate in an area that offers TRICARE Prime.

II. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not a significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this proposed rule is not subject to any of these requirements.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public.

Executive Order 13132, ''Federalism''

We have examined the impacts of the rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.17 is amended by revising paragraph (o)(4) to read as follows:

§ 199.17 TRICARE Program.

* * * * *

(o) * * *

(4) *Voluntary disenrollment.* Any non-active duty beneficiary may disenroll at any time. Disenrollment will take effect in accordance with administrative procedures established by the Assistant Secretary of Defense (Health Affairs). Retired beneficiaries and their family members who disenroll prior to their annual enrollment renewal date will not be eligible to reenroll in Prime for a 1-year period from the effective date of the disenrollment. Active Duty family members may change their enrollment status twice in an enrollment year. Any additional disenrollment changes will result in an enrollment lock out for a 1-year period from the effective date of the disenrollment. Enrollment rules may be waived by the Assistant Secretary of Defense (Health Affairs) based on extraordinary circumstances.

* * * * *

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26044 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0018]

32 CFR Part 806b

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of the Air Force is updating the Department of the Air Force Privacy Act Program Rules, 32 CFR part 806b, by adding the (k)(1) thru (k)(7) exemptions to accurately describe the basis for exempting the records. The Privacy Act system of records notice, F051 AF JAA, entitled ''Freedom of Information Appeal Records'', has already been published on December 12, 2008 (73 FR 75688).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Paragraph (e) of Appendix D to 32 CFR part 806b is amended by adding paragraph (26) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

* * * * *

(26) System identifier and name: F051 AF JAA, Freedom of Information Appeal Records.

(i) *Exemption:* During the processing of a Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reason:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26035 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 192, 195, and 198

[Docket No. PHMSA–2009–0192]

RIN 2137–AE43

Pipeline Safety: Pipeline Damage Prevention Programs

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPRM) initiates a rulemaking procedure to establish criteria for determining adequate state enforcement of pipeline damage prevention laws. Under the Pipeline Inspection, Protection, Safety, and Enforcement (PIPES) Act of 2006,

establishment of these criteria is a prerequisite should PHMSA find it necessary to conduct an enforcement proceeding against an excavator for violation of one-call damage prevention laws in the absence of enforcement action by the state where the events occurred. This notice is issued to solicit feedback and comments regarding the criteria and procedures PHMSA should use to determine if a state's enforcement of its damage prevention laws is adequate. These procedures will encourage states to develop effective excavation damage prevention enforcement programs to protect gas and hazardous liquid pipelines, but also allow federal enforcement authority should any state fail to do so.

DATES: Persons interested in submitting written comments on this ANPRM must do so by December 14, 2009. PHMSA will consider late filed comments so far as practicable.

ADDRESSES: Comments should reference Docket No. PHMSA–2009–0192 and may be submitted in the following ways:

- *E-Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Operations Facility (M–30), U.S. Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Operations Facility, U.S. Department of Transportation, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: Identify the docket number, PHMSA–2009–0192, at the beginning of your comments. If you mail your comments, we request that you send two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. **Note:** All comments are electronically posted without changes or edits, including any personal information provided.

Privacy Act Statement

Anyone can search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Steve Fischer, Director of Program Development, PHMSA by e-mail at *steve.fischer@dot.gov*; or Larry White, Attorney-Advisor, PHMSA by e-mail at *lawrence.white@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Objective

Excavation damage is a leading cause of pipeline failure incidents. Better, more effective enforcement of state damage prevention laws is seen as a key to making further reductions in pipeline damage incidents.

PHMSA is seeking to encourage states to strengthen their excavation damage prevention laws and to adequately enforce those laws. Toward this goal and in response to language included in the Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006 (Pub. L. 109–468), PHMSA intends to issue criteria and procedures, through a rulemaking proceeding, for determining whether states are adequately enforcing their damage prevention laws, and for conducting federal enforcements if necessary. This ANPRM seeks feedback and comments regarding the development of those criteria and procedures.

II. Background

A. PHMSA Damage Prevention Efforts

PHMSA has made extensive efforts over many years to improve excavation damage prevention as it pertains to pipeline safety. These have included outreach to and cooperative efforts with a wide spectrum of damage prevention stakeholders, including:

- Public and community organizations
- Excavators and property developers
- Emergency responders
- Local, state and federal government agencies
- Pipeline and other underground facility operators
- Industry trade associations
- Consensus standards organizations
- Environmental organizations

Current PHMSA programs and recent initiatives sponsored and/or supported by PHMSA designed to enhance pipeline safety through improvements in excavation damage prevention include:

- State Pipeline Safety Partners—Supported by funding agreements with PHMSA, state agencies can assume safety jurisdiction for intrastate and/or interstate gas and hazardous liquid pipeline operators. To assume jurisdiction, states must publish regulations that meet or exceed the federal safety regulations. Our state pipeline safety partners are represented by the National Association of Pipeline Safety Representatives (NAPSR), which strives to strengthen state pipeline safety programs through promotion of improved pipeline safety standards, education, training, and technology. PHMSA frequently consults with NAPSR, especially for issues concerning intrastate pipelines.
- Grants to States and Communities—Each state has established laws, regulations, and procedures shaping the state damage prevention program. PHMSA provides grant opportunities intended to help states improve their damage prevention programs to protect pipelines. States seeking damage prevention program grants must incorporate the nine elements of effective damage prevention programs identified in the PIPES Act of 2006 into their programs. PHMSA also offers Technical Assistance Grants (TAG) to communities. Informed communities play a vital role in the safety and reliability of pipeline operations. PHMSA's TAG program offers new opportunities to strengthen the depth and quality of public participation in pipeline safety and damage prevention matters.
- Consensus Standards—Office of Pipeline Safety (OPS) works closely with several national consensus standards organizations, such as the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API) and the National Association of Corrosion Engineers (NACE). These organizations include members from various stakeholder groups and produce effective standards balanced through a consensus process. PHMSA recognizes the value of stakeholder consensus and appreciates the hard work required to develop and publish consensus technical safety standards. When these standards complement or enhance federal pipeline safety regulations, they may be incorporated into the regulations by reference. One example of an incorporated consensus standard intended to help improve pipeline damage prevention is American Petroleum Institute (API) Recommended Practice (RP) 1162, *Public Awareness Programs for Pipeline Operators.*
- Research and Development (R&D)—PHMSA technical review committees identify R&D priorities and select projects for funding. PHMSA's R&D program goal is to drive improvements in various aspects of pipeline safety, including damage prevention. The program focuses on the rapid conversion of new technology into tools pipeline stakeholders can use to improve pipeline safety. Completed

R&D projects often provide the technical basis for regulations and consensus safety standards. Other R&D projects summarize information necessary for well-informed decisions by pipeline safety stakeholders.

• Public Awareness Programs—Pipeline safety regulations address all aspects of public awareness communications. Pipeline operators are required to implement public awareness programs in communities traversed by their pipelines. They must inform stakeholders, including the public, excavators, emergency responders, and local officials, on how to recognize pipeline failures and of what actions to take in such an event. Operators must develop plans for carrying out their public awareness activities and must evaluate the effectiveness of their programs to identify needed improvements. These requirements are reflected in PHMSA's adoption of API RP 1162 into the pipeline safety regulations, as noted above.

• Focused Damage Prevention Initiatives—PHMSA invests considerable resources in identifying damage prevention best practices and in raising stakeholder awareness regarding pipeline damage prevention. PHMSA's Stakeholder Communications Web site (*http://primis.phmsa.dot.gov/comm*) provides additional information on these and other recent PHMSA damage prevention initiatives, including:

○ *Damage Prevention Best Practices*—In 1999, PHMSA sponsored the landmark *Common Ground Study* to identify ''best practices'' to prevent damage to pipelines and other underground facilities. The nonprofit Common Ground Alliance (CGA) now provides stewardship to ensure the Damage Prevention Best Practices are maintained, updated, and promoted for implementation. The CGA Best Practices are recognized nationally and internationally.

○ *Common Ground Alliance*—The CGA promotes damage prevention across all underground facility damage prevention stakeholder groups. Its individual members and member/sponsor organizations represent the diverse spectrum of these stakeholders. PHMSA supported the formation and incorporation of the CGA and continues to support its efforts toward pipeline damage prevention through grants and cooperative agreements.

○ *811*—PHMSA supported and championed the national 3-digit dialing number to provide a standard and easily remembered number for excavators to call to access the local one-call damage prevention center.

○ *Community Assistance and Technical Services (CATS) Managers*—PHMSA established the CATS program and deploys CATS personnel in each of its five regions. CATS Managers provide community assistance and technical services to all stakeholders. The main focus of the CATS program is to foster effective communications regarding pipeline safety among PHMSA and other stakeholders, and assist permitting agencies issuing permits required for safety-related pipeline repairs and construction projects.

○ *VA Pilot Project*—PHMSA sponsors and supports the Virginia Pilot Project for Incorporating Global Positioning System (GPS) Technology to Enhance One-Call Damage Prevention. The report for Phase I of the VA Pilot Project is available from PHMSA's Stakeholder Communications Web site.

○ *Pipelines and Informed Planning Alliance (PIPA)*—PIPA was initiated by and is supported by PHMSA. It is driven by requirements in the Pipeline Safety Improvement Act of 2002 (PSIA) and recommendations in the Transportation Research Board (TRB) Special Report 281. The PIPA initiative aims to improve damage prevention and pipeline safety by enhancing communication between pipeline operators and property owners/developers, and to ensure that decisions about land use and development near transmission pipelines are risk-informed.

○ *Damage Prevention Assistance Program (DPAP)*—PHMSA has developed guidance, ''Strengthening State Damage Prevention Programs,'' to assist stakeholders. The guidance draws on the definition of effective damage prevention programs found in the PIPES Act of 2006. It examines the nine elements specified in the PIPES Act and makes suggestions for implementing them at the state level. State programs can be improved by incorporating the nine elements and by identifying and implementing positive changes in processes, procedures, technologies and damage prevention laws.

These efforts are producing benefits. Data from PHMSA Significant Incident Files dated July 14, 2009, indicates that serious pipeline incidents caused by excavation damage have begun to trend downward. However, despite these efforts and the efforts of the states, pipeline operators, and other stakeholders, excavation damage to gas and hazardous liquid pipelines continues to be the single leading cause of pipeline incidents. Based on data provided to PHMSA,[1] during a recent 10-year period, from 1998–2008, excavation damage alone was cited as the cause in almost 26 percent of significant incidents for all pipeline systems. Better, more effective enforcement of state damage prevention laws is seen as a key to making further reductions in pipeline damage incidents.

While excavation damage is the cause in a significant portion of all pipeline failure incidents, it is cited as the cause in a relatively higher portion of natural gas distribution incidents. To look at this issue, PHMSA initiated and sponsored in 2005 an investigation of the risks and threats to gas distribution systems. This investigation was conducted through the efforts of four joint work/study groups, each of which included representatives of the stakeholder public, the gas distribution pipeline industry, state pipeline safety representatives, and PHMSA. The areas of their investigations included excavation damage prevention. The Distribution Integrity Management for Gas Distribution, Report of Phase I Investigations (DIMP Report) was issued in December 2005. As noted in the DIMP Report, the Excavation Damage Prevention work/study group reached four key conclusions.

• Excavation damage poses by far the single greatest threat to distribution system safety, reliability and integrity; therefore, excavation damage prevention presents the most significant opportunity for distribution pipeline safety improvements.

• States with comprehensive damage prevention programs that include effective enforcement have a substantially lower probability of excavation damage to pipeline facilities than states that do not. The lower probability of excavation damage translates to a substantially lower risk of serious incidents and consequences resulting from excavation damage to pipelines.

• A comprehensive damage prevention program requires nine important elements be present and functional for the program to be effective. All stakeholders must participate in the excavation damage prevention process. The elements are:

1. Enhanced communication between operators and excavators.

2. Fostering support and partnership of all stakeholders in all phases (enforcement, system improvement, etc.) of the program.

[1] PHMSA Significant Incidents Files, April 15, 2009.

3. Operator's use of performance measures for persons performing locating of pipelines and pipeline construction.

4. Partnership in employee training.

5. Partnership in public education.

6. Enforcement agencies' role as partner and facilitator to help resolve issues.

7. Fair and consistent enforcement of the law.

8. Use of technology to improve all parts of the process.

9. Analysis of data to continually evaluate/improve program effectiveness.

• Federal legislation is needed to support the development and implementation of damage prevention programs that include effective enforcement as a part of the state's pipeline safety program. This is consistent with the objectives of the state pipeline safety programs, which are to ensure the safety of the public by addressing threats to the distribution infrastructure. The legislation will not be effective unless it includes provisions for ongoing funding such as federal grants to support these efforts. This funding is intended to be in addition to, and independent of, existing federal funding of state pipeline safety programs.

Another recent report prepared on behalf of PHMSA [2] concluded that excavation damage continues to be a leading cause of serious pipeline failures and that better one-call enforcement is a key gap in damage prevention. In that regard, the Mechanical Damage Report noted that most jurisdictions have established laws to enforce one-call notification compliance; however, it noted that many pipeline operators consider lack of enforcement to be degrading the effectiveness of one-call programs. The report also noted that administrative enforcement measures managed through government departments are relatively easy to implement and have proven to be effective. It cited that in Massachusetts, 3,000 violation notices were issued from 1986 to the mid-1990s, contributing to a decrease of third-party damage incidents on all types of facilities from 1,138 in 1986 to 421 in 1993. The report also cited findings from another study that enforcement of the one-call notification requirement was the most influential factor in reducing the probability of pipeline strikes and that the number of pipeline strikes is proportionate to the degree of enforcement.

With respect to the effectiveness of current regulations, the Mechanical Damage Report stated that an estimated two-thirds of pipeline excavation damage is caused by third parties and found that the problem is compounded if the pipeline damage is not promptly reported to the pipeline operator so that corrective action can be taken. It also noted ''when the oil pipeline industry developed the survey for its voluntary spill reporting system—known as the Pipeline Performance Tracking System (PPTS)—it also recognized that damage to pipelines, including that resulting from excavation, digging, and other impacts, is also precipitated by operators (''first parties'') and their contractors (''second parties'')''.

Finally, the report found that for some pipeline excavation damage data that was evaluated, ''in more than 50 percent of the incidents, one-call associations were not contacted first'' and that ''failure to take responsible care, to respect the instructions of the pipeline personnel, and to wait the proper time accounted for another 50 percent of the incidents.''

B. The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006

On December 29, 2006, the Pipeline and Hazardous Materials Safety Administration's pipeline safety program was reauthorized for an additional four years, through 2010, by enactment of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (Pub. L. 109–468). The PIPES Act of 2006 provides for enhanced safety and environmental protection in pipeline transportation, enhanced reliability in the transportation of the Nation's energy products by pipeline, and other purposes. Major portions of the PIPES Act were focused on damage prevention including additional resources and clear program guidelines as well as additional enforcement authorities to assist states in developing effective excavation damage prevention programs.

With respect to resources, the PIPES Act of 2006 provides incentives through funding grants for states to improve the overall quality and effectiveness of their damage prevention programs. It provides an increased funding level up to 80% for state agencies that submit an annual certification and participate in the pipeline and/or hazardous liquid safety programs. As noted in 49 U.S.C. 60105(b), each certification submitted must state that the state authority ''(4) is encouraging and promoting the establishment of a program designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies that subjects persons who violate the applicable requirements of that program to civil penalties and other enforcement actions that are substantially the same as are provided under this chapter.* * *''

PHMSA's damage prevention grants will facilitate the establishment of comprehensive damage prevention programs in states that do not have such programs and will help improve damage prevention programs in states that do. PHMSA posted a Grants.gov opportunity in November 2007, with a $100,000 maximum grant per state and $1.5 million in total grant funding available. During 2008–2009, PHMSA awarded 27 grants to state agencies or one-call centers under state authority for improvements in their state damage prevention programs. The grant awards covered a wide scope of projects. Examples include: A study on the scope and effectiveness of the underground utility damage prevention system within the state; the design and implementation of a computer-based system that tracks, measures, analyzes and reports the overall effectiveness of damage prevention training programs; staff training; development of software and world wide web applications; development of a state-of-the-art plastic pipe locating device; and additional staff positions and equipment purchases to enhance enforcement of the state damage prevention laws and regulations. Summaries of these projects are available at *http://primis.phmsa.dot.gov/comm/DamagePreventionGrantsToStates.htm.*

With respect to program guidelines and authorities, the PIPES Act of 2006 identifies nine elements that effective damage prevention programs will include. These are, essentially, identical to those nine elements noted in the DIMP Report discussed in the previous subsection.

Of particular note, relevant to this ANPRM, is Element 7, which identifies effective enforcement of state damage prevention laws and regulations, including the use of civil penalties for violations, as a key part of an effective state program. The PIPES Act also provided PHMSA with limited authority to conduct civil enforcement proceedings against excavators who damage pipelines in a state that has failed to adequately enforce its damage prevention laws. Specifically, Section 2 of the PIPES Act established 49 U.S.C. 60114 to provide that the Secretary of Transportation may take civil enforcement action against excavators who (1) fail to use a one-call system

[2] Mechanical Damage Final Report, Michael Baker Jr., Inc., April 2009.

before excavating, or (2) who fail to regard the location information or markings established by a pipeline facility operator, and (3) who cause damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property and fail to promptly report the damage and fail to call 911 if the damage results in a release of pipeline products. The PIPES Act limited the Secretary's ability to take civil enforcement action against these excavators, in that the Secretary may not conduct an enforcement proceeding for a violation within the boundaries of a state that has the authority to impose penalties described in 49 U.S.C. 60134(b)(7) against persons who violate that state's damage prevention laws, unless the Secretary has determined that the state's enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate state enforcement of penalties. This ANPRM initiates that rulemaking procedure. Following is citation of these additions from the PIPES Act.

SEC. 2. PIPELINE SAFETY AND DAMAGE PREVENTION.

(a) ONE CALL CIVIL ENFORCEMENT.—

(1) PROHIBITIONS.—Section 60114 is amended by adding at the end the following:

(d) PROHIBITION APPLICABLE TO EXCAVATORS.—A person who engages in demolition, excavation, tunneling, or construction—

(1) May not engage in a demolition, excavation, tunneling, or construction activity in a state that has adopted a one-call notification system without first using that system to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;

(2) May not engage in such demolition, excavation, tunneling, or construction activity in disregard of location information or markings established by a pipeline facility operator pursuant to subsection (b); and

(3) Who causes damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property—

(A) May not fail to promptly report the damage to the owner or operator of the facility; and

(B) If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, may not fail to promptly report to other appropriate authorities by calling the 911 emergency telephone number.

(e) PROHIBITION APPLICABLE TO UNDERGROUND PIPELINE FACILITY OWNERS AND OPERATORS.—Any owner or operator of a pipeline facility who fails to respond to a location request in order to prevent damage to the pipeline facility or who fails to take reasonable steps, in response to such a request, to ensure accurate marking of the location of the pipeline facility in order to prevent damage to the pipeline facility shall be subject to a civil action under section 60120 or assessment of a civil penalty under section 60122.

(f) LIMITATION.—The Secretary may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a state that has the authority to impose penalties described in section 60134(b)(7) against persons who violate that state's damage prevention laws, unless the Secretary has determined that the state's enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate state enforcement of penalties.

III. Purpose and Scope of the ANPRM

PHMSA is a strong supporter of expanded state damage prevention enforcement to protect pipelines. PHMSA strongly believes that individual states should retain the primary responsibility to effectively enforce damage prevention laws. PHMSA's goal is to minimize the need to take federal enforcement action against excavators that damage pipelines by encouraging states to strengthen their damage prevention laws to include the authority to impose penalties against persons who violate those laws and to adequately enforce those laws through the use of civil penalties. However, PHMSA must follow Congressional direction and assume that responsibility if it is determined that a state is not doing so adequately. In order to do so, PHMSA must have procedures in place to evaluate state programs to make such determinations. These procedures will enable PHMSA to conduct civil enforcement proceedings against excavators who damage pipelines, in accordance with the limitations prescribed in 49 U.S.C. 60114(f), as noted above. The procedures to be used to determine if a state is adequately enforcing its one-call damage prevention laws will necessarily include a means of allowing a state the opportunity to contest a determination that it is not adequately enforcing its damage prevention laws and will provide an adjudication process to be used if PHMSA determines that an excavator is to be subject to federal enforcement as the result of a violation of the damage prevention requirements cited in 49 U.S.C. 60114. These procedures will enhance pipeline safety and will encourage states to develop effective damage prevention programs.

The purpose of this ANPRM is to enable PHMSA to begin the process of rulemaking to establish procedures for determining the adequacy of state enforcement of damage prevention requirements and to articulate a proposed process for federal enforcement. To that purpose, PHMSA is soliciting feedback and comments regarding: (1) The criteria for determining the adequacy of a state's enforcement program; (2) the procedures PHMSA will use to make this determination; (3) the federal standards to be enforced against an excavator in the event PHMSA determines a state to have inadequate enforcement; and (4) the administrative process for imposing fines or penalties on an excavator alleged to have violated the applicable standards.

IV. Issues on Which PHMSA Seeks Comment

Pipeline operators, excavators, states and the public are urged to carefully consider the appropriate procedures for determining the adequacy of state damage prevention enforcement programs, as well as the need for federal enforcement in the absence of an adequate state program. Commenters should be aware that the information and data generated in response to this ANPRM could result in a notice of proposed rulemaking. We invite commenters to submit data and information on the following:

A. Considerations for Determining the Adequacy of State Damage Prevention Enforcement Programs

A threshold criterion for determining the adequacy of a state's damage prevention enforcement program will be whether the state has established and excercised its authority to assess civil penalties for violations of its one-call laws. PHMSA will likely consider the following issues in further evaluating the enforcement component of state damage prevention programs:

- Current federal pipeline safety regulations, 49 CFR 192.614 and 49 CFR 195.442, require that gas and hazardous liquid pipeline operators, respectively, comply with certain damage prevention requirements through participation in a qualified one-call system. Specifically, this involves the receipt and recordation of notifications from excavators of planned excavation activities and performing their locating and marking responsibilities. Does state law contain similar requirements for operators to be members of and participate in the state's one-call system?
- Does state law require all excavators to use the state's one-call system and request that underground utilities in the area of the planned excavation be located and marked prior to digging?
- Has the state avoided giving exemptions to its one-call damage prevention laws to state agencies,

municipalities, agricultural entities, railroads, and other groups of excavators?

• Are the state's requirements detailed and specific enough to allow excavators to understand their responsibilities before and during excavating in the vicinity of a pipeline?

• Are excavators required to report all pipeline damage incidents to the affected pipeline operators?

• Does state law contain a provision requiring that 911 be called if a pipeline damage incident causes a release of hazardous products?

• Has the responsible state agency established a reliable mechanism to ensure that it receives reports of pipeline damage incidents on a timely basis? Damage reports should include documentation of the consequences of any product release, including the extent of service interruptions, product loss, property damage, evacuations, injuries, fatalities, and environmental damage, and copies of the reports should be made available to the appropriate PHMSA Regional Office.

• Does the responsible state agency conduct investigations of all excavation damage to pipeline incidents to determine whether the excavator appropriately used the one-call system to request a facility locate, whether a dig ticket was generated, how quickly the pipeline operator responded, whether the pipeline operator followed all of its applicable written procedures, whether the excavator waited the appropriate time for the facilities to be located and marked, whether the pipeline operator's markings were accurate, and whether the digging was conducted in a responsible manner?

• Does the state's damage prevention law provide enforcement authority including the use of civil penalties, and are the maximum penalties similar to the federal maximums (*see* 49 U.S.C. 60122(a))?

• Has the state designated a state agency with responsibility for administering the damage prevention laws?

• Does the state official responsible for determining whether or not to proceed with enforcement action document the reasons for the decision in a transparent and accountable manner? Are the records of these investigations and enforcement decisions made available to PHMSA?

• With respect to cases where enforcement action is taken, is the state actually exercising its civil penalty authority? Does the amount of the civil penalties assessed reflect the seriousness of the incident? Are remedial orders given to the violator legally enforceable?

• Are annual statistics on the number of excavation damage incidents, investigations, enforcement actions, penalties proposed, and penalties collected by the state made available to PHMSA and the public?

Commenters are invited to provide comment on these considerations and may also offer additions and alternatives that may be equally suitable for the purpose of evaluating the adequacy of state damage prevention enforcement programs.

B. Administrative Process

PHMSA seeks comment on the administrative procedures available to a state that elects to contest a notice of inadequacy should it receive one. The procedures would likely involve a ''paper hearing'' process where PHMSA would notify a state that it considers its damage prevention enforcement inadequate (*i.e.,* following its annual review), and the state would then have an opportunity to submit written materials and explanations. PHMSA would then make a final written determination including the reasons for the decision. The administrative procedures would also likely provide for an opportunity for the state to petition for reconsideration of the decision. If the state's enforcement program is ultimately deemed inadequate, direct federal enforcement against an excavator who violated the state's damage prevention law and damaged a pipeline in that state could proceed. The procedures would also likely give states the right to make a showing at a later time that it has improved its damage prevention enforcement program to an adequate level and request that PHMSA discontinue federal enforcement in that state.

Commenters are invited to submit their views on this process or suggest alternatives. In particular, does this process strike the right balance between the Congressional directive to PHMSA to undertake federal enforcement where necessary while providing a state with a fair and efficient means of showing that the state's enforcement program is adequate? PHMSA will likely evaluate state damage prevention enforcement programs on an annual basis, considering factors such as those set forth in paragraph A above. This annual review will likely include a review of all of the enforcement actions taken by the state over the previous year. For states that have been deemed to have inadequate programs in their most recent annual reviews and in accordance with the process outlined in paragraph B, PHMSA could conduct federal enforcement without further process.

With respect to a state that has been deemed nominally adequate in its most recent annual review, should the process also enable PHMSA to evaluate a state enforcement decision concerning an individual incident during the course of the year and potentially conduct federal enforcement where a state decided not to undertake enforcement for an incident that PHMSA believes may warrant enforcement action?

C. Federal Standard for Excavators

PHMSA also seeks comment on the establishment of the federal standards for excavators that PHMSA would be enforcing in a state that has been found to have an inadequate enforcement program. At a minimum the standards will directly reflect the words in the U.S. Code cited above and include requirements for an excavator to: Use an available one-call system before digging, wait the required time, excavate with proper regard for location information or markings established by the pipeline operator, promptly report any damage to the pipeline operator, and report any release of hazardous products to appropriate authorities by calling 911.

Commenters are invited to submit their views on these standards or to suggest alternatives. For example:

• Should the federal standards for excavators be limited to the minimum requirements reflected in the above-referenced statute or should they be more detailed and extensive?

• Will implementing the 911 requirement cause any unintended consequences in practice?

• Are there suggested alternatives to these standards?

The Common Ground Alliance Best Practices and API Recommended Practice 1166, Excavation Monitoring and Observation (November 2005), could be used to inform the development of such standards.

D. Adjudication Process

PHMSA also seeks comment from the excavator community on the adjudication process that would be used if an excavator were cited by PHMSA for failure to comply with the standards established as discussed in section C above in a state in which the enforcement has been deemed inadequate. At a minimum, an excavator that allegedly violated the applicable requirement would have the right to: Receive written notice of the allegations, including a description of the factual evidence the allegations are based on;

file a written response to the allegations; request an informal hearing; be represented by counsel if he or she chooses; examine the evidence; submit relevant information and call witnesses on his or her behalf; and otherwise contest the allegations of violation. Hearings would likely be held at one of PHMSA's five regional offices or via teleconference. The hearing officer would be an attorney from the PHMSA Office of Chief Counsel. The excavator would also likely have the opportunity to petition for reconsideration of the agency's administrative decision and judicial review of final agency action would be available to the same extent it is available to a pipeline operator.

Commenters are invited to submit their views on this process or suggest alternatives. For example:

- Is the process too formal in the sense that excavators contesting a citation would have to prepare a written response for the record and potentially appear before a hearing officer?
- Is the process not formal enough in the sense that it does not provide for formal rules of evidence, transcriptions, or discovery? Or does this process strike the right balance by being efficient and at the same time providing enough formality that excavators feel the process is fair and their due process rights are maintained?
- How should the civil penalty considerations found in 49 U.S.C. 60122(b) apply to excavators?

E. Existing Requirements Applicable to Owners and Operators of Pipeline Facilities

Commenters are also invited to submit their feedback and comments on the adequacy of PHMSA's existing requirements for pipeline operators to participate in one-call organizations, respond to dig tickets, and perform their locating and marking responsibilities. Under existing pipeline safety regulations 49 CFR 192.614 for gas pipelines and 49 CFR 195.442 for hazardous liquid pipelines, operators are required to have written damage prevention programs that require, in part, that the operator provide for marking its pipelines in the area of an excavation for which a locate request has been submitted by the excavator.

Comments could address, for example, whether PHMSA should consider making the existing regulatory requirements more detailed and explicit in terms of:

- The amount of time for responding to locate requests,
- The accuracy of facility locating and marking, or
- Making operator personnel available to consult with excavators following receipt of an excavation notification.

V. Regulatory Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits of evaluating state damage prevention programs and enforcing federal requirements.

B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. Because evaluating the effectiveness of state damage prevention enforcement programs necessarily involves states, we invite state and local governments with an interest in this rulemaking to comment on the effect that adoption of criteria for effective damage prevention programs and enforcement requirements may have on state pipeline safety programs.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of specific requirements applicable to using one-call systems could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

D. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires federal agencies to consider the consequences of federal actions and that they prepare a detailed statement analyzing if the action significantly affects the quality of the human environment. Interested parties are invited to address the potential environmental impacts of this ANPRM. We are particularly interested in comments about compliance measures that would provide greater benefit to the human environment or on alternative actions the agency could take that would provide beneficial impacts.

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

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian tribal governments to provide comments on any aspect of this ANPRM that may affect Indian communities.

F. Paperwork Reduction Act

Under 5 CFR Part 1320, PHMSA analyzes any paperwork burdens if any information collection will be required by a rulemaking. We invite comment on the need for any collection of information and paperwork burdens, if any.

Authority: 49 U.S.C. 60101 *et seq.*; 49 CFR 1.53.

Issued in Washington, DC, on October 26, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E9–26099 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 74, No. 208

Thursday, October 29, 2009

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Generic Clearance To Conduct Formative Research

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other interested parties to comment on a proposed information collection. This collection is an extension, without change, of a currently approved collection. This information collection will conduct research in support of FNS' goal of delivering science-based nutrition education to targeted audiences. From development through testing of materials and tools with the target audience, FNS plans to conduct data collections that involve formative research including focus groups, interviews (dyad, triad, telephone, *etc.*), surveys and Web-based collection tools.

DATES: Written comments must be received on or before December 28, 2009.

ADDRESSES: *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 has 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; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Judy F. Wilson, Senior Nutrition Advisor, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1012, Alexandria, VA 22302. Comments may also be faxed to the attention of Judy F. Wilson at (703) 305–2576 or e-mailed to *judy.wilson@fns.usda.gov.*

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the Office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1012.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Judy F. Wilson at (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Formative Research for Development of Nutrition Education and Promotion Materials and Related Tools for FNS Population Groups.

OMB Number: 0584–0524.

Expiration Date: March 31, 2010.

Type of Request: Extension of previously approved information collection.

Abstract: This information collection is based on Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1787), Section 5 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1754) and Section 11(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020). This request for approval of information collection is necessary to obtain input into the development of nutrition education interventions for population groups served by the U.S. Department of Agriculture, Food and Nutrition Service (USDA–FNS).

Diet has a significant impact on the health of citizens and is linked to four leading causes of disease, which can reduce the quality of life and cause premature death. While these diet-related problems affect all Americans, they have a greater impact on the disadvantaged populations served by many FNS programs. One of FNS' goals includes improving the nutrition of children and low-income families by providing access to program benefits and nutrition education. The FNS programs include Child Nutrition, Food Distribution, Food Stamp and Supplemental Foods Programs.

The basis of our approach rests on the philosophies that all health communications and social marketing activities must be science-based, theoretically grounded, audience-driven, and results-oriented. Secondly, consumer-based health communications require a focus on specific target audiences, encouraging positive behaviors in culturally relevant ways, unique benefits and supports for adopting the new behavior, insights into the most appropriate time and place to deliver messages, and striking the right tone to enhance attention and action to the message. Interventions need to be designed so that they can be delivered through different types of media and in a variety of formats for diverse audiences.

FNS develops a variety of resources to support nutrition education and promotion activities. These resources are designed to convey science-based, behavior-focused nutrition messages about healthy eating and physical activity to children and adults eligible to participate in FNS nutrition assistance programs and to motivate them to consume more healthful foods as defined by the Dietary Guidelines for Americans (DGAs). This includes education materials, messages, promotion tools and interventions for the diverse population served by the Federal nutrition programs including WIC, Team Nutrition, Food Distribution and other programs.

Obtaining formative input and feedback is fundamental to FNS' success in delivering science-based nutrition messages and reaching diverse segments of the population in ways that are meaningful and relevant. This includes conferring with the target audience, individuals providing service to the target audience, and key stakeholders on the communication strategies and interventions that will be developed and on the delivery approaches that will be used to reach consumers. The formative

research and testing activities described will help in the development of effective education and promotion tools and communication strategies. Collection of this information will increase FNS' ability to formulate nutrition education interventions that resonate with the intended target population, in particular low-income families.

Formative research methods and information collection will include focus groups, interviews (dyad, triad, telephone, *etc.*), surveys and Web-based data collection. The data obtained will provide input regarding the potential use of materials and products during both the developmental and testing stages. In order to determine future nutrition education needs, tools and dissemination strategies, key informant interviews will be conducted. This task involves collecting a diverse array of information from a variety of groups including: People familiar with the target audiences; individuals delivering nutrition education interventions and projects; program providers at State and local levels; program participants and other relevant informants associated with FNS programs.

Findings from all data collection will be included in summary reports submitted to USDA–FNS. The reports will describe the data collection methods, findings, conclusions, implications, and recommendations for the development and effective dissemination of nutrition education materials and related tools for FNS population groups. There will be no specific quantitative analysis of data. No attempt will be made to generalize the findings to be nationally representative or statistically valid.

Respondents: Individual & Household: Recipients and those persons eligible for FNS nutrition assistance programs, State and local staff administering FNS programs, Business: FNS stakeholders and consumers, and other interested parties.

Estimated Number of Respondents:	19,000
Focus Group Screeners	3000
Interview Screeners/Surveys	1400
Focus Groups	1500
Intercept Interviews	800
Dyad/Triad Interviews	200
Telephone Interviews	1500
Surveys	800
Web-based Collections	800
Confidentiality Agreements	9000
Estimated Time per Response:	
Focus Group Screeners	[1] 10
Interview Screeners/Surveys	[1] 10
Focus Groups	[1] 120
Intercept Interviews	[1] 30
Dyad/Triad Interviews	[1] 60
Telephone Interviews	[1] 15
Surveys	[1] 30
Web-based Collections	[1] 30
Confidentiality Agreement	[1] 10
Estimated Total Annual Burden on Respondents:	
Focus Group Screeners	[1] 30,000
Interview Screeners/Surveys	[1] 14,000
Focus Groups	[1] 180,000
Intercept Interviews	[1] 24,000
Dyad/Triad Interviews	[1] 12,000
Telephone Interviews	[1] 22,500
Survey Instruments	[1] 24,000
Web-based Collections	[1] 24,000
Confidentiality Agreement	[1] 90,000
Total Estimated Burden	[1] 420,500

[1] Minutes.

Public reporting burden for this collection of information is estimated to average 19,000 respondents with a total estimated burden of 420,500 minutes or 7,008 hours.

Dated: October 21, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–26017 Filed 10–28–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1942, subpart F, ''Complaints and Compensation for Construction Defects.''

DATES: Comments on this notice must be received by December 28, 2009 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Myron Wooden, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave., SW., Washington, DC 20250, telephone: (202) 720–4780.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 1942, subpart F, ''Complaints and Compensation for Construction Defects.''

OMB Number: 0575–0082.

Expiration Date of Approval: February 28, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The Complaints and Compensation for Construction Defects program under Section 509C of Title V of the Housing Act of 1949, as amended, provides funding to eligible persons who have structural defects with their Agency financed homes to correct these problems. Structural defects are defects in the dwelling, installation of a manufactured home, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The period in which to place a claim for a defect is within 18 months after the date that financial assistance was granted. If the defect is determined to be structural and is covered by the builder's/dealer's-contractor's warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the borrower may be compensated for having the defect corrected, under the Complaints and Compensation for Construction Defects program. Provisions of this subpart do not apply to dwellings financed with guaranteed Section 502 loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 375.

Estimated Number of Responses per Respondent: 1.00.

Estimated Number of Responses: 375.

Estimated Total Annual Burden on Respondents: 75 hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, at (202) 692–0226.

Comments:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information, including a variety of methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0743. 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: October 16, 2009.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. E9–26018 Filed 10–28–09; 8:45 am]

BILLING CODE 3410–XU–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0018]

Notice of Request for Revision of a Currently Approved Information Collection (Exportation, Transportation, and Importation of Meat and Poultry Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of an information collection concerning the exportation, transportation, and importation of meat and poultry products since the OMB approval for this information collection is scheduled to expire in January 2010, and because the Agency now has more accurate data regarding the forms used to export and import product.

DATES: Comments on this notice must be received on or before December 28, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2175 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0018. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Exportation, Transportation, and Importation of Meat and Poultry Products.

OMB Number: 0583–0094.

Expiration Date of Approval: 1/31/2010.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and correctly labeled and packaged.

FSIS is planning to request a revision of an information collection addressing paperwork requirements related to the collection of information for the exportation, transportation, and importation of meat and poultry products because this information collection is scheduled to expire in January 2010, and because the Agency now has more accurate data regarding the forms used to export and import product. In the previous submission (three years ago), FSIS had overestimated the number of burden hours associated with completing and submitting the Application for Export Certificate by over 500,000 hours.

FSIS requires that meat and poultry establishments exporting product to foreign countries complete an export certificate (9 CFR 322.2 and 381.105). Establishments must supply the type, amount, and destination of product being exported. The information required to be supplied on this form does not duplicate any information other Federal agencies may require. Such a form is necessary to certify to the importing countries that FSIS inspectors have inspected the product and have found it sound and wholesome.

Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under USDA seal to prevent such unmarked product from entering into commerce (9 CFR 325.5). To track product shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product.

Foreign countries exporting meat and poultry products to the U.S. must establish eligibility for importation of product into the U.S. and must annually certify that their inspection systems are ''equivalent to'' the U.S. inspection system (9 CFR 327.2 and 381.196). Additionally, meat and poultry products intended for import into the U.S. must be accompanied by a certificate, signed by an official of the foreign government, stating that the products have been produced by certified foreign establishments (9 CFR 327.2 and 381.197). Official import inspection establishments or brokers wishing to import product into the United States must complete a form that specifies the type, amount, originating country, and destination of the meat and poultry product (9 CFR 327.4 and 381.198). Additionally, FSIS has established procedures that allow import facilities importing product to stamp such product with the inspection legend prior to FSIS inspection, if they receive prior FSIS approval (9 CFR 327.10 and 381.204). Import facilities wishing to pre-stamp must submit a letter to FSIS requesting approval. Import facilities must also keep a log of information concerning each lot of product they have pre-stamped.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take an average of .15 hours per response.

Respondents: Official establishments, warehouses, and import establishments.

Estimated Total No. of Respondents: 6,441.

Estimated No. of Annual Responses per Respondent: 145.

Estimated Total Annual Burden on Respondents: 139,471 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Bldg., Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it online through the FSIS Web page located at: *http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on October 23, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–26084 Filed 10–28–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0031]

Notice of Request for Revision of a Currently Approved Information Collection (Electronic Animal Disease and Reporting System)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice is announcing the Food Safety and Inspection Service's (FSIS's) intention to request an extension of an information collection regarding data on meat, poultry, exotic animal, and rabbit slaughter for the Agency's electronic Animal Disease Reporting System (eADRS) since the OMB approval for this information collection is scheduled to expire in February 2010, and because the Agency now has more accurate data regarding eADRS, which has led to an increase in the estimate of burden hours.

DATES: Comments on this notice must be received on or before December 28, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2175 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0031. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR ADDITIONAL INFORMATION: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Electronic Animal Disease Reporting System.

OMB Number: 0583–0139.

Expiration Date of Approval: 2/28/2010.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged. FSIS also inspects exotic animals and rabbits under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C 1621 *et seq.*)

FSIS is planning to request a revision of an approved information collection addressing paperwork requirements related to the collection of information concerning meat and poultry slaughter for the Agency's eADRS.

In accordance with 9 CFR parts 320, 381.175, 381.180, 352.15, and 354.91, establishments that slaughter meat, poultry, exotic animals, and rabbits are required to maintain certain records regarding their business operations and

to report this information to the Agency as required.

For eADRS, establishments report (by shift) slaughter totals in number of head and weight by animal category.

FSIS uses this information to plan inspection activities, to develop sampling plans for testing, to target establishments for testing, to develop the Agency budget, and to develop reports to Congress. FSIS also provides this data to other USDA agencies: The National Agricultural Statistics Service (NASS), the Animal and Plant Health Inspection Service (APHIS), the Agricultural Marketing Service (AMS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA), for their publications and other functions.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of .1207 hours per response to collect and submit this information to FSIS.

Respondents: Slaughter establishments.

Estimated No. of Respondents: 1,341.

Estimated No. of Annual Responses per Respondent: 500.

Estimated Total Annual Burden on Respondents: 80,958.3 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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; and, (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on October 23, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–26087 Filed 10–28–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0032]

Notice of Request for a New Information Collection (Food Safety Education Conference)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a new information collection regarding the registration for a Food Safety Education Conference that will be held by FSIS and NSF International. FSIS plans to publish a public meeting notice about the conference closer to the date of the conference.

DATES: Comments on this notice must be received on or before December 28, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2175 George Washington Carver Center, 5601 Sunnyside Avenue, MAILSTOP 5272, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0032. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065 South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Food Safety Education Conference.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the

Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is requesting a new information collection addressing paperwork requirements regarding the registration to the FSIS Food Safety Education Conference to be held in 2010.

This information collection is necessary so people can register for the Food Safety Education Conference. Registration will be mandatory to attend the conference. To register on-line, individuals will have to use their credit cards to reserve a spot. FSIS and NSF International will collect the following personal data related to the use of a credit card from individuals who register for the conference: name, organization, street address, city or town, State, country, telephone number, and credit card information. The respondents are individuals interested in attending the conference. The information will be used to collect payment and make hotel reservations for the respondents.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 10 minutes per response to collect and submit this information to FSIS.

Respondents: Individuals.

Estimated No. of Respondents: 400.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 66.6 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532, South Bldg., Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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; and, (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on October 23, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–26085 Filed 10–28–09; 8:45 am]

BILLING CODE 3410–DM–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to Ross A. *Rutledge@omb.eop.gov* fax to 202–395–6974. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0580.

Form Number: N/A.

Title: OCR Deployment Tracking System (DTS).

Type of Submission: Renewal of Information Collection.

Purpose: The purpose of this information collection will be used to (a) Track operations of the hiring process; (b) monitor the deployment validation process; (c) identify and plan deployment teams; (d) assess and manage the deployment and logistics of team members; (e) notify, locate and mobilize individuals in a deployed area, as necessary during emergency or other threatening situation; (f) notify the designated emergency contact in case of a medical or other emergency involving an individual; (g) manage orientation, annual, specialized and pre-deployment training in preparation for projected deployments.

Annual Reporting Burden:

Respondents: 250.

Total annual responses: 1,000.

Total annual hours requested: 375 hours.

Dated: October 21, 2009.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E9–25773 Filed 10–28–09; 8:45 am]

BILLING CODE 6116–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, November 6, 2009; 9:30 a.m. EDT.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda
II. Program Planning
- Approval of Concept Papers for FY 2010 Briefing Report Topics
- Amendments to Title IX Briefing Report
- Update on Status of 2010 Enforcement Report

III. Approval of Minutes of October 30 Meeting
IV. Announcements
V. Staff Director's Report
VI. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: October 27, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–26208 Filed 10–27–09; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews

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

SUMMARY: On August 17, 2009 the Department of Commerce (''Department'') published the final results of the antidumping duty administrative review and new shipper reviews (''NSRs'') of wooden bedroom furniture from the People's Republic of China (''PRC''). *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 41374 (August 17, 2009) (''*Final Results*''), and accompanying Issues and Decision Memorandum. The period of review is January 1, 2007, through December 31, 2007. We are amending our *Final Results* to correct ministerial errors made in the calculation of the administrative and new shipper reviews pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act''). These corrections will also affect the dumping margins for the companies in the administrative review to which a separate rate applies.

DATES: *Effective Date:* October 29, 2009.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Erin Begnal, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6478 and (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2009, Bon Ten Furniture Co., Ltd. (''Bon Ten'') submitted ministerial error allegations with respect to the *Final Results* of the January 1, 2007, through December 31, 2007, administrative review. On August 19, 2009, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Basset Furniture Company, Inc. submitted rebuttal comments with respect to Bon Ten's ministerial error allegations. On August 19, 2009, Yihua Timber Industry Co., Ltd (''Yihua Timber'') submitted ministerial error allegations with respect to the *Final Results* of the January 1, 2007, through December 31, 2007, administrative review. No interested party submitted comments with respect to Yihua Timber's ministerial error allegations.

Ministerial Errors

A ministerial error is defined in section 751(h) of the Act and further clarified in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''

After analyzing all interested parties' comments, we have determined, in accordance with 19 CFR 351.224(e), that ministerial errors existed in certain calculations for Yihua Timber in the *Final Results.* Correction of these errors results in a change to Yihua Timber's final antidumping duty margin. These corrections will also affect the dumping margins for the other companies in the review to which a separate rate applies. The dumping margins for Orient International Shanghai Foreign Trade Co., Ltd. and the PRC-wide entity remain unchanged. Because several of the ministerial errors pertain to the calculation of the surrogate financial ratios used for the concurrent NSRs, we also corrected the calculations of the new shippers, Golden Well International (HK), Ltd./Zhangzhou XYM Furniture Product Co., Ltd. and Dongguan Sunshine Furniture Co., Ltd./Dongguan Sunshine Furniture Co., Ltd., as well. In addition, we are continuing to find that Bon Ten is part of the PRC-wide entity. However, we are clarifying that our determination concerning Bon Ten covers the period August 1, 2007, through December 31, 2007, not the entire period of review. We also made a correction to Yihua Timber's assessment rates due to an error we found in reviewing the record. For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see* Ministerial Error Memorandum for the Final Results of the 2007 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China, dated October 7, 2009 (''Ministerial Error Memo''). The Ministerial Error Memo is on file in the Central Records Unit, room 1117 in the main Department building.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative and new shipper reviews of wooden bedroom furniture from the PRC. The revised weighted-average dumping margins are detailed below. For Yihua Timber-specific calculations, see ''Antidumping Duty Administrative Review: Wooden Bedroom Furniture from the People's Republic of China—Analysis of the Amended Final Results Margin Calculation for Guangdong Yihua Timber Industry Co., Ltd.,'' dated concurrently with this notice. For the amended calculations for the new shippers, see ''Antidumping Duty New Shipper Review: Wooden Bedroom Furniture from the People's Republic of China—Analysis of the Amended Final Results Margin Calculation for Golden Well International (HK), Ltd.,'' and ''Antidumping Duty New Shipper Review: Wooden Bedroom Furniture from the People's Republic of China—Analysis of the Amended Final Results Margin Calculation for Dongguan Sunshine Furniture Co., Ltd.,'' dated concurrently with this notice. Listed below are the revised weighted-average dumping margins resulting from these amended final results:

ADMINISTRATIVE REVIEW

Exporter	Original final margin (%)	Amended final margin (%)
Guangdong Yihua Timber Industry Co., Ltd. (a.k.a. Yihua Timber Industry Co., Ltd.)	29.98	29.89
Brother Furniture Manufacture Co., Ltd	29.98	29.89
COE, Ltd	29.98	29.89
Decca Furniture Limited	29.98	29.89
Dongguan Landmark Furniture Products Ltd	29.98	29.89
Dongguan Mingsheng Furniture Co., Ltd	29.98	29.89
Dongguan Yihaiwei Furniture Limited	29.98	29.89
Fujian Lianfu Forestry Co., Ltd. aka Fujian Wonder Pacific, Inc. (Dare Group)	29.98	29.89
Fuzhou Huan Mei Furniture Co., Ltd. (Dare Group)	29.98	29.89
Jiangsu Dare Furniture Co., Ltd. (Dare Group)	29.98	29.89
Hwang Ho International Holdings Limited	29.98	29.89
Meikangchi (Nantong) Furniture Company Ltd	29.98	29.89
Qingdao Shengchang Wooden Co., Ltd	29.98	29.89
Shenzhen Shen Long Hang Industry Co., Ltd	29.98	29.89
Transworld (Zhangzhou) Furniture Co., Ltd	29.98	29.89
Winny Universal, Ltd., Zhongshan Winny Furniture Ltd., Winny Overseas, Ltd	29.98	29.89
Xingli Arts & Crafts Factory of Yangchun	29.98	29.89
Zhongshan Gainwell Furniture Co., Ltd	29.98	29.89

NEW SHIPPER REVIEW

Exporter/producer combination	Original final margin (%)	Amended final margin (%)
Golden Well International (HK), Ltd./Zhangzhou XYM Furniture Product Co., Ltd	0	0
Dongguan Sunshine Furniture Co., Ltd./Dongguan Sunshine Furniture Co., Ltd	0	0

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rate

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the amended final results of these reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after August 17, 2009, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate shown for this company (except if the rate is *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 216.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: October 22, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–26107 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review

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

DATES: *Effective Date:* October 29, 2009.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, Susan Pulongbarit, or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4047, (202) 482–4031, or (202) 482–0409, respectively.

Background

On July 9, 2009, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the 2007–2008 administrative review of the antidumping duty order on silicon metal from the People's Republic of China (''PRC''), covering the period June 1, 2007, through May 31, 2008. *See Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Reviews,* 74 FR 32,885 (July 9, 2009). The final results are currently due no later than November 6, 2009.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department requires additional time to properly consider the issues raised by interested parties regarding the treatment of Value-Added Tax, surrogate values for factors of production, and numerous company-specific issues. Thus, it is not practicable to complete this review by November 6, 2009. Therefore, the Department is extending the time limit for completion of the final results of this review by 31 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than December 7, 2009.

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

Dated: October 23, 2009.

John M. Andersen,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26106 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain stainless steel bar from Brazil for the period February 1, 2008, through January 31, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 12310 (March 24, 2009). The preliminary results of this administrative review are currently due no later than October 31, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month of the order. See also 19 CFR 351.213(h).

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of October 31, 2009, for several reasons. Specifically, the Department has granted the respondent, Villares Metals S.A. (Villares), several extensions to respond to the original and supplemental questionnaires. Thus, the Department needs additional time to review and analyze the responses submitted by Villares. Further, the Department requires additional time to review issues such as corporate affiliations and steel grades of products reported by Villares as it will affect the Department's matching methodology in this case. Finally, the petitioners submitted a cost allegation on September 9, 2009. We require additional time to examine the cost allegation and consider whether to initiate and conduct a cost investigation. Therefore, we are extending the time period for issuing the preliminary results of this review by 90 days until January 29, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: October 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26105 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2009]

Foreign-Trade Zone 25—Port Everglades, FL; Application for Subzone South Florida Materials Corporation (Fuel Product Storage) Port Everglades, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, requesting special-purpose subzone status for the fuel product distribution terminal of South Florida Materials Corporation (SFMC), located in Port Everglades, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 22, 2009.

The SFMC terminal (8 employees, 9.93 acres, 1.3 million barrel capacity) is located at 1200 SE. 32nd Street, Port Everglades, Florida. The facility primarily is used for the receipt, storage and distribution of jet fuel by pipeline to carriers operating at the Miami International and Fort Lauderdale

International Airports. The company also uses the facility to store, blend and distribute gasoline, diesel fuel, biodiesel, biofuels and certain fuel blendstocks, including ethanol. The company is not requesting to blend foreign status products in the proposed subzone. Some of the products are or will be sourced from abroad or from U.S. refineries under FTZ procedures. Duty rates range from duty-free to 52.5 cents/barrel to 7% ad valorem for fuel products, duty-free to 6.5% for biofuels, and 1.9%–2.5% + 14.27 cents/liter for ethanol.

Zone procedures would exempt SFMC from customs duties and Federal excise taxes on foreign status jet fuel used for international flights, some 20–35 percent of the terminal's shipments. On domestic sales, the company would be able to defer duty payments on foreign status products until shipped from the facility and entered for consumption. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 28, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 12, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane_Finver@ita.doc.gov* or (202) 482–1367.

Dated: October 22, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–26100 Filed 10–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1647]

Reorganization/Expansion of Foreign-Trade Zone 114; Peoria, IL, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic Development Council for Central Illinois, Inc., grantee of Foreign-Trade Zone 114, submitted an application to the Board for authority to reorganize and expand its zone to delete Site 3 in its entirety and to include two sites at the former Chanute Air Force Base (Site 7) in Rantoul and at the Logistics Park Galesburg (Site 8) in Galesburg, Illinois, adjacent to the Peoria Customs and Border Protection port of entry (FTZ Docket 9–2009, filed 3/6/09);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 10883–10884, 3/13/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 114 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 16th day of October 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E9–26102 Filed 10–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–2009]

Foreign-Trade Zone 17—Kansas City, KS; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of FTZ 17, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 22, 2009.

FTZ 17 was approved by the Board on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74), and expanded in January 1989 (Board Order 428, 54 FR 5992, 2/7/89), in January 1993 (Board Order 631, 58 FR 6112, 1/26/93), and in October 1997 (Board Order 925, 62 FR 55574, 10/27/97). The current zone project includes the following sites: Site 1 (7.5 acres)—located at 6500 Inland Drive, Kansas City; Site 2 (5.1 acres)—located at 5203 Speaker Road, Kansas City; Site 3 (5 acres)—located at 30 Funston Road, Kansas City; Site 4 (50,000 sq. ft.)—located at 830 Kindleberger Road, Kansas City; Site 5 (21 acres, 2 parcels)—within the Leavenworth Area Business Center, located at 13th and Eisenhower Road, Leavenworth; Site 6 (966 acres)—Forbes Field Airport/Topeka Air Industrial Park, 6700 South Topeka Boulevard, Topeka; Site 7 (106 acres)—The Phillip Billard Airport/Industrial Park Complex, 3600 Sardue, Topeka; and, Site 8 (50 acres)—Coleman Corporation within the Midwest Commerce Center, 17150 Mercury Street, Gardner. (There is an application pending with the Board to expand Site 8 to include the entire 156-acre Midwest Commerce Center (Doc. 16–2009).)

The grantee's proposed service area under the ASF would be Wyandotte, Johnson, Douglas, Shawnee, Leavenworth and Miami Counties, Kansas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Kansas City Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project as follows: Sites 2, 3, 5, 6, 7 and 8 would become ''magnet'' sites; Site 4 would become a ''usage-driven'' site; and, Site 1 would be removed from the zone project due to changed circumstances.

The applicant is also requesting approval of two ''usage-driven'' sites in Johnson County: Proposed Site 9 (6.64 acres)—Bushnell Outdoor Products, 9200 Cody, Overland Park; and, Proposed Site 10 (2.4 acres)—Bushnell Outdoor Products, 10716 West 78th Street, Shawnee. Proposed Site 9 is located within the Congleton Industrial Park and proposed Site 10 is located within the Nieman Business Park.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 28, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 12, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: October 22, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–26101 Filed 10–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

DATES: *Effective Date:* October 29, 2009.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2009, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2008, through January 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 12310 (March 24, 2009). The preliminary results for this administrative review are currently due no later than October 31, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Due to the complexity of the issues in this case, including issues regarding company affiliations, and the lengthy supplemental questionnaire responses pending, it is not practicable to complete the preliminary results of this review within the original time limit (*i.e.,* October 31, 2009). Therefore, the Department is extending the time limit for completion of the preliminary results to no later than March 1, 2010,[1] in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

[1] 120 days from October 31, 2009, is February 28, 2010, which is a Sunday. However, Department practice dictates that where a deadline falls on a weekend, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Act,* 70 FR 24533 (May 10, 2005).

Dated: October 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26110 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–007

Barium Chloride From the People's Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order

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

EFFECTIVE DATE: October 29, 2009.

SUMMARY: On July 1, 2009, the Department of Commerce (the ''Department'') initiated a sunset review of the antidumping duty order on barium chloride from the People's Republic of China (''PRC''). On the basis of a notice of intent to participate and an adequate substantive response from domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, 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) 482–3518 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department published the notice of initiation of the third sunset review of the antidumping duty order on barium chloride from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Review*, 74 FR 31412 (July 1, 2009). On July 6, 2009, the Department received a notice of intent to participate from Chemical Products Corporation (''CPC''), a domestic interested party, within the deadline specified in section

351.218(d)(1)(i) of the Department's regulations. CPC claimed interested party status under section 771(9)(C) of the Act as a domestic producer of barium chloride in the United States. On July 31, 2009, the Department received a substantive response from CPC within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

Scope of the Order

The merchandise covered by the order is barium chloride, a chemical compound having the formulas BaCl2 or BaCl2–2H2O, currently classifiable under item number 2827.39.45.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[1] Although the HTSUS item number is provided for convenience and for U.S. Customs and Border Protection purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, which is dated concurrently with this notice, and hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to section 752(c) of the Act, we determine that revocation of the antidumping duty order on barium chloride from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margin:

Exporter/Manufacturer	Margin (percent)
PRC–Wide	155.50

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 22, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–26109 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] The scope reflects the HTSUS item number currently in effect.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XS61

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on Thursday, November 12, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, November 12, 2009 at 12 p.m.

ADDRESSES: The meeting will be held at New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; fax: (978) 465–3116.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will hold a conference call for approximately one to two hours at 12 noon on November 12, 2009 concerning Atlantic herring. At the request of the Council, the committee intends to revisit the size of the 40% buffer between the Overfishing Level and Acceptable Biological Catch to consider whether application of recent years retrospective difference of about 17% is sufficient to account for scientific uncertainly caused by retrospective patterns. A space will be made available in the Council office for members of the public who wish to listen to the SSC's deliberations and/or offer comments. The SSC will report about its discussion at the November 17–19, 2009 Council meeting in Newport, RI.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 26, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–26045 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XS62

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings of the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) Groundfish plan teams.

SUMMARY: The North Pacific Fishery Management Council's GOA and BS/AI groundfish plan teams will meet in Seattle, WA.

DATES: The meetings will be held November 16–20, 2009. The meetings will begin at 9 a.m. on Monday, November 16, and continue through Friday, November 20.

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

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

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

SUPPLEMENTARY INFORMATION: The plan teams will prepare and review the stock assessments for groundfish fisheries in the BSAI and GOA and recommend catch specifications for 2010/2011. Agenda posted on website at: *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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

Dated: October 26, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–26046 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS64

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council Rural Community Outreach Committee.

SUMMARY: The North Pacific Fishery Management Council's Rural Community Outreach Committee will meet by teleconference, (907) 271–2896.

DATES: The teleconference will be held on November 20, 2009, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: North Pacific Fishery Management Council; telephone: (907) 271–2896.

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

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee is scheduled to receive updates from staff on several ongoing outreach efforts stemming from committee and Council recommendations. The committee's primary task at this meeting is to provide recommendations toward developing a Bering Sea chum salmon bycatch outreach plan.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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

Dated: October 26, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–26048 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XS63

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Summer Flounder Monitoring Committee, Scup Monitoring Committee, Black Sea Bass Monitoring Committee, and the Mid-Atlantic Fishery Council's and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisors will hold public meetings.

DATES: The meetings will be held on Wednesday, November 18, 2009 beginning at 9 a.m. with the Monitoring Committees. The Advisory Panels will begin meeting at 1 p.m. See **SUPPLEMENTARY INFORMATION** for meeting agenda.

ADDRESSES: The meetings will be held at the Hilton Philadelphia Airport Hotel, 4509 Island Ave., Philadelphia, PA 19153; telephone: (215) 365–4150).

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to recommend the 2010 recreational management measures for the summer flounder, scup, and black sea bass fisheries.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan, (302) 674–2331 extension 18, at the Council Office at least 5 days prior to the meeting date.

Dated: October 26, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–26047 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: On June 24, 2009, in response to requests from the Wheatland Tube Company (the petitioner), the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The period of review is May 1, 2008, through April 30, 2009. The Department is rescinding this review in part.

DATES: *Effective Date:* October 29, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2009, in response to a request from the petitioner, the Department published a notice of initiation of administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). The Department selected two mandatory respondents, Lloyds Metals and Engineers Limited (Lloyds Metals) and Jindal Industries Ltd. (Jindal). See Memorandum to Laurie Parkhill entitled ''Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India—Respondent Selection'' dated July 28, 2009. On September 22, 2009, the petitioner withdrew its request for an administrative review of Jindal. See letter from the petitioner entitled ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Withdrawal of Request For Administrative Review of Jindal'' dated September 22, 2009.

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1) the Department will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' We received the petitioner's withdrawal letter within the 90-day time limit. Because the Department received no other requests for review of Jindal Industries Ltd., the Department is rescinding the review in part with respect to certain welded carbon steel standard pipes and tubes from India from Jindal. This administrative review will continue with respect to Lloyds Metals. This rescission is pursuant to 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

We are issuing and publishing this rescission in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26103 Filed 10–28–09; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0088]

Proposed Collection; Comment Request—Consumer Product Safety Improvement Act; Consumer Product Conformity Assessment Body Registration Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (''CPSC'' or ''Commission'') requests comments on a proposed collection of information regarding a form that will be used to identify third party conformity assessment bodies that meet the requirements to test for compliance to specified children's product safety rules. Third party conformity assessment bodies found to meet the requirements will be listed on the CPSC Web site. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than December 28, 2009.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0088, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed collection of information. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7671; e-mail *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'' or ''Act'') was signed into law on August 14, 2008 (Pub. L. 110–314). Section 102 of the CPSIA mandates that third party testing be conducted for any children's product that is subject to a children's product safety rule. Such third party testing of children's products must be completed before importing for consumption or warehousing or distributing in commerce. Every manufacturer of such children's products (and the private labeler of such children's product if the product bears a private label) must submit samples for testing to a third party conformity assessment body which is accredited under requirements established by the Commission. The third party conformity assessment body will test such samples for compliance with applicable children's product safety rules. Based on this testing, the manufacturer or private labeler must issue a certificate that certifies that the children's product complies with all applicable children's product safety rules.

Section 14(f)(2)(A) of the Consumer Product Safety Act (as amended by section 102(b) of the CPSIA) defines a third party conformity assessment body as one that is not owned, managed, or controlled by the manufacturer or private labeler of a product to be assessed by such conformity assessment body. A conformity assessment body that is owned, managed, or controlled by a manufacturer or a private labeler may, in certain specified circumstances, be accredited as a third party conformity assessment body. The CPSIA also refers to such entities as ''firewalled conformity assessment bodies.'' Additionally, the CPSIA specifies that, under certain conditions, a third party conformity assessment body may include a government-owned or government-controlled entity.

The CPSIA provides that accreditation of third party conformity assessment bodies may be conducted either by the Commission or by an independent accreditation organization designated by the Commission. The Commission must maintain an up-to-date list of entities that have been accredited to assess compliance with children's product safety rules on its Web site.

The CPSC uses an online collection form, CPSC Form 223, to gather information from third party conformity assessment bodies voluntarily seeking recognition by CPSC. The information collected relates to location, accreditation, and ownership. This information will be used by the Commission to assess:

- A third party conformity assessment body's status as either an independent third party conformity assessment body, a government-owned or government-controlled conformity assessment body, or a firewalled conformity assessment body;
- Qualifications for recognition by CPSC to test for compliance to specified children's product safety rules; and
- Eligibility for recognition on the CPSC Web site.

The collection of this information on CPSC Form 223 is required in three separate circumstances: (1) Upon initial application by the third party conformity assessment body for recognition by CPSC (''initial registrations''); (2) at least every 2 years as part of a regular audit process (''re-registrations''); and (3) whenever a change to accreditation or ownership information occurs (''information changes'').

B. Estimated Burden

The CPSC staff estimates a total reporting burden of approximately 451 hours. This reporting burden is broken down into the categories of submissions as follows: (1) Initial registrations—300 hours, (2) re-registrations—150 hours, and (3) information changes—.75 hours, for a total of 450.75 hours, which the Commission will round up to 451 hours.

Initial Registrations—The Commission tentatively estimates that 300 third party conformity assessment bodies will register initially, with each response taking 1 hour for a total of 300 reporting hours (300 third party conformity assessment bodies × 1 hour = 300 hours). The 300 entity estimate is based on the fact that by June 5, 2009, 153 third party conformity assessment bodies had already registered with the CPSC. The Commission expects to receive additional registrations, which will be further increased by a notice of requirement for ''all other children's product safety rules'' pursuant to CPSA section 14(a)(3)(B)(vi).

Re-Registrations—Under a separate proposed rule issued by the Commission on August 13, 2009 (74 FR 40784), third party conformity assessment bodies would be required to re-register using CPSC Form 223 every two years. Because not all third party conformity assessment bodies will first submit CPSC Form 223 at the same time, only some of these entities will re-register using CPSC Form 223 in any given year. Because the Commission does not know how many entities will re-register in any given year, for the purposes of this analysis, the Commission estimates that half of the third party conformity assessment bodies will re-register using CPSC Form 223 in any given year, for a total of 150 Re-Registrations per year (300 total third party conformity assessment bodies × 0.5 = 150 re-registrations per year). The reporting burden for each re-registration is estimated to be one hour, making the total reporting burden for all re-registrations per year 150 hours (150 re-registrations × 1 hour per re-registration = 150 hours).

Information Changes—Finally, under the same separate proposed rule noted above, third party conformity assessment bodies would be required to ensure that the information submitted on CPSC Form 223 remains current. Any changes in information must be submitted on a new CPSC Form 223. Based on current experience, the Commission estimates that only one percent of third party conformity assessment bodies will revise or update their information yearly, so the

estimated number of respondents is 3 (300 third party conformity assessment bodies × 0.01 = 3 information changes per year). Because information changes in most cases will likely only involve updating a phone number or contact person, the estimated reporting burden is 15 minutes per update, for a total reporting burden of 45 minutes per year (3 information changes × 0.25 hours = 0.75 hours per year).

Estimated Total Cost Burden on Respondents—Assuming that CPSC Form 223 will be submitted by someone at the level of a general or operations manager at each third party conformity assessment body, at a median compensation (wages and benefits) of $68 per hour, the total cost burden to the respondents is estimated to be $30,668 ($68 × 451 hours).

Estimated Annualized Cost Burden to the Federal Government—The Commission estimates 150 re-registrations per year. Re-registrations will require review by a CPSC staff member with an average rate of pay of $67/hour (the approximate hourly compensation (wages and benefits) of a GS–13 step 5 employee). Re-registration review involves a thorough review of the accreditation certificate and scope documents provided by the third party conformity assessment body to ensure, among other things, that the accreditations are current, are to the ISO Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' and include the appropriate test methods. The review is estimated to take an average of 1.75 hours per submission. Thus, the annualized cost to the Federal government is estimated to be approximately $17,588 (150 re-registrations × 1.75 hours × $67 = $17,587.50 per year).

Additional costs to the Federal government associated with information changes submitted on CPSC Form 223 will be negligible. The Commission estimates that 15 minutes will be spent reviewing each update. The annualized cost to the federal government is estimated to be approximately $50 (3 information changes × 0.25 hours × $67 = $50.25 per year).

C. Request for Comments

The Commission invites written comments from all interested persons about the proposed collection of information. The Commission specifically invites information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 23, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–26070 Filed 10–28–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request; Clothing Textiles, Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of clothing, and textiles and related materials intended for use in clothing. This collection of information is required in regulations implementing the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to the flammability standards for clothing textiles and vinyl plastic film. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: Written comments must be received by the Office of the Secretary not later than December 28, 2009.

ADDRESSES: Written comments should be captioned ''Clothing Textiles and Film, Collection of Information'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*, or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West-Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Clothing and fabrics intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). Clothing made from vinyl plastic film and vinyl plastic film intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611). These standards prescribe a test to assure that articles of wearing apparel, and fabrics and film intended for use in wearing apparel, are not dangerously flammable because of rapid and intense burning. (Children's sleepwear and fabrics and related materials intended for use in children's sleepwear in sizes 0 through 14 are subject to other, more stringent flammability standards, codified at 16 CFR Parts 1615 and 1616.) The flammability standards for clothing textiles and vinyl plastic film were made mandatory by the Flammable Fabrics Act of 1953 (FFA) (Pub. L. 83–88, 67 Stat. 111; June 30, 1953).

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative tests.'' The Commission estimates that about 1,000 manufacturers and importers of clothing, and of textiles and vinyl film intended for use in clothing, issue guaranties that the products they produce or import comply with the applicable standard.

B. Testing and Recordkeeping

Regulations implementing the flammability standards for clothing

textiles and vinyl plastic film prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR Part 1610, Subpart B, and 16 CFR Part 1611, Subpart B.

The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with clothing and fabrics and vinyl film intended for use in clothing. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

OMB approved the collection of information in the enforcement regulations implementing the standards for clothing textiles and vinyl plastic film under control number 3041–0024. OMB's most recent extension of approval will expire on December 31, 2009. The Commission proposes to request an extension of approval for the collection of information in those regulations.

C. Estimated Burden

The Commission staff estimates that about 1,000 firms that manufacture or import products subject to the flammability standards for clothing textiles and vinyl plastic film issue guaranties that the products they produce or import comply with the applicable standard. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 101.6 hours on each of those firms. That burden will result from conducting the testing and maintaining records required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of clothing textiles and vinyl plastic film will be about 101,600 hours.

The hourly wage for the testing and recordkeeping required by the standards and regulations is estimated to be $57.22 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, June 2009), for an estimated annual cost to the industry of nearly $5.8 million (101,600 × $57.22).

The Commission staff will expend approximately 80 hours of professional time reviewing and evaluating the records maintained by manufacturers and importers of garments, textiles, and related materials. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $6,400.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 23, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–26079 Filed 10–28–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Availability of a Statement of Policy: Testing and Certification of Lead Content in Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability.

SUMMARY: The Consumer Product Safety Commission (Commission) is announcing the availability of a document titled, ''Statement of Policy: Testing and Certification of Lead Content in Children's Products.'' The document provides guidance on complying with the Consumer Product Safety Improvement Act (CPSIA).

ADDRESSES: The Statement of Policy is available from the Commission's Web site at: *http://www.cpsc.gov/about/cpsia/leadpolicy.pdf.* Copies may also be obtained from the Consumer Product Safety Commission, Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; 301–504–7923.

FOR FURTHER INFORMATION CONTACT: Hyun Sun Kim, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7632; *hkim@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

The CPSIA was enacted on August 14, 2008 (Pub. L. 110–314). Section 101(a) of CPSIA provides that products designed or intended primarily for children 12 years old and younger that contain more than 600 ppm of lead (as of February 10, 2009), 300 ppm of lead (as of August 14, 2009); or 100 ppm after three years (as of August 14, 2011), unless the Commission determines that it is not technologically feasible to have this lower limit, are considered to be banned hazardous substances under the Federal Hazardous Substances Act (FHSA). Unless granted a specific exclusion or determination, products and materials used to make children's products are subject to the lead limits and also to the testing and certification requirements of section 14(a) of the Consumer Product Safety Act (CPSA), as amended by section 102(a) of the CPSIA.

The Commission has prepared a document titled, ''Statement of Policy: Testing and Certification of Lead Content in Children's Products.'' The document provides guidance on the testing and certification of children's products for compliance with the CPSIA. The Statement of Policy is available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/leadpolicy.pdf* and from the Commission's Office of the Secretary at the location listed in the **ADDRESSES** section of this notice.

Dated: October 23, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–26080 Filed 10–28–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0090]

Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Total Lead in Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Requirements.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'')

is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the limits on total lead in children's products. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies for testing to the limits on total lead in children's products are effective upon publication of this notice in the **Federal Register**.

Comments in response to this notice of requirements should be submitted by November 30, 2009. Comments on this notice should be captioned ''Third Party Conformity Assessment Body Accreditation Process for the Limits on Total Lead in Children's Products.''

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0090, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice of requirements. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert ''Jay'' Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Consumer Product Safety Act (''CPSA''), at section 14(a)(3)(B)(vi), as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies (also referred to as ''third party laboratories'') to assess children's products for conformity with ''other children's product safety rules.'' Section 14(f)(1) of the CPSA defines ''children's product safety rule'' as ''a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.'' Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of this notice tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with the applicable regulations based on that testing. (The Commission notes, however, that in the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission announced a stay of enforcement of certain provisions of section 14(a) of the CPSA; the stay applies to the testing that would result from this notice of requirements.) Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

The Commission also is recognizing limited circumstances in which it will accept certifications if the product was tested by a third party conformity assessment body that the CPSC accepts as being accredited by December 31, 2009 or 30 days before the Commission terminates the stay of enforcement that was originally announced in the **Federal Register** on February 9, 2009 (74 FR 6396), whichever date is later. The details regarding those limited circumstances can be found in part IV of this document below.

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following test methods:

- CPSC–CH–E1001–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry*[1]*)*, issued December 4, 2008, and
- CPSC–CH–E1002–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products,* issued February 1, 2009.

For measuring total lead content of homogeneous polymeric materials (including natural and synthetic polymers or plastic materials in children's consumer products), the methods for using x-ray fluorescence spectrometry (XRF) described in CPSC–CH–E1002–08 may be used. Both methods may be freely downloaded from the CPSC Web site at *http://www.cpsc.gov/about/cpsia/labaccred.html.*

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with ''all other children's product safety rules,'' this notice of requirements is limited to the test methods identified immediately above. The CPSC acknowledges that the test methods for determining total lead content are not, in themselves, rules, but we believe it is appropriate for the notice of requirements to apply to the CPSC test methods because section 101(g) of the CPSIA considers the lead content restrictions to be ''a regulation of the Commission'' under the Federal Hazardous Substances Act. Thus, the test methods would be used to assess conformity with the lead requirements.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned as ''All Other Children's Product Safety Rules,'' but the body of the statutory requirement refers only to ''other children's product safety rules.'' Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as

[1] Due to the Commission's stay of enforcement that appeared in the **Federal Register** on February 9, 2009 (74 FR 6396), at the time when the stay of enforcement was published, only accessible, metallic parts of children's metal jewelry were required to be tested. When the stay of enforcement is lifted, all accessible parts of children's metal jewelry, metals and non-metals, will need to comply with the applicable regulations.

requiring a notice of requirements for ''all'' other children's product safety rules, rather than a notice of requirements for ''some'' or ''certain'' children's product safety rules. However, whether a particular rule represents a ''children's product safety rule'' may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are ''children's product safety rules.'' The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be ''children's product safety rules.''

The CPSC also advises interested parties that, with respect to the materials which the CPSC has determined not to exceed the lead content limits specified in section 101(a) of the CPSIA, testing by third party conformity assessment bodies is *not* required to support a finding that a particular material is within the determinations. In the **Federal Register** of August 26, 2009 (74 FR 43031), the CPSC issued a final rule identifying those materials which do not exceed the lead content limits specified in section 101(a) of the CPSIA (the ''determinations rule''). For example, the determinations rule includes natural fibers, such as cotton, in the determinations; this means that a cotton shirt would not need to be tested by a third party conformity assessment body for lead, and it also means that a third party conformity assessment body would not need to test the cotton shirt to show that it is, indeed, made out of cotton. The CPSC reminds interested parties that the obligation to have third party conformity assessment bodies test children's products exists in relation to ''children's product safety rules'' and that section 14(f)(1) of the Consumer Product Safety Act (CPSA) defines ''children's product safety rule'' as a consumer product safety rule under the CPSA or ''similar rule, regulation, standard, or ban under any other Act enforced by the Commission.'' Section 3(a)(6) of the CPSA, in turn, defines ''consumer product safety rule,'' in part, as a consumer product safety standard * * * or a rule * * * declaring a consumer product a banned hazardous product.'' The rule determining that certain materials do not exceed the lead limits in section 101(a) of the CPSIA is not a ''consumer product safety rule'' as defined by section 3(a)(6) of the CPSA and, therefore, also is not a ''children's product safety rule'' as defined by section 14(a)(1) of the CPSA. Consequently, to continue using the example of a cotton shirt, the cotton shirt manufacturer could decide, based on its own knowledge and expertise regarding the materials used in its product, that its cotton shirt is, indeed, made of cotton and within the determinations rule. The cotton shirt manufacturer would not need to submit samples of its cotton shirts to a third party conformity assessment body to determine whether the shirts were made of cotton.

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) ''firewalled'' conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for ''firewalled'' conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (''ISO'') Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories.'' The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (''ILAC–MRA''), and the scope of the accreditation must include testing for any of the test methods identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum ''Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1501 (Small Parts Regulation),'' dated November 2008 and available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf.*)

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site.

This notice of requirements is effective on October 29, 2009. However, the CPSC will stay its enforcement of this notice of requirements at least until February 10, 2010; the date reflects the stay of enforcement that the CPSC published in the **Federal Register** on February 9, 2009 (74 FR 6396). Nevertheless, the Commission invites comments on the accreditation procedures as they apply to that testing and on the accreditation approach in general.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (see section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G))).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' and the scope of the accreditation must expressly include testing to CPSC–CH–E1001–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry),* issued December 4, 2008, and/or CPSC–CH–E1002–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products,* issued February 1, 2009. A true copy, in English, of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation.

Subject to the limited provisions for acceptance of ''retrospective'' testing performed by other than firewalled conformity assessment bodies noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support certification by the manufacturer or private labeler of compliance with the test methods identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies ; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How Does a Third Party Conformity Assessment Body Apply for Acceptance of its Accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at *http://www.cpsc.gov/businfo/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/businfo/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will then be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of ''retrospective'' testing performed by other than accredited firewalled conformity assessment bodies noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children's products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance to the total lead content limits established by the CPSIA for children's products and tested in accordance with CPSC–CH–E1001–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry),* issued December 4, 2008, and/or CPSC–CH–E1002–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products,* issued February 1, 2009, based on testing performed by an accredited third party conformity assessment body (including a government-owned conformity assessment body, a government controlled conformity

assessment body, and a firewalled conformity assessment body) if:

• At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC–MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission has accredited by order at or before the time the product was tested, even if the order did not include the test methods specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body.

• The third party conformity assessment body's application for testing for total lead content in children's products using the test methods identified in this document is accepted by the CPSC by December 31, 2009 or 30 days prior to the date the Commission terminates the stay of enforcement that was originally announced in the **Federal Register** on February 9, 2009 (74 FR 6396) (whichever is the later date);

• The product was tested on or after December 4, 2008 with respect to CPSC test method CPSC–CH–E1001–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)* and/or was tested on or after February 1, 2009 with respect to CPSC test method CPSC–CH–E1002–08, *Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products.* For example, a children's product constructed completely from metal materials must be tested in accordance with CPSC–CH–E1001–08. A children's product constructed completely from non-metal materials must be tested in accordance with CPSC–CH–E1002–08. A children's product constructed from a combination of metal and non-metal materials must be tested in accordance with both test methods.

• The accreditation scope in effect for the third party conformity assessment body at that time expressly included testing to the test method(s) identified earlier in part I of this document;

• The test results show compliance with the applicable *current* standards and regulations (*i.e.,* the total lead limits in effect on the day the certification is presented, rather than those in effect on the day that the testing was performed); and

• The third party conformity assessment body's accreditation and inclusion of the test method(s) for determining total lead content (identified earlier in part I of this document) in its scope remain in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for the total lead limit requirements for children's products.

Dated: October 23, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–26073 Filed 10–28–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–OS–0156]

Proposed Collection; Comment Request

AGENCY: Office of the General Counsel, Standards of Conduct Office, OSD, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the General Counsel, Standards of Conduct Office, announces a public information collection and seeks public comment on the provisions thereof. 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the General Counsel, *Attn:* Standards of Conduct Office (Mr. Rishel), 1600 Defense Pentagon, Suite 3B652, Washington, DC 20301–1600 at (703) 695–3422.

Title; Associated Form; and OMB Number: Post Government Employment Advice Opinion Request; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain minimal information on which to base an opinion about post Government employment of select former and departing Department of Defense (DoD) employees seeking to work for Defense Contractors within two years after leaving DoD. The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to render an advisory opinion to the employee requesting the opinion. *The National Defense Authorization Act of 2008,* Public Law 110–181, section 847, *http://www.dod.mil/dodgc/olc/docs/pl110-181.pdf,* requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expect to receive compensation from a DoD contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

Affected Public: Departing and former DoD employees.

Annual Burden Hours: 300.

Number of Respondents: 200.

Responses per Respondent: 1.

Average Burden per Response: 90 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Defense Authorization Act of 2008, Public Law 110–181,

section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expects to receive compensation from a DoD contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to provide an opinion to the employee on the applicability of post-Government employment restrictions. The information requested is employment-related and identifying information about the person requesting the opinion.

Dated: October 7, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26028 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–HA–0154]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 28, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: TMA Uniform Business Office, OASD(HA)/TMA/Management Control & Financial Studies, 5111 Leesburg Pike, Falls Church, Virginia 22041, Skyline 5, Suite 407—ATTN: DeLisa E. Prater, Program Manager, at 703–681–3492 ext.6757 (DSN 761).

Title; Associated Form; and OMB Number: Third Party Collection Program/Medical Services Account/Other Health Insurance; DD FORM 2569; OMB Control Number 0704–0323.

Needs and Uses: DoD implemented the Coordination of Benefits Program in FY87 based on authority of 10 U.S.C. 1095, enacted as section 2001 of Public Law 99–272, Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), April 7, 1986, and Uniform Business Office (UBO) Manual 6010.15–M, Military Treatment Facility UBO Manual, April 1997. Under this program, DoD is required to collect from third-party payers the cost of inpatient and outpatient services rendered to military retirees, all dependents, and others who have private health insurance. Part 220 of Title 32 of the Code of Federal Regulations, implements 10 U.S.C. 1095. Specifically, 32 CFR 220.2(d) states that the form must be available to third-party payers upon request. A third-party payer may not request any other assignment of benefits form from the subscriber.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 175,370.

Number of Respondents: 3,507,390.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: Annually or On occasion (when insurance information changes).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The administration has placed increased emphasis upon recovery of health care expenses under Third Party Collection Program, as authorized by title 10, section 1095 and 1097b of the United States Code. Completion of this form, while increasing total burden hours, will aid in increasing revenues (O&M dollars), services and operating efficiency and effectiveness within the Military Health Services system. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure.

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26029 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee Meeting; Military Leadership Diversity Commission (MLDC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Military Leadership Diversity Commission (MLDC) will meet on November 17 and 18, 2009. Subject to the availability of space, the meeting is open to the public on a first-come basis.

DATES: The meeting will be held on Wednesday, November 17, 2009, from 8:30 a.m. to 3 p.m. and on Thursday, November 18, 2009, from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel, 3101 North Hwy. A1A, Melbourne, Florida 32903.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838 or (703) 347–5295, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail *Steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

Agenda

Wednesday, November 17, 2009

8:30 a.m.–1 p.m.
DFO opens the meeting
Commission Chairman opening remarks
Open discussion on process
Open discussion on topics related to definition of diversity
1 p.m.
DFO adjourns the meeting
2 p.m.–3 p.m.
DFO opens the meeting
Briefings from representatives from DEOMI and Q&A
3 p.m.
DFO adjourns the meeting

Thursday, November 18, 2009

8:30 a.m.–1 p.m.
DFO opens the meeting
Commission Chairman opening remarks
DFO opens the meeting
Open discussion on topics related to recruiting and outreach
Open discussion on way forward.
1 p.m.
DFO adjourns the meeting
2 p.m.
DFO opens the meeting
Briefings from Service representatives from organizations responsible for career Development.
5:45 pm
Time available for Public comments
6 p.m.
DFO adjourns the meeting

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings will be open to the public. Please note that the availability of seating is on a first-come basis.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed under **FOR FURTHER INFORMATION CONTACT** at least five calendar days prior the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26041 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0059]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 30, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Air Force Privacy Act Office, Air Force Privacy Act Office, Office of War fighting Integration and Chief Information Officer, *Attn:* SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at 703–696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 23, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DELETION: F036 USAFA M

SYSTEM NAME:

Thomas D. White National Defense Award (April 12, 1999, 64 FR 17636)

REASON:

Information in this system is no longer being retrieved by a personal identifier; data is being retrieved by group identification. Therefore, this notice should be deleted.

[FR Doc. E9–26034 Filed 10–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 30, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 26, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: State Plan for Vocational Rehabilitation Services and Supplement for Supported Employment Services.

Frequency: Annually.

Affected Public: Businesses or other for-profit. State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 1,002,000.

Abstract: The Rehabilitation Act of 1973, as amended (the Act), requires each state to submit to the Commissioner of the Rehabilitation Services Administration (RSA) a State Plan for the Vocational Rehabilitation (VR) Services program and the State Supported Employment (SE) Services program that meets the requirements of Sections 101(a) and 625 of the Act. Program funding is contingent on Departmental approval of the State Plan and its supplement.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4113. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–26078 Filed 10–28–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, 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 December 28, 2009.

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 Director, Information Collection Clearance Division, 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: October 26, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision

Title: Grants to States for Workplace and Community Transition Training for Incarcerated Individuals

Frequency: Annually

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 56

Burden Hours: 2,800

Abstract: The Department of Education receives funding for the Grants to States for Workplace and Community Transition Training for Incarcerated Individuals Program (Title VIII, Part D of the Higher Education Amendments of 1998, as amended). The most recent amendment passed via Public Law 110–315 requires State Correctional Education Agencies to submit a proposal in order to be eligible. The law also requires that appropriated funds be allotted to each State in an amount that bears the same relationship to the total number of eligible students in each State. Therefore, States must submit data concerning the number of eligible students under the Program, so that the Department can run the State allocation formula. State Correctional Education Agencies (SCEA) are required to conduct an evaluation and to annually report to the Secretary and the Attorney General on the results of the evaluation.

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 4165. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–26112 Filed 10–28–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Field Initiated (FI) Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133G–1 (Research) and 84.133G–2 (Development).

Dates: Applications Available: October 29, 2009.

Deadline for Transmittal of Applications: January 6, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the FI Projects program is to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. Another purpose of the FI Projects program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

NIDRR makes two types of awards under the FI Projects program: Research grants (CFDA 84.133G–1) and development grants (CFDA 84.133G–2).

In carrying out a research activity under an FI research grant, a grantee must identify one or more hypotheses or research questions and, based on the hypotheses or research questions identified, perform an intensive, systematic study directed toward producing (1) new scientific knowledge, or (2) better understanding of the subject, problem studied, or body of knowledge.

In carrying out a development activity under an FI project development grant, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods, including designing and developing prototypes and processes, that are beneficial to the target population. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. There may be more than one target population because a project may affect those who receive services, provide services, or administer services.

Note: Different selection criteria are used for FI projects research grants (84.133G–1) and development grants (84.133G–2). Applicants must clearly indicate in the application whether they are applying for a research grant (84.133G–1) or a development grant (84.133G–2) and must address the selection criteria relevant for their grant type. Without exception, NIDRR will review each application based on the designation (*i.e.,* research (84.133G–1) or development (84.133G–2)) made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation of research or development.

Note: This program is in concert with NIDRR's Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to (1) improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Program Authority: 29 U.S.C. 764.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $110,700,000 for NIDRR for FY 2010, of which we intend to use an estimated $4,000,000 for the FI Projects competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $195,000–$200,000.

Estimated Average Size of Awards: $200,000.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period exceeding 36 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62 and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the

Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133G–1 or 84.133G–2.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You may single space titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:* Applications Available: October 29, 2009. Deadline for Transmittal of Applications: January 6, 2010.

Applications for grants under this competition must be submitted electronically using Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Field Initiated Projects program—CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC

(document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6027, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number [Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.]), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number [Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.]), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and 350.55 and are listed in the application package.

Note: There are two different sets of selection criteria for FI projects: One set to evaluate applications proposing to carry out research activities (CFDA 84.133G–1), and a second set to evaluate applications proposing to carry out development activities (CFDA 84.133G–2). Each applicant will be evaluated using the selection criteria for the type of project the applicant designates in its application.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their applications a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

Note: NIDRR will provide information by letter to grantees on how and when to submit the performance report.

4. *Performance Measures:* NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

For Further Information Contact: Contact either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 6027, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov*. Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 6026, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov*.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: October 26, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–26127 Filed 10–28–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Thursday, November 5, 2009; 10 a.m.–12 p.m. EDT (Morning Session); 1 p.m.–3 p.m. EDT (Afternoon Session).

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005. (Metro Stop: Metro Center)

AGENDA: The Commission will hold a public meeting to consider administrative matters. The Commission will discuss the 2008 Election Day Survey Report and the 2008 UOCAVA Report. The Commission will discuss the Election Management Guidelines Chapters. The Commission will receive a presentation and consider translations of the NVRA form.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act.*

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9–26136 Filed 10–27–09; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 20, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–4–000.

Applicants: Three Buttes Windpower, LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator of Three Buttes Windpower, LLC.

Filed Date: 10/20/2009.

Accession Number: 20091020–5026.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–730–003.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits Third Substitute Original Sheet 241 A *et al* to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 10/19/2009.

Accession Number: 20091020–0018.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER09–1247–003.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits a Compliance Filing with 9/17/09 order.

Filed Date: 10/19/2009.

Accession Number: 20091020–0063.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER09–1612–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits response to FERC's 10/16 letter, amends its 8/20/09 filing in the proceeding, and requests expedited action by the Commission.

Filed Date: 10/19/2009.

Accession Number: 20091020–0050.

Comment Date: 5 p.m. Eastern Time on Monday, October 26, 2009.

Docket Numbers: ER09–1720–001.

Applicants: Tuolumne Wind Project, LLC.

Description: Tuolumne Wind Project, LLC submits amended notice of cancellation with a request that the notice take effect on 9/19/09.

Filed Date: 10/19/2009.

Accession Number: 20091020–0048.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER10–76–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corporation submits supplement to Rate Schedule FERC No 72 Facilities Agreement with Municipal Board of the Village of Bath.

Filed Date: 10/19/2009.

Accession Number: 20091020–0017.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER10–77–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corporation submits supplement to Rate Schedule FERC No 117.

Filed Date: 10/19/2009.

Accession Number: 20091020–0015.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER10–79–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits notice of cancellation of an interconnection service agreement with Fairless Energy, LLC *et al* designated as Substitute Original Service Agreement 977.

Filed Date: 10/19/2009.

Accession Number: 20091020–0047.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER10–81–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits a Notice of Cancellation of first revised rate schedule 168 between Kansas Gas and Electric Company and City of Arma, Kansas.

Filed Date: 10/20/2009.

Accession Number: 20091020–0062.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the

appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26056 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09–13–000]

East Tennessee Natural Gas, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northeastern Tennessee Project and Request for Comments on Environmental Issues

October 22, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the East Tennessee Natural Gas, LLC's (ETNG) proposed Northeastern Tennessee Project (Project). The proposed Project would involve the construction, replacement and operation of approximately 28 miles of natural gas transmission pipeline in southwestern Virginia and northeastern Tennessee. The EA will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process we [1] will use to gather input from the public and interested agencies on the proposed Project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on November 20, 2009.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by an ETNG representative about the acquisition of an easement across your property. ETNG would seek to negotiate a mutually acceptable agreement for the rights to construct and operate the proposed natural gas transmission pipeline across your property. If the proposed Project is approved by the Commission, that approval would convey with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, ETNG could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC internet Web site at *http://www.ferc.gov.* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

ETNG proposes to:

- Construct and operate approximately 8.53 miles of 24-inch-diameter natural gas transmission pipeline parallel to an existing Tennessee Valley Authority (TVA) electrical transmission powerline in Greene and Hawkins Counties, Tennessee;
- Construct and operate approximately 7.80 miles of 24-inch-diameter natural gas transmission pipeline loop within or immediately adjacent to existing ETNG natural gas transmission pipeline easement in Sullivan, Washington and Greene Counties, Tennessee;
- Replace approximately 2.37 miles of existing 12-inch-diameter natural gas transmission pipeline with 24-inch-diameter natural gas transmission pipeline in Sullivan County, Tennessee;
- Replace approximately 9.30 miles of existing 8-inch-diameter natural gas transmission pipeline with 24-inch-diameter natural gas transmission pipeline in Washington County, Virginia and Sullivan County, Tennessee; and
- Modify piping at the Glade Spring and Flatwoods Compressor Stations in Washington County, Virginia and Greene County, Tennessee, respectively.

ETNG also proposes to:

- Construct a meter facility at the terminus of the proposed 8.53-mile, 24-inch-diameter natural gas transmission pipeline; and
- Construct and operate related natural gas transmission pipeline facilities including mainline valves and pipeline inspection launching and receiving facilities.

The locations of the proposed facilities are shown in Appendix 1.

According to ETNG, the proposed facilities are necessary to provide natural gas service to TVA's proposed North East Plant power generating facility in Hawkins County, Tennessee.

If approved, ETNG anticipates placing the proposed facilities in-service by 2012.

Land Requirements

Construction and replacement of the proposed pipeline facilities would require the use of a temporary construction right-of-way ranging in width from 100- to 125-feet. Additional temporary workspace would also be required to construct and replace the proposed pipeline, metering facility, compressor station piping and related natural gas transmission pipeline facilities. Operation of the proposed pipeline facilities would require the permanent use of a 50-foot-wide maintenance right-of-way. Additionally, the operation of the metering facility and the related natural gas transmission pipeline facilities would require the permanent use of lands.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed facilities. We will also evaluate possible alternatives to the

[1] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

proposed Project or portions of the Project, and make recommendations on how to avoid or mitigate impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before November 20, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number PF09–13–000 with your submission. The Commission encourages electronic filing of comments and has dedicated staff to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature located on the Commission's internet Web site (*www.ferc.gov*) under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may also file your comments electronically by using the *eFiling* feature located on the Commission's internet Web site (*http://www.ferc.gov)* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must create an account by clicking on ''*Sign up''* or *''eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may send your comments via U.S. mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter PF09–13–000 in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or route evaluations, if applicable, will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25975 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400–051–CO]

Public Service Company of Colorado; Notice of Availability of Final Environmental Assessment

October 22, 2009.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new major license for the Ames Hydroelectric Project (FERC No. 400), located on Lake Fork, Howards Fork, and South Fork of the San Miguel River, in San Miguel County, about 6 miles north of Telluride, Colorado. The Ames Project occupies 99 acres of the Uncompahgre National Forest administered by the U.S. Forest Service.

Staff prepared a final environmental assessment (EA) that analyzes the probable environmental effects of relicensing the project and concludes that relicensing the project, with

appropriate staff-recommended environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact David Turner at (202) 502–6091.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25979 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–14–004]

Black Oak Energy, L.L.C., EPIC Merchant Energy, LP, SESCO Enterprises, LLC v. PJM Interconnection, L.L.C.; Notice of Filing

October 22, 2009.

Take notice that on October 19, 2009, PJM Interconnection, L.L.C. submitted revised PJM Open Access Transmission Tariffs and PJM Amended and Restated Operating Agreement sheets to comply with the directives in the Commission's September 17, 2009 Order Accepting Compliance filing issued in this proceeding, *Black Oak Energy, L.L.C., et al.* v. *PJM Interconnection, L.L.C.,* 128 FERC ¶ 61,262 (2009) (September 17 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 9, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25976 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–34–000]

Energy Consulting Service, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 21, 2009.

This is a supplemental notice in the above-referenced proceeding of Energy Consulting Service, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 10, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26059 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–47–000]

Geodyne Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 21, 2009.

This is a supplemental notice in the above-referenced proceeding of Geodyne Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 10, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26058 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–1383–001; ER03–1383–003]

DeSoto County Generating Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 20, 2009.

This is a supplemental notice in the above-referenced proceeding of DeSoto County Generating Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application included a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.[1]

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 9, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26057 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Filing submitted September 25, 2003 in Docket No. ER03–1383–001.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13356–000]

Slatersville Hydro, LLC; Notice of Intent To Waive Scoping

October 22, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–13356–000.

c. *Date Filed:* January 15, 2009.

d. *Applicant:* Slatersville Hydro, LLC.

e. *Name of Project:* Slatersville Hydroelectric Project.

f. *Location:* On the Branch River in Providence County, Rhode Island. The project would not occupy any land of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Michael P. DeFrancesco, 87 Hall Road, Exeter, RI 02822, (401) 742–1968.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. On May 8, 2009, Commission staff requested additional information from Slatersville Hydro including interim water quality monitoring reports. On August 5, 2009, Slatersville Hydro filed the requested information, and on August 13 and October 15, 2009, Slatersville Hydro filed interim water quality reports (the final water quality report is due January 15, 2010).

Based on a review of the exemption application, additional environmental information subsequently filed by Slatersville Hydro, resource agency consultation letters and comments filed to date, Commission staff intend to prepare a single environmental assessment (EA). The EA will assess the potential effects of project construction

and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, aesthetic, and cultural and historic resources. Because staff believe the issues that need to be addressed in its EA have been adequately identified, with this notice, we are soliciting comments on our intent to waive scoping for the Slatersville Project.

k. The deadline for filing comments is 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25978 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

October 22, 2009.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4).

The Commission's PRB will remove the following member: Cynthia A. Marlette.

The Commission's PRB will add the following member: Thomas R. Sheets.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25977 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–7–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

October 22, 2009.

Take notice that on October 14, 2009, Columbia Gas Transmission, LLC (Columbia) 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP10–7–000, an application pursuant to sections 157.205, 157.208(b) and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct, uprate, replace, and abandon certain natural gas facilities near Columbia's Majorsville compressor station system in Marshall County, West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Columbia proposes to uprate the Maximum Allowable Operating Pressure on approximately 17 miles of 20-inch diameter pipeline (Line 1758) from 760 psig to 936 psig; construct and extend Line 1758 with approximately 0.7 miles of 20-inch pipeline and appurtenances; construct approximately 2.9 miles of 20-inch diameter pipeline and appurtenances (Line 10365); and abandon approximately 0.04 mile of 20-inch diameter pipeline and appurtenances. Columbia also states that the proposed facilities would enable it to transport up to 225 MMcf/day of natural gas from Chesapeake Appalachia, LLC's (Chesapeake) and joint venture partner, Statoil Natural Gas LLC, from Chesapeake's production fields in the Marcellus shale formation to a new MarkWest Liberty Midstream & Resources, L.L.C. processing plant to be built on the grounds of Columbia's Majorsville compressor station. Columbia further states that the proposed new facilities and modifications would cost an estimated $28,200,000 to construct.

[1] 22 FERC ¶ 62,029 (1983).

Any questions concerning this application may be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273 or via telephone at (304) 357–2359 or by facsimile (304) 357–3206.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25980 Filed 10–28–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0819; FRL–8974–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Proposed Information Collection Request for the Steam Electric Power Generating Effluent Guidelines; EPA ICR No. 2368.01, OMB Control No. 2040–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 28, 2009.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–HQ–OW–2009–0819, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2009–0819
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2009–0819. Please include a total of 3 copies.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2009–0819. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0819. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Jezebele Alicea-Virella, Engineering and Analysis Division (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1755; e-mail address: *Alicea.Jezebele@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2009–0819, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are approximately 1,200 steam electric power plants that generate electricity using nuclear fuel or fossil fuels such as coal, oil and natural gas.

Title: Proposed Information Collection Request for the Steam Electric Power Generating Effluent Guidelines.

ICR numbers: EPA ICR No. 2368.01, OMB Control No. 2040–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for

EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Clean Water Act (CWA) directs EPA to develop regulations, called effluent guidelines, to limit the amount of pollutants that are discharged to surface waters or to sewage treatment plants. The effluent guidelines for the steam electric power generating point source category apply to steam electric generating units at establishments that are primarily engaged in the generation of electricity for distribution and sale, resulting primarily from a process using nuclear or fossil-type fuels, such as coal, oil and natural gas. There are about 1,200 nuclear- and fossil-fueled steam electric power plants nationwide.

EPA first identified the industry during its 2005 annual effluent guidelines review when publicly available data indicated that this industry ranked high in discharges of toxic and nonconventional pollutants, relative to other industry sectors. Because of these findings, EPA initiated a more detailed study of the industry and collected data through site visits, wastewater sampling, a limited data request, and secondary data.

As part of the detailed study, EPA reviewed available information on environmental effects attributed to intentional permitted discharges to surface waters and other releases of the pollutants present in coal combustion residues. Studies have shown that the pollutants present in discharges from coal-fired power plants can affect aquatic organisms and wildlife, resulting in lasting environmental impacts on local habitats and ecosystems. Peer-reviewed literature has documented the impacts resulting from intentional and accidental surface water discharges of wastewater from coal-fired power plants, as well as environmental impacts from leachate from waste management units (*i.e.,* surface impoundments and landfills) entering the ground water system.

EPA's review of wastewater discharges from power plants, and the treatment technologies available to reduce pollutant discharges, has indicated the need to update the current national effluent guidelines regulations. The current regulations, which were last updated in 1982, do not adequately address the pollutants being discharged and have not kept pace with changes that have occurred in the electric power industry over the last three decades. The process to develop and propose new discharge standards will require several years and the first steps to begin this process include an industry questionnaire.

EPA is conducting this ICR to support the rulemaking process for revising the steam electric power generating effluent guidelines. The ICR will aid in the collection of information from a wide range of steam electric power generating industry operations to characterize waste streams, understand the processes that generate the wastes, gather environmental data, and assess the availability and affordability of treatment technologies. These data will be used to perform detailed technical and economic analyses that will support EPA's rulemaking. EPA will seek OMB approval under the Paperwork Reduction Act (PRA).

EPA has identified approximately 1,200 fossil- and nuclear-fueled steam electric power plants that are potentially within scope of the data collection objectives of the ICR. To reduce burden on the industry, EPA intends to distribute the questionnaire to a statistically-sampled subset of these facilities. EPA estimates that this questionnaire will involve 760 respondents. The questionnaire consists of multiple sections which have been tailored to address specific processes, specific data needs, or types of power plants. Part A of the questionnaire will be sent to all questionnaire recipients; the remaining sections will be sent to discrete subpopulations of questionnaire recipients. No plant will be required to complete every section of the questionnaire.

The questionnaire will collect general plant information and selected technical information about the plant processes and the electric generating units. The information that will be collected includes economic data and technical information about flue gas desulfurization (FGD) wastewater, ash handling, process equipment cleaning operations, wastewater treatment, surface impoundment and landfill operations, and nuclear operations. The questionnaire will also require certain power plants to collect and analyze samples of leachate from surface impoundments and landfills containing coal combustion residues.

EPA intends to submit this information collection request to the Office of Management and Budget (OMB) for approval to distribute the questionnaire under the authority of section 308 of the CWA, 33 U.S.C. 1318. All questionnaire recipients will be required to complete and return the questionnaire to EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 205 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 760.

Frequency of response: One occasion.

Estimated total average number of hours for each respondent: 205.

Estimated total annual burden hours: 156,091.

Estimated total annual costs: $8.17 million. This includes an estimated burden cost of $6.45 million for labor and $1.72 million for operations and maintenance.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and a 30 day opportunity to submit comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 23, 2009.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. E9–25988 Filed 10–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037, FRL–8975–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Report (Renewal); EPA ICR No. 2207.03, OMB Control No. 2025–0006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 30, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0037, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wm. Terry Forrest, OEI/OIC/IESD, Mail Code 2823T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–0196; *fax number:* 202–566–1624; *e-mail address: forrest.terry@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 11, 2009 (74 *FR* 27789), EPA sought comments pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2006–0037 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744.

EPA's electronic docket and comment system at *http://www.regulations.gov* can be used to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Exchange Network Grants Progress Report (Renewal).

ICR Numbers: EPA ICR No. 2207.03, OMB Control No. 2025–0006.

ICR Status: This ICR is scheduled to expire on November 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: This notice announces the collection of information related to the U.S. EPA Environmental Information Exchange Network (EIEN) Grant Program. The EPA Office of Environmental Information provides funding to EPA's Exchange Network partners: states, territories, and federally recognized Indian tribes to support the development of the EIEN. The EIEN is an Internet and-standards-based, secure information system that supports the electronic collection, exchange, and integration of data among its partners. Funding for the Grant Program has been provided through annual congressional appropriations for the EPA.

To enhance the quality and overall public benefit of the Network, EPA proposes to collect information from the EIEN grantees about how they intend to ensure quality in their projects and the environmental outcomes and outputs from their projects. The proposed Quality Assurance Report is intended to provide a simple means for grant recipients to describe how quality will be addressed throughout their projects. The Administrative Terms and Conditions that accompany the grant provide guidance on how to prepare the Quality Assistance Report. As a stipulation of their award, grant recipients are to submit the report within ninety days of grant award.

Grantees are currently required to submit semi-annual progress reports as a stipulation of their award. In these reports, grantees outline project goals, activities required to meet these goals, and outputs and outcomes of activities to date.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours for the Semi-Annual Report Form per response and 1 hour per Quality Assurance Form per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Tribal, and Territorial Environmental Offices receiving EIEN grants.

Estimated Number of Respondents: 225.

Frequency of Response: Twice for the Semi-Annual Report Form; Once for the Quality Assurance Form.

Estimated Total Annual Hour Burden: 733.

Estimated Total Annual Cost: $37,000 includes $0 annualized capital or O&M costs and $37,000 annual labor costs.

Dated: October 23, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E9–26081 Filed 10–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0253; FRL–8975–3; EPA ICR No. 1847.05; OMB Control No. 2060–0390]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 30, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0253 to EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Walt Stevenson, Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Mail Code D243–01, Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: 919–541–5264; fax number: 919–541–5450; e-mail address: *Stevenson.Walt@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 24, 2009 (74 FR 36696), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for the ICR under Docket ID No. EPA–HQ–OAR–2009–0253, which is available for online viewing at *http://www.regulations.gov* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified in this document. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Emission Guidelines for Large Municipal Waste Combustors Constructed on or before September 20, 1994 (Renewal).

ICR numbers: EPA ICR No. 1847.05, OMB Control No. 2060–0390.

ICR status: This ICR is scheduled to expire on November 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The ICR is a renewal of current data collection and reporting requirements for large municipal waste combustors (MWC)s subject to 40 CFR part 60, subpart Cb emission guidelines. The subpart Cb guidelines are maximum achievable control technology (MACT) based standards that were adopted in 1995 and were fully implemented by year 2000. The data collected by the ICR are intended to monitor the compliance status of large MWCs subject to these MACT standards. The data collection is a mandatory requirement (Clean Air Act section 114(a)(1)).

The emission guidelines require initial notifications, performance tests, and periodic reports. Owners or operators of large MWCs also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Owners or operators of large MWCs must maintain all files for least five years.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,725 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Large Municipal Waste Combustors.

Estimated Number of Respondents: 81.

Frequency of Response: Annual, semiannual.

Estimated Total Annual Hour Burden: 394,954.

Estimated Total Annual Cost: $50,588,150, which includes labor costs

of $49,032,950 and operation and maintenance costs of $1,555,200.

Changes in Estimates: There is an increase of 356,537 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The original ICR included only the burden for large MWCs subject to the Federal 111(d) plan for large MWCs. This ICR renewal includes the additional burden of large MWCs subject to approved State Section 111(d) plans and for State agencies implementing the Section 111(d) plans.

Dated: October 23, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E9–26082 Filed 10–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0927; FRL–8975–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients; EPA ICR No. 0597.10, OMB Control No. 2070–0024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 30, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2008–0927, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Pesticide Programs (OPP), Regulatory Public Docket (7502P), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lily Negash, Field and External Affairs Division, (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–347–8515; fax number: 703–305–5884; e-mail address: *negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 25, 2009 (74 FR 8537), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2008–0927, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients.

ICR numbers: EPA ICR No. 0597.10, OMB Control No. 2070–0024.

ICR Status: This ICR is scheduled to expire on November 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection will enable EPA to collect adequate data to support the establishment of pesticide tolerances pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). A pesticide may not be used on food or feed crops unless EPA has established a tolerance for the pesticide residues on that crop, or established an exemption from the requirement to have a tolerance. Responses to this collection are required to obtain tolerances or exemptions from tolerances for pesticides used on food or feed crops, pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Pub. L. 104–170). Confidential Business Information (CBI) submitted to EPA in response to this information collection is protected from disclosure under FIFRA Section 10.

This ICR only applies to the information collection activities associated with the submission of a petition for a tolerance action. It is EPA's responsibility to ensure that the maximum residue levels likely to be found in or on food/feed crops are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, it must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. If the data are adequate for EPA to determine that there is a reasonable certainty that no harm will result from aggregate exposure, the Agency will establish the tolerance or grant an exemption from the requirement of a tolerance.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,726 hours per response for petitions submitted by pesticide registrants and 1,739 hours per response for petitions submitted by IR–4 participants. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide

information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this ICR include individuals or entities engaged in activities related to the registration of a pesticide product, which may be identified by the North American Industrial Classification System (NAICS) code 325320.

Estimated Number of Respondents: 103.

Frequency of Response: As needed.

Estimated Total Annual Hour Burden: 178,285.

Estimated Total Annual Cost: $14,103,722. This ICR does not involve any capital investment or maintenance and operational costs.

Changes in the Estimates: There is a net decrease of 80,615 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. EPA anticipates that 47 fewer tolerance petitions will be received annually compared to the previous three years (2006, 2007, and 2008). This would result in a corresponding 81,122 hour reduction in estimated annual burden. The change is an adjustment. In addition, EPA estimates that IR–4 petitioners are changing the way in which they compile tolerance petitions for submission to EPA in an effort to capture the new fee waiver incentives under the Pesticide Registration Improvement Renewal Act. This change in IR–4 petition preparation results in an additional 13 hours per response, resulting in a program change increase of 507 hours annually.

Dated: October 23, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E9–26089 Filed 10–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8971–6]

Clean Water Act Section 303(d): Final Agency Action on 8 Total Maximum Daily Loads (TMDLs) in Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the final agency action on 8 TMDLs established by EPA Region 6 for waters listed in the State of Arkansas, under section 303(d) of the Clean Water Act (CWA). Documents from the administrative record files for the final 8 TMDLs, including TMDL calculations may be viewed at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm*.

ADDRESSES: The administrative record files for these 8 TMDLs may be obtained by writing or calling Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

EPA Takes Final Agency Action on 8 TMDLs

By this notice EPA is taking final agency action on the following TMDLs for 8 waters located within the State of Arkansas:

Segment-reach	Waterbody name	Pollutant
08020301–010	Cypress Bayou	Fecal coliform and E. coli.
08020301–011	Cypress Bayou	Fecal coliform and E. coli.
08020301–012	Cypress Bayou	Fecal coliform and E. coli.
11110103–029	Clear Creek	Fecal coliform and E. coli.

EPA requested the public to provide EPA with any significant data or information that might impact the 8 TMDLs at Federal Register *Notice:* Volume 74, Number 154, pages 40583 (August 12, 2009). The comments were received, and the EPA's response to comments and the TMDLs may be found at: *http://www.epa.gov/region6/water/npdes/tmdl/index.htm*.

Dated: September 30, 2009.

Bill Luthans,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E9–26091 Filed 10–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0015; FRL–8973–1]

Release of Draft Document Related to the Review of the National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of draft document for public comment.

SUMMARY: On or about October 20, 2009, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public comment a draft assessment document: *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide (CO) Primary National Ambient Air Quality Standards—First External Review Draft.* This draft document describes the quantitative analyses that are being conducted as part of the review of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO).

DATES: Comments should be submitted on or before November 19, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0015, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2008–0015.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2008–0015.

• *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2008–0015.

• *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0015. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For questions related to the draft document titled, *Risk and Exposure Assessment to Support the Review of the Carbon Monoxide (CO) Primary National Ambient Air Quality Standards—First External Review Draft* (October 2009), please contact Dr. Ines Pagan, Office of Air Quality Planning and Standards (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: pagan.ines@epa.gov*; *telephone:* 919–541–5469; fax: 919–541–0237.

General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

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

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Presently, EPA is reviewing the air quality criteria and NAAQS for CO. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Carbon Monoxide.*[1] A draft of the integrated review plan was released for public review and comment in March 2008 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on April 8, 2008 (73 FR 12998). Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

As part of EPA's review of the primary (health-based) CO NAAQS, the Agency is conducting qualitative and quantitative assessments characterizing the health risks associated with exposure to ambient CO. The EPA's plans for conducting these assessments, including the proposed scope and methods of the analyses, were presented in a planning document titled, *Carbon*

[1] EPA 452R–08–005; August 2008; Available at: *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html.*

Monoxide National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment (Scope and Methods Plan). This document was released for public comment in April 2009 and was the subject of a consultation with the CASAC on May 13, 2009 (74 FR 15265). Comments received from the CASAC consultation (Brain and Samet, 2009) [2] as well as public comments on the Scope and Methods Plan have been considered in developing the draft assessment document being released at this time.

The draft document announced today conveys the approaches taken to assess exposures to ambient CO and to characterize associated health risks, as well as present the initial key results, observations, and related uncertainties associated with the quantitative analyses performed. This draft document will be available on or about October 20, 2009, through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.* This document may be accessed in the ''Documents from Current Review'' section under ''Risk and Exposure Assessments.'' The EPA is soliciting advice and recommendations from the CASAC by means of a review of the draft document at an upcoming public meeting of the CASAC scheduled in Chapel Hill, NC. Information about this public meeting, including the date and location, has been published as a separate notice in the **Federal Register** (74 FR 48536) on September 23, 2009. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing revisions to this assessment document.

The draft document briefly described above does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising the documents.

Dated: October 15, 2009.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–26093 Filed 10–28–09; 8:45 am]

BILLING CODE 6560–50–P

[2] *See http://yosemite.epa.gov/sab/sabproduct.nsf/93C1DE17CB957211852575F30071B0BD/$File/EPA-CASAC-09-012-unsigned.pdf*

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission under Delegated Authority, Comments Requested

October 23, 2009.

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, 44 U.S.C. 3501–3520. 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 comments on this information collection should submit comments on December 28, 2009. 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0307.

Title: Parts 1, 22 and 90 of the Commission's Rules to Facilitate Development of Specialized Mobile Radio (SMR) Systems in the 800 MHz Frequency Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit; not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 272 respondents; 272 responses.

Estimated Time Per Response: 2.5 – 3.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 173 hours.

Annual Cost Burden: $78,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: The Commission is submitting this information collection to the Office of Management and Budget (OMB) under delegated authority at the end of this 60 day comment period in order to obtain the full three year clearance from them. There is an adjustment reduction in the burden hours and annual costs. The burden hours have been reduced by 351 hours and the annual costs have been reduced by $226,000.

For this submission to the OMB, the Commission is requesting an extension with no changes to the reporting and/or third party disclosure requirements. The Commission has adjusted the number of respondents based on its experience with application receipts over the past three years. In addition, the Commission is no longer auctioning 800 MHz spectrum and thus, there will be no respondents for information collections associated with 800 MHz auctions. We also note that the three year time period for filing transfer disclosure information

following the auction of 800 MHz licenses has passed for all three 800 MHz auctions (upper, lower and general). Therefore, there will be no respondents for information collections associated with transfer disclosures during the next collection period.

The information will be used by the Commission to update the Commission's licensing database and thereby facilitate the successful coexistence of Economic Area (EA) licensees and incumbents in the 800 MHz SMR band.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–26053 Filed 10–28–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; and Ira M. Lubert, W. Kirk Wycoff and James J. Lynch, all of Philadelphia, Pennsylvania; to acquire voting shares of TIB Financial Corp., and thereby indirectly acquire voting shares of TIB Bank, both of Naples, Florida.

Board of Governors of the Federal Reserve System, October 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26063 Filed 10–28–09; 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 applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Overland Bancorp, Inc., and thereby indirectly acquire voting shares of Bank of Belton, both of Belton, Missouri.

Board of Governors of the Federal Reserve System, October 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26062 Filed 10–28–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[Docket No. 9340]

The M Group, et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before November 23, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''The M Group, Docket No. 9340'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled

''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/D9340*) 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://public.commentworks.com/ftc/D9340*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''The M Group, Docket No. 9340'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 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.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. 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.shtm*).

FOR FURTHER INFORMATION CONTACT: Korin K. Ewing, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3556.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 22, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from The M Group, Inc., also doing business as Bamboosa, a corporation, and Mindy Johnson, Michael Moore, and Morris Saintsing, individually and as members of the corporation (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondents' marketing and sale of textile fiber products purportedly made of bamboo fiber. The FTC complaint alleges that respondents violated Section 5(a) of the FTC Act by making false claims that their textile fiber products are bamboo fiber; retain the anti-microbial properties of the bamboo plant; and will completely break down and return to the elements found in nature within a reasonably short period of time after customary disposal. The complaint alleges that respondents' textile fiber products are made of rayon; do not retain the anti-microbial properties of the bamboo plant; and that a substantial majority of household waste is disposed of by methods that do not present conditions that would allow for respondents' textile fiber products to decompose into elements found in nature, within a reasonably short period of time. The complaint further alleges that the respondents failed to have substantiation for the foregoing claims.

The complaint also alleges that the respondents have violated the Textile Fiber Products Identification Act (''Textile Act'') and the Rules and Regulations promulgated thereunder (''Textile Rules'') by falsely and deceptively labeling and advertising their textile fiber products as bamboo.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I.A of the proposed order prohibits respondents from representing that any textile fiber product (1) is made of bamboo or bamboo fiber; (2) is anti-microbial or retains the anti-microbial properties of any material from which it is made; or (3) is degradable, biodegradable, or photodegradable, unless such representations are true, not misleading, and substantiated by competent and reliable scientific evidence. Part I.B prohibits respondents from making claims about the benefits, performance, or efficacy of any textile fiber product, unless at the time the representation is made, it is truthful and not misleading, and is substantiated by competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence. Part II makes clear that, although Part I prohibits respondents from making false and unsubstantiated representations that their textile fiber products are made of bamboo or bamboo fiber as opposed to rayon, the respondents nonetheless may describe such products using the generic name of any manufactured fiber and identifying bamboo as the cellulose source for such fiber (*e.g.*, rayon made from bamboo), so long as such

[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* FTC Rule 4.9(c), 16 CFR 4.9(c).

representation is true and substantiated. Part III of the proposed order prohibits respondents from failing to comply with the Textile Act or the Textile Rules.

Parts IV through VIII require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in the individual respondents' current business or employment; and to file compliance reports with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. E9–26006 Filed 10–28–09: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Zhong Bin Deng, Medical College of Georgia: Based on the report of an investigation conducted by the Medical College of Georgia (MCG), the report of the MCG Adjudication Subcommittee, additional analysis conducted by ORI in its oversight review, and the Respondent's written and oral admissions and expressed remorse, ORI found that Dr. Zhong Bin Deng, former postdoctoral fellow at MCG in Augusta, GA, engaged in scientific misconduct in research supported by National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grant 2 P01 AI42288.

ORI found that Dr. Deng engaged in scientific/research misconduct by falsifying research results reported in a paper published in *Nature Medicine*.[1] Specifically:

- Figures 1 and 2 in the Nature Medicine paper purportedly show that the autoimmune regulator Arie controls iNKT cell development and maturation. In Figure 1(a), the Respondent falsified the Aire +/+ (thymus and liver) flow cytometry plots by substituting Aire +/− (thymus and liver) flow cytometry plots that were altered to disguise their origins and falsified the Aire −/− (bone marrow) flow cytometry plot by substituting the Aire +/− (bone marrow) flow cytometry plot, also altered to disguise its origin.
- In supplementary Figure 2 of the *Nature Medicine* paper, the Respondent falsified flow cytometry plots as follows: (1) in row 1, the Aire −/− (thymus) flow cytometry plot [plot 2] and the Aire +/+ → −/− (thymus) flow cytometry plot [plot 3] are duplicates, thus one of the plots is falsified; (2) in row 2, the Aire −/− (spleen) flow cytometry plot [plot 2] and the Aire −/− → +/+ flow cytometry plot [plot 5] are duplicates, thus one of the plots is falsified; (3) in row 3, the Aire −/− (liver) flow cytometry plot [plot 2] and the Aire +/+ → −/− (liver) flow cytometry plot [plot 3] are duplicates, thus one of the plots is falsified; and (4) in row 4, the Aire −/− (thymus) flow cytometry plot [plot 2] and the Aire +/+ → +/+ flow cytometry plot [plot 4] are duplicates, thus one of the plots is falsified.

Dr. Deng has entered into a Voluntary Settlement Agreement in which he has voluntarily agreed, for a period of two (2) years, beginning on October 2, 2009:

(1) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses him in any capacity on PHS-supported research or that submits a report of PHS-funded research in which he is involved must concurrently submit a plan for supervision of his duties to ORI; the supervisory plan must be designed to ensure the integrity of his research contribution; respondent agreed that he will not participate in any PHS-supported research until such a supervisory plan is approved by ORI;

(2) That any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS funded research in which the Respondent is involved, a certification to ORI that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application or report; and

(3) To exclude himself from serving in any advisory capacity to the U.S. Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. E9–26007 Filed 10–28–09; 8:45 am]

BILLING CODE 4150–31–P

[1] Mi, Q.-S., Deng, Z.-B., Joshi, S.K., Wang, Z.-Z., Zhou, L., Eckenrode, S., Joshi, R., Ly, D., Yi, B., Delovitch, D.L., & She, J.-X. ''The autoimmune regulator 9Aire) controls iNKT cell development and maturation.'' *Nature Medicine* 12:624–626, 2006; hereafter referred to as the ''*Nature Medicine* paper.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel E), Funding Opportunity Announcement (FOA) PAR07–231, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned SEP:

Time and Date: 12 p.m.–3 p.m., December 2, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, FOA PAR07–231, Panel E.''

Contact Person for More Information: Sheree Marshall Williams, PhD, MSc, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D73, Atlanta, GA 30333, Telephone 404–639–7742.

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: October 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–26125 Filed 10–28–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 17, 2009, 8 a.m. to November 18, 2009, 5 p.m., William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854 which was published in the **Federal Register** on October 22, 2009, 74 FR 54585–54586.

The meeting will be one day only November 17, 2009, from 8:30 a.m. to 8 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26124 Filed 10–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on November 10, 2009, from 8:30 a.m. to 3 p.m. at the Bethesda Hyatt Regency Hotel, 7400 Wisconsin Avenue, Bethesda, MD. The meeting will be open to the public, with attendance limited to space available. Non-Federal individuals planning to attend the meeting should notify the Contact Person listed on this notice at least 2 days prior to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The November 10, 2009, DMICC meeting will discuss ''Diabetes Prevention: A National Priority.''

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first come, first serve basis.

A registration link and information about the DMICC meeting will be available on the DMICC Web site: *http://www.diabetescommittee.gov.* Members of the public who would like to receive e-mail notification about future DMICC meetings could register on a listserv available on the same Web site.

For further information concerning this meeting contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, Telephone: 301- 594–8803 FAX: 301- 402–6271, e-mail: *dmicc@mail.nih.gov*.

Dated: October 19, 2009.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. E9–25848 Filed 10–28–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Review of T32 Applications.

Date: November 23, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26128 Filed 10–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–82]

Public Housing Operating Subsidy-Stop-Loss and Appeals

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

To stop the phase-in of the reduction in the amount of subsidy a PHA receives under the new operating fund formula, PHAs submit a ''stop-loss'' package to HUD demonstrating conversion to asset management. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

DATES: *Comments Due Date:* November 30, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0246) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Operating Subsidy-Stop-Loss and Appeals.

OMB Approval Number: 2577–0246.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: To stop the phase-in of the reduction in the amount of subsidy a PHA receives under the new operating fund formula, PHAs submit a ''stop-loss'' package to HUD demonstrating conversion to asset management. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	322	1		16.04		5,168

Total Estimated Burden Hours: 5,168.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–26115 Filed 10–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–84]

Homelessness Prevention and Rapid Re-Housing Program (HPRP) Quarterly and Annual Performance Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Quarterly and annual reports to monitor grantees and sub-grantees receiving Homelessness Prevention and Rapid Re-Housing Programs as well as to report aggregate data to HUD staff, other federal agencies, the Congress, the Officer of Management and Budget, and the public.

DATES: *Comments Due Date: November 30, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0186) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Homelessness Prevention and Rapid Re-Housing Program (HPRP) Quarterly and Annual Performance Reporting.

OMB Approval Number: 2506–0186.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Quarterly and annual reports to monitor grantees and sub-grantees receiving Homelessness Prevention and Rapid Re-Housing Programs as well as to report aggregate data to HUD staff, other Federal agencies, the Congress, the Officer of Management and Budget, and the public.

Frequency of Submission: Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	780	3.07		108.78		261,072

Total Estimated Burden Hours: 261,072.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 23, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–26119 Filed 10–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–81]

Public Housing Reform Act: Changes to Admission and Occupancy Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this information collection is to extend the admission and occupancy requirements put in place by the Quality Housing and Work Responsibility Act (QHWRA).

DATES: *Comments Due Date: November 30, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0230) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Reform Act: Changes to Admission and Occupancy Requirements.

OMB Approval Number: 2577–0230.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The purpose of this information collection is to extend the admission and occupancy requirements put in place by the Quality Housing and Work Responsibility Act (QHWRA).

Frequency of Submission: On occasion, Other Per applicant.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,113	1		25		102,825

Total Estimated Burden Hours: 102,825.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–26129 Filed 10–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N150; 40136–1265–0000–S3]

Cross Creeks National Wildlife Refuge, Stewart County, TN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Cross Creeks National Wildlife Refuge (NWR). In the final CCP, we describe how we

will manage this refuge for the next 15 years.

ADDRESSES: A copy of the CCP may be obtained by writing to: Mr. Richard Hines, Refuge Manager, Cross Creeks NWR, 643 Wildlife Road, Dover, TN 37058. The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/*.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Dawson; telephone: 601/965–4903, Extension 20; fax: 601/965–4010.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Cross Creeks NWR. We started this process through a notice in the **Federal Register** on January 3, 2007 (72 FR 143). For more about the process, see that notice.

Cross Creeks NWR was established on November 9, 1962, when a Memorandum of Agreement between the Service and the U.S. Army Corps of Engineers (Corps) was signed. The creation of Cross Creeks NWR was mitigation for waterfowl habitat lost due to the flooding of the former Kentucky Woodlands NWR. This flooding occurred as a result of the creation of Lake Barkley Reservoir, a project of the Corps, in 1954. Public Land Order 4560 formally transferred land rights of Cross Creek NWR to the Service.

The refuge's name originates from the intersection of North Cross Creek and South Cross Creek on the refuge. Cross Creeks NWR currently is 8,862 acres in size. The mixture of open water, wetlands, woodlands, croplands, and grasslands creates a mosaic of wildlife-rich habitats. The refuge provides valuable wintering habitat for migrating waterfowl and bald eagles. It also provides habitat and protection for threatened and endangered species, such as gray bats, Indiana bats, and least terns.

Cross Creeks NWR stretches 12 miles on either side of the Lake Barkley Reservoir and the Cumberland River between the cities of Dover and Cumberland, Tennessee. This river creates a north side and a south side of the refuge. The reservoir and refuge are on the middle transition portion of the Cumberland River between Cheatham Dam and Barkley Dam. The Corps operates Lake Barkley ''primarily for flood control, hydropower, and navigation, as well as secondary purposes of recreation, water quality, water supply, and fish and wildlife habitat.''

Multiple local roads cross the refuge, which receives approximately 45,000 visitors annually. Residents and non-residents generate $1.8 million in expenditures annually.

Cross Creeks NWR is in the Tennessee-Kentucky portion of the Mississippi Flyway. Peak wintering populations of ducks reached more than 108,000 in the mid-1990s. Recently, duck populations have peaked at 35,000–50,000. Canada geese peak wintering populations reached over 73,000 twice in the early to mid-1990s. However, recent wintering populations are 4,000–5,000, with an average of 15,000 during the period 1997–2003.

We announce our decision and the availability of the final CCP and FONSI for Cross Creeks NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA). The CCP will guide us in managing and administering Cross Creeks NWR for the next 15 years. Alternative D is the foundation for the CCP.

The compatibility determinations for hunting, fishing, wildlife observation and photography, environmental education and interpretation, boating, and cooperative farming are also available in the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We solicited comments on the Draft CCP/EA for Cross Creeks NWR as announced in the **Federal Register** on May 1, 2009 (74 FR 20333). Five public comments were received.

Selected Alternative

After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative D to implement the CCP. This alternative is judged to be the most effective management action for meeting the purposes of the refuge by optimizing habitat management and visitor services throughout the refuge. Over the life of the CCP, Alternative D will balance an enhanced wildlife management program, with increased opportunities for public use. Wildlife and habitat management, as well as public use activities, will increase under this alternative. Under this alternative, we will pursue the same five broad refuge goals as each of the other alternatives.

We will provide foraging habitats to meet the needs of 33,100 to 44,400 ducks (25 percent more than Alternative A) for 110 days and other habitats that are needed for loafing, roosting, molting, and other needs. We will also provide adequate foraging habitat to meet the needs of 15,400 migratory Canada geese for 90 days, but will evaluate the need for foraging habitat every 5 years and adjust accordingly. We will continue to provide sanctuary, as under Alternative A, backed up by increased enforcement to reduce illegal disturbance and trespass. In addition, we will seek opportunities for limited wildlife observation within the sanctuary. We will provide 20 to 50 properly located and maintained nesting boxes, brood rearing habitat, and feeding areas throughout the refuge.

We will determine the status of priority marsh bird species on the refuge. Alternative D also calls for determining the status of shorebirds on the refuge and implementing active shorebird management on at least one impoundment during fall migration. We will develop additional partnerships with other agencies, non-governmental organizations, and the public in efforts to inventory shorebirds, colonial nesting waterbirds, and landbirds, and to possibly assist in certain habitat management activities. Under Alternative D, development of a baseline colonial waterbird inventory through systematic surveys will occur. We will develop and implement baseline inventories for non-game mammals, reptiles, amphibians, and invertebrates.

We will manage game populations to maximize quality hunting opportunities while maintaining habitat for Federal trust species. We will continue to

protect all Federally listed species under the Endangered Species Act and will use partners and volunteers (when necessary) to determine the distribution and abundance of all listed species. When necessary, control of invasive animal species using approved techniques to help achieve refuge conservation goals and objectives will occur.

Alternative D will focus water management within the impoundments on migratory birds for the duration of the CCP. We will accomplish this by providing adequate and reliable flooded habitat throughout the refuge and assuring that water management capability can distribute water in a timely manner. We will make a concerted effort to accommodate sport fishing opportunities where and when circumstances allow.

Alternative D calls for expanding efforts to improve the moist-soil management program on at least 300 acres by expanding the invasive plant control program, water management capabilities, and the use of management techniques that set back plant succession. We will also make a concerted effort to accommodate sport fishing opportunities where and when circumstances allow. Increasing the acreage of other habitats, such as mudflats, native submerged and emergent aquatic vegetation, flooded woodlands, beaver ponds, and open water that provides food resources, as well as habitats for loafing, resting, roosting, and molting, will occur under Alternative D.

We will develop and begin to implement a Forest Management Plan to benefit nesting and migratory birds. For the duration of the CCP, we will explore possibilities of managing for scrub-shrub habitat to benefit certain birds in suitable locations on the refuge. We will explore the potential benefits of planting and managing native warm season grasses on formerly farmed fields (up to 75 percent of existing cultivated acreage). Over the lifetime of the CCP, we will gradually phase out cooperative farming in favor of force-account or contract farming of wheat, corn, milo, and millet on 600 acres to meet wildlife foraging objectives.

We will control invasive species through active methods of removal. These methods will work towards reducing the infestation and eliminating populations whenever feasible. We will also extend control efforts to include Eurasian water milfoil and develop partnerships with other agencies, non-governmental organizations, and the public in these control efforts.

Within 5 years, we will draft, approve, and begin to implement a new Visitor Services Plan, using the current format as a guide. We will provide quality fishing and compatible water-related recreation programs on 3,260 acres of the refuge by furnishing adequate launching facilities, bank fishing areas, and, based on availability of funding, at least one ADA-compliant pier to accommodate anglers of all abilities. We will develop and begin to implement a Cultural Resources Management Plan.

Throughout the life of the CCP, we will manage game populations to maximize quality hunting opportunities while maintaining habitat for Federal trust species. We will continue to provide environmental education services to the public, including visits to schools, environmental education workshops, and onsite and offsite environmental education programs. However, we will also expand the refuge's role as an outdoor classroom both for students and the general public for Stewart and surrounding counties.

We will continue to offer opportunities for wildlife observation and photography throughout the refuge, accessible along the refuge road system from March 16 to November 14, but with the addition of a wildlife observation deck next to the visitor center. Within 5 years, we will explore the feasibility of building a wildlife observation tower near Pool 1. Also within 5 years, we will increase the number of wayside signs and add wildlife signs along the Woodpecker Interpretive Trail, as well as develop an interpretive kiosk at Elk Reservoir.

We will maintain the staff of nine fulltime employees, including the refuge manager, park ranger, office assistant, maintenance mechanic, assistant refuge manager, one forester to serve all Tennessee and Cumberland Rivers refuges, one biologist, one law enforcement officer, and one equipment operator. We will replace the now separate visitor center and headquarters with one common building. We will maintain the existing equipment fleet, replacing obsolete equipment as needed. We will add three portable toilets along the road system. Finally, we will install three pumps and will add farm and fire management equipment, such as corn planter, all-terrain vehicles, and pumper truck.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 6, 2009.

Michael L. Piccirilli,

Acting Regional Director.

[FR Doc. E9–26055 Filed 10–28–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–ET0000; HAG–09–0200; WAOR–7964]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has filed an application with the Bureau of Land Management (BLM) proposing to extend the duration of Public Land Order (PLO) No. 6833 for an additional 20-year term. PLO No. 6833 withdrew approximately 142.90 acres of National Forest System land from all mining activities in order to protect the unique natural and ecological research values at the Wolf Creek Research Natural Area. The withdrawal created by PLO No. 6833 will expire on March 20, 2011, unless extended. This notice gives the public an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by January 27, 2010.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Gregory B. Graham, Okanogan-Wenatchee National Forest, (509)–664–9262, or Charles R. Roy, BLM Oregon/Washington State Office, (503)–808–6189.

SUPPLEMENTARY INFORMATION: The United States Forest Service has filed an application requesting that the Secretary of the Interior extend PLO No. 6833 (56 FR 11940 (1991)), which withdrew certain lands in Okanogan County, Washington from all mining activities, for an additional 20 years, subject to valid existing rights. The area described contains approximately 142.90 acres in Okanogan County. PLO No. 6833 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the unique natural and

ecological research values at the Wolf Creek Research Natural Area.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The Forest Service would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Charles R. Roy at the above address or phone number.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Individual respondents may request confidentiality. However, before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity to request a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM State Director at the address indicated above by January 27, 2010. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1)

Fred O'Ferrall,

Chief, Branch of Lands and Mineral Resources.

[FR Doc. E9–26116 Filed 10–28–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Office of the Secretary; Renewal of the Wind Turbine Guidelines Advisory Committee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of renewal.

SUMMARY: The Secretary of the Interior (Secretary), after consultation with the General Services Administration, has renewed the Wind Turbine Guidelines Advisory Committee. The Committee will provide advice and recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities.

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). The Secretary certifies that he has determined that the renewal of the Committee is necessary and is in the public interest.

The Committee will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary through the Director, U.S. Fish and Wildlife Service, and will function solely as an advisory body. Committee membership includes representation from governments, wind energy development organizations, and wildlife conservation organizations.

In accordance with FACA, we have filed a copy of the Committee's charter with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, United States Senate; Committee on Natural Resources, United States House of Representatives; and the Library of Congress.

The certification for renewal is published below.

Certification

I hereby certify that the Wind Turbine Guidelines Advisory Committee is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Public Laws 16 U.S.C. 703–712, Migratory Bird Treaty Act; 16 U.S.C. 668–668d, Bald and Golden Eagle Protection Act; 16 U.S.C. 1531–1544, Endangered Species Act; and 42 U.S.C. 4371 *et seq.,* National Environmental Policy Act. The Committee will assist the Department of the Interior by providing advice and recommendations on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy development.

Dated: October 20, 2009.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–26015 Filed 10–28–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–619]

Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players and Products Containing Same; Notice of Commission Final Determination of No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there has been no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its

Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2007, based on a complaint filed by SanDisk Corporation of Milpitas, CA. 72 FR 70610 (Dec. 12, 2007). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory controllers, drives, memory cards, media players and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,426,893; 6,763,424 (''the '424 patent''); 5,719,808; 6,947,332; and 7,137,011 (''the '011 patent''). Three patents and several claims were subsequently terminated from the investigation. Claims 17, 24 and 30 of the '424 patent and claim 8 of the '011 patent remain in the investigation. The complaint named nearly fifty respondents. Twenty-one respondents were terminated from the investigation based on settlement agreements, consent orders and withdrawal of allegations from the complaint. Five respondents defaulted. The following respondents remain in the investigation: Imation Corporation of Oakdale, MN; Imation Enterprises Corporation of Oakdale, MN; and Memorex Products, Inc. of Cerritos, CA (collectively, ''Imation Respondents''); Phison Electronics Corporation of Hsinchu, Taiwan; Silicon Motion Inc. of Taiwan; Silicon Motion, Inc. of Milpitas, CA; Skymedi Corporation of Hsinchu, Taiwan; Power Quotient International Co., Ltd. of Taipei, Taiwan; Power Quotient International (HK) Co., Ltd. of Hong Kong; Syscom Development Co., Ltd. of the British Virgin Islands; PQI Corporation of Fremont, California; Kingston Technology Corporation of Fountain Valley, CA; Kingston Technology Company, Inc. of Fountain Valley, CA; MemoSun, Inc. of Fountain Valley, CA; Transcend Information Inc. of Taipei, Taiwan; Transcend Information Inc. of Orange, CA; Transcend Information Maryland, Inc. of Linthicum, MD; Apacer Technology Inc. of Taipei Hsien, Taiwan; Apacer Memory America, Inc. of Milpitas, CA; Dane Memory S.A. of Bagnolet, France; Deantusaiocht Dane-Elec TEO of Spiddal, Galway, Ireland; Dane-Elec Corporation USA of Irvine CA; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics, Inc. of Seoul, South Korea.

On April 10, 2009, the ALJ issued his final ID finding no violation of section 337 by Respondents. The ALJ issued a corrected version of his final ID on April 16, 2009. The ID included the ALJ's recommended determination on remedy and bonding. In the subject ID, the ALJ found that the accused products do not infringe asserted claims 17, 24 and 30 of the '424 patent. The ALJ also found that none of the asserted claims of the '424 patent were proven to be invalid as anticipated or obvious in view of the prior art. The ALJ further found the Respondents not liable for contributory or induced infringement of the asserted claims of the '424 patent. Likewise, the ALJ found that SanDisk failed to prove that the Imation Respondents, the only respondents accused of infringing claim 8 of the '011 patent, induced or contributed to infringement of the patent. The ALJ also found that SanDisk's rights in the '011 patent were not exhausted and that claim 8 of the '011 patent satisfies the indefiniteness requirement of 35 U.S.C. 112, second paragraph. The ALJ, however, concluded that the prior art rendered claim 8 of the '011 patent obvious.

On May 4, 2009, SanDisk and the Commission investigative attorney filed petitions for review of the ID. That same day, Respondents filed a collective contingent petition for review of the ID with respect to the '424 patent. Skymedi Corporation and the Imation Respondents, in addition to joining the collective contingent petition for review, filed individual contingent petitions for review. On May 18, 2009, the parties filed responses to the various petitions and contingent petitions for review.

On August 24, 2009, the Commission determined to review the final ID in part and requested briefing on several issues it determined to review, and on remedy, the public interest and bonding. 74 FR 44382 (Aug. 28, 2009). The Commission determined to review the claim construction of claims 17, 24 and 30 of the '424 patent; infringement of the asserted claims of the '424 patent; validity of the '424 patent; and the ALJ's decision not to consider the Sinclair PCT publication as evidence of prior art to claim 17 of the '424 patent. *Id.*

On September 3, 2009, the parties filed written submissions on the issues on review, remedy, the public interest and bonding. On September 14, 2009, the parties filed response submissions on the issues on review, remedy, the public interest and bonding.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to (1) reverse the ALJ's finding that claim 17 of the '424 patent does not cover single-page updates; (2) reverse the ALJ's finding that the claim term ''reading and assembling data from the first and second plurality of pages'' as recited in claim 20 of the '424 patent excludes the so-called table method as disclosed in Figure 12; (3) affirm the ALJ's finding that the accused products do not infringe the asserted claims of the '424 patent; and (4) affirm the ALJ's finding that none of the asserted claims of the '424 patent were proven to be invalid as anticipated or obvious in view of the prior art considered by the ALJ. Given the Commission's affirmance of the ALJ's determination that SanDisk failed to establish that the accused controllers infringe claim 17 of the '424 patent, the Commission declines to reach the issue of whether the ALJ should have considered the Sinclair PCT publication as evidence of prior art to claim 17 of the '424 patent.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: October 23, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–25974 Filed 10–28–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–660]

In the Matter of: Certain Active Comfort Footwear; Notice of Commission Determination To Terminate the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–

205–3116. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 25, 2008, based on the complaint of Masai Marketing & Trading AG of Romanshorn, Switzerland and Masai USA Corp. of Haley, Idaho (''Complainants''). 73 FR 73884 (Nov. 25, 2008). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain active comfort footwear that infringes certain claims of U.S. Patent No. 6,341,432. Complainants named as respondents RYN Korea Co., Ltd. of Seoul, Korea (''RYN''); Main d/b/a WalkingShoesPlus.com of Los Angeles, California (''WalkingShoesPlus''); and Feet First Inc. of Boca Raton, Florida (''Feet First''). The Tannery of Cambridge, Massachusetts and A Better Way to Health of West Melbourne, Florida were subsequently added as respondents in the investigation by an unreviewed initial determination (''ID'') (Order No. 4). 74 FR 11378 (Mar. 17, 2009).

On May 21, 2009, the Commission determined not to review an ID (Order No. 6) finding WalkingShoesPlus and Feet First in default for failure to respond to the complaint and notice of investigation.

On August 5, 2009, the Commission determined not to review an ID (Order No. 12) terminating the investigation based on a settlement agreement as to RYN and withdrawal of the complaint as to the remaining respondents. The Commission also requested briefing on remedy, bonding, and the public interest in connection with the defaulting respondents. 74 FR 40843 (Aug. 13, 2009).

Complainants and RYN filed a joint response to the Commission's request. The joint response states that Complainants do not believe that any remedy should be ordered against the defaulting parties and that Complainants therefore seek no relief against them. Complainants and RYN contend that the issuance of any remedy as to the defaulting parties would not be consistent with the spirit of the settlement agreement that resolved the dispute and led to the termination of the investigation. Complainants and RYN therefore submit that no remedy should be imposed on the defaulting parties, that there are no public interest concerns, and that a bond should not be imposed. The investigative attorney also filed a response to the Commission's request. She takes the position that, under the unique circumstances presented, no limited exclusion order or cease and desist order should issue against defaulting respondents.

Based on consideration of the record, including the responses of the parties to the Commission's request for briefing, the fact that Complainants do not seek relief against the defaulting respondents, and the settlement agreement between the Complainants and RYN, the Commission has determined not to issue a remedy against the defaulting respondents and has terminated the investigation in its entirety.

The authority for the Commission's determination is contained in section 337(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(g)), and in section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21).

By order of the Commission.

Issued: October 26, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–26060 Filed 10–28–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–691]

Certain Inkjet Ink Supplies and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 23, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hewlett-Packard Company of Palo Alto, California. A letter supplementing the complaint was filed on October 7, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet ink supplies and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,959,985; 7,104,630; 6,089,687; and 6,264,301. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 22, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain inkjet ink supplies or components thereof that infringe one or more of claims 1–7 and 22–28 of U.S. Patent No. 6,959,985; claims 1–10, 12, 14, 18–20, 22, 26, and 28–35 of U.S. Patent No. 7,104,630; claims 6, 7, 9, and 10 of U.S. Patent No. 6,089,687; and claims 1–3, 5, and 6 of U.S. Patent No. 6,264,301, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, CA 94304

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Zhuhai Gree Magneto-Electric Co. Ltd., No. 205, Shihua West Road, Xiangzhou District, Zhuhai, Guangdong 519000, China

InkPlusToner.com, 7851 Alabama Ave. #5, Canoga Park, California 91304

Mipo International Ltd., 7/F Wong Tze Building, No. 71 Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong

Mextec Group Inc. d/b/a Mipo America Ltd., 3100 N.W. 72nd Avenue #106, Miami, Florida 33122

Shanghai Angel Printer Supplies Co. Ltd., No. 81 Kanguan Road, Zhujiajiao Industrial Zone, Qingpu District, Shanghai, China

SmartOne Services LLC d/b/a InkForSale.net, 27613 Del Norte Court, Hayward, California 94545

Shenzhen Print Media Co., Ltd., Room 10A Xingfu Ge Zhongfu Building (129), Fumin Rd., Futian District, Shenzhen, China

Comptree Ink d/b/a Meritline, ABCInk, EZ, Label, and CDR DVDR Media, 18961 East Arenth Ave., City of Industry, California 91748

Zhuhai National Resources & Jingjie Imaging, Products Co., Ltd., No. 1 Industrial Building, Pingdong 2 Road, Nanping S&T Industrial Community, Zhuhai, Guangdong, China

Tatrix International, 10 C, Garden Building, No. 1083 JiuZhou Road, Jida, Zhuhai, Guangdong, China 519015

Ourway Image Co., Ltd., No. 125 Renmin East Road, Zhuhai, Guangdong, China

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: October 23, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–25997 Filed 10–28–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 21, 2009, a proposed Consent Decree in *United States* v. *Louisiana Midland Transport Company, L.L.C.* (''Louisiana Midland''), C.A. No. 1:09–cv–01825 (W.D. La.), was lodged with the United States District Court for the Western District of Louisiana. The Consent Decree resolves the United States' claim for response costs against Louisiana Midland, pursuant to Section 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a)(2). The claim relates to response costs incurred by the U.S. Environmental Protection Agency (''EPA'') in connection with clean-up activities performed at the Doughty's Treating Plant Site, located in Jena, La Salle Parish, Louisiana. Under the Consent Decree, defendant Louisiana Midland will pay EPA $1,200,000 in reimbursement of a portion of the response costs incurred by EPA in connection with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Louisiana Midland Transport Company, L.L.C.,* DOJ Reference No. 90–11–3–09181.

The Consent Decree may be examined at the Office of the United States Attorney, 300 Fannin Street, Suite 3201, Shreveport, Louisiana, and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_ Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page production costs), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–25957 Filed 10–28–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on September 11, 2009, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, and coca leaves. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 30, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic classes of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25999 Filed 10–28–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on September 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ADLINK Technology has changed its name to Ampro ADLINK Technology, Inc. San Jose, CA.

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 PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on June 22, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2009 (74 FR 38473).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–25777 Filed 10–28–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0033]

Walking and Working Surfaces Standard for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR part 1910, subpart D).

DATES: Comments must be submitted (postmarked, sent, or received) by December 28, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0033, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution

Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0033). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The collections of information contained in the Walking and Working Surfaces Standard are necessary to protect workers from the collapse of overloaded floors, outrigger scaffolds, and failure of defective portable metal ladders. The following describes the information collection requirements in subpart D:

Paragraph 1910.22(d)(1) requires that in every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.

Under paragraph 1910.26(c)(2)(vii), portable metal ladders having defects are to be marked and taken out of service until repaired by either the maintenance department or the manufacturer.

Paragraph 1910.28(e)(3) specifies that unless outrigger scaffolds are designed by a licensed professional engineer, they shall be constructed and erected in accordance with table D–16 of this section. A copy of the detailed drawings and specifications showing the sizes and spacing of members shall be kept on the job.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR Part 1910, subpart D). OSHA is proposing to increase the burden hours in the currently approved information collection request from 1,193 to 6,125 (a total increase of 4,932 hours). This increase is due to updated data showing an increase in the number of firms from 10,000 to 41,540. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Walking and Working Surfaces for General Industry (29 CFR 1910, Subpart D).

OMB Number: 1218–0199.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 75,408.

Frequency of Response: On occasion.

Average Time per Response: Three minutes (.05 hour) to mark ladders with a tag or other means; 20 minutes (0.33 hours) to acquire a replacement sign and to post it.

Estimated Total Burden Hours: 6,125 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0033). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office

at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 26th day of October 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–26074 Filed 10–28–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0040]

The Standard on 4,4′-Methylenedianiline in General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on 4,4′-Methylenedianiline in General Industry (29 CFR 1910.1050).

DATES: Comments must be submitted (postmarked, sent, or received) by December 28, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0040, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0040). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaa N. Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 4,4′-Methylenedianiline Standard in General Industry (the ''MDA Standard'') (29 CFR 1910.1050) protect workers from the adverse health effects that may result from their exposure to MDA, including cancer, liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure monitoring; notify each worker in writing of their results as soon as possible but no later than 5 days after receiving exposure monitoring results; and routinely inspect the hands, face, and forearms of each worker potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: Establish a written compliance program; institute a respiratory protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard); and develop a written emergency plan for any construction operation that could have an emergency (*i.e.,* an unexpected and potentially hazardous release of MDA).

Employers must label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and

equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or accessways to regulated areas, as well as train workers exposed to MDA at the time of their initial assignment, and at least annually thereafter.

Other paperwork provisions of the MDA Standard require employers to provide workers with medical examinations, including initial, periodic, emergency and follow-up examinations. As part of the medical surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the worker's medical results and exposure limitations.

The MDA Standard also specifies that employers are to establish and maintain exposure monitoring and medical surveillance records for each worker who is subject to these respective requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure monitoring and medical surveillance records to workers and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure monitoring and medical surveillance records, and who have no successor employer, must notify NIOSH at least 90 days before disposing of the records and transmit the records to NIOSH if so requested.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the 4,4′-Methylenedianiline in General Industry Standard (29 CFR 1910.1050). The Agency is requesting an adjustment to the burden hours from 293 hours to 310 hours (an increase of 17 burden hours). This increase is the result of increasing the job turnover rate from 10% to 27%, resulting in an increased number of workers that are receiving medical examinations and being trained.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: 4,4′-Methylenedianiline in General Industry (29 CFR 1910.1050).

OMB Number: 1218–0184.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal Government; State, Local, or Tribal Governments.

Total Respondents: 10.

Frequency: On occasion.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for employers to provide information to the physician to 2 hours for initial monitoring.

Total Burden Hours: 310.

Estimated Cost (Operation and Maintenance): $21,428.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and OSHA docket number for the ICR (Docket No. OSHA–2009–0040). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available through the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 26th day of October 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–26075 Filed 10–28–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0036]

The Standard on 4,4′-Methylenedianiline in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to

extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on 4,4′-Methylenedianiline in Construction (29 CFR 1926.60).

DATES: Comments must be submitted (postmarked, sent, or received) by December 28, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0036, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0036). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled ''**SUPPLEMENTARY INFORMATION**.''

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaa N. Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 4,4′-Methylenedianiline Standard for Construction (the ''MDA Standard'') (29 CFR 1926.60) protect workers from the adverse health effects that may result from their exposure to MDA, including cancer, liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure monitoring; notify each worker in writing of their results as soon as possible but no later than 5 days after receiving exposure monitoring results; and routinely inspect the hands, face, and forearms of each worker potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: establish a written compliance program; institute a respiratory protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard); and develop a written emergency plan for any construction operation that could have an emergency (*i.e.,* an unexpected and potentially hazardous release of MDA).

Employers must label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or accessways to regulated areas, as well as train workers exposed to MDA at the time of their initial assignment, and at least annually thereafter.

Other paperwork provisions of the MDA Standard require employers to provide workers with medical examinations, including initial, periodic, emergency and follow-up examinations. As part of the medical surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the worker's medical results and exposure limitations.

The MDA Standard also specifies that employers are to establish and maintain exposure monitoring and medical surveillance records for each worker who is subject to these respective requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure monitoring and medical surveillance records to workers and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure monitoring and medical surveillance records, and who have no successor employer, must notify NIOSH at least 90 days before disposing of the records and transmit the records to NIOSH if so requested.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the Standard on 4,4′-Methylenedianiline in Construction (29 CFR 1926.60). The Agency is requesting an adjustment to the burden hours from 1,607 to 1,030 hours (a decrease of 577 hours). The reduction in burden hours is primarily the result of decreasing the number of establishments from 66 to 33 and the number of job sites from 660 to 330.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirements contained in the Standard on 4,4′-Methylenedianiline in Construction (29 CFR 1926.60).

Type of Review: Extension of a currently approved collection.

Title: 4,4′-Methylenedianiline in Construction (29 CFR 1926.60).

OMB Number: 1218–0183.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal Government; State, Local, or Tribal Governments.

Total Respondents: 2,639.

Frequency: On occasion.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for employers to provide information to the physician to 2 hours for initial monitoring.

Total Burden Hours: 1,030.

Estimated Cost (Operation and Maintenance): $62,850.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and OSHA docket number for the ICR (Docket No. OSHA–2009–0036). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publically available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available through the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 26th day of October 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–26077 Filed 10–28–09; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2010

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2010 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2010.

DATES: All comments and recommendations must be received on or before the close of business on November 30, 2009.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 3, 2009 (74 FR 15307), and Grant Renewal applications due on June 5, 2009, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Estimated annualized grant amount
Alabama		
AL–4	Legal Services Alabama, Inc	$6,850,344
MAL	Texas RioGrande Legal Aid, Inc	35,083
Alaska		
AK–1	Alaska Legal Services Corporation	793,046
NAK–1	Alaska Legal Services Corporation	577,924
Arizona		

Service area	Applicant name	Estimated annualized grant amount
AZ–3	Community Legal Services, Inc	4,153,841
MAZ	Community Legal Services, Inc	158,313
NAZ–6	Southern Arizona Legal Aid, Inc	681,151
AZ–5	Southern Arizona Legal Aid, Inc	2,003,430
AZ–2	DNA–Peoples Legal Services, Inc	575,485
NAZ–5	DNA–Peoples Legal Services, Inc	2,788,510
Arkansas		
AR–6	Legal Aid of Arkansas, Inc	1,595,491
AR–7	Center for Arkansas Legal Services	2,381,642
MAR	Texas RioGrande Legal Aid, Inc	84,280
California		
NCA–1	California Indian Legal Services, Inc	944,111
CA–1	California Indian Legal Services, Inc	36,227
CA–2	Greater Bakersfield Legal Assistance, Inc	1,006,445
CA–26	Central California Legal Services, Inc	3,148,767
CA–29	Legal Aid Foundation of Los Angeles	8,696,359
CA–30	Neigh. Legal Services of Los Angeles County	5,136,861
CA–12	Inland Counties Legal Services, Inc	4,471,848
CA–27	Legal Services of Northern California, Inc	3,890,801
CA–14	Legal Aid Society of San Diego, Inc	3,127,098
CA–31	California Rural Legal Assistance, Inc	5,133,448
MCA	California Rural Legal Assistance, Inc	2,814,831
CA–28	Bay Area Legal Aid	4,586,813
CA–19	Legal Aid Society of Orange County, Inc	4,367,713
Colorado		
MCO	Colorado Legal Services	158,362
NCO–1	Colorado Legal Services	102,625
CO–6	Colorado Legal Services	3,677,925
Connecticut		
CT–1	Statewide Legal Services of Connecticut, Inc	2,541,859
NCT–1	Pine Tree Legal Assistance, Inc	16,729
Delaware		
DE–1	Legal Services Corporation of Delaware, Inc	662,971
MDE	Legal Aid Bureau, Inc	26,473
District of Columbia		
DC–1	Neigh. Legal Svcs. Prog. of the District of Columbia	1,080,014
Florida		
FL–15	Community Legal Services of Mid-Florida, Inc	3,305,000
FL–17	Florida Rural Legal Services, Inc	2,952,304
MFL	Florida Rural Legal Services, Inc	957,642
FL–5	Legal Services of Greater Miami, Inc	3,785,670
FL–13	Legal Services of North Florida, Inc	1,554,470
FL–16	Bay Area Legal Services, Inc	2,804,307
FL–14	Three Rivers Legal Services, Inc	1,914,642
FL–18	Coast to Coast Legal Aid of South Florida, Inc	1,985,016
Georgia		
GA–1	Atlanta Legal Aid Society, Inc	2,761,373
MGA	Georgia Legal Services Program	418,059
GA–2	Georgia Legal Services Program	7,017,011
Guam		
GU–1	Guam Legal Services Corporation	343,158
Hawaii		
HI–1	Legal Aid Society of Hawaii	1,483,801
NHI–1	Legal Aid Society of Hawaii	244,785
Idaho		
MID	Idaho Legal Aid Services, Inc	199,304
ID–1	Idaho Legal Aid Services, Inc	1,267,660
NID–1	Idaho Legal Aid Services, Inc	69,426
Illinois		
IL–6	Legal Assistance Foundation of Metro. Chicago	6,889,708
MIL	Legal Assistance Foundation of Metro. Chicago	266,177
IL–3	Land of Lincoln Legal Assistance Foundation, Inc	2,639,386
IL–7	Prairie State Legal Services, Inc	2,947,490
Indiana		

Service area	Applicant name	Estimated annualized grant amount
MIN	Indiana Legal Services, Inc	121,238
IN–5	Indiana Legal Services, Inc	5,397,030
Iowa		
MIA	Iowa Legal Aid	40,232
IA–3	Iowa Legal Aid	2,504,537
Kansas		
MKS	Kansas Legal Services, Inc	12,674
KS–1	Kansas Legal Services, Inc	2,530,329
Kentucky		
KY–10	Legal Aid of the Bluegrass	1,353,568
KY–2	Legal Aid Society, Inc	1,256,416
KY–5	Appalachian Research and Defense Fund of KY	2,168,164
KY–9	Kentucky Legal Aid	1,302,427
MKY	Texas RioGrande Legal Aid, Inc	45,380
Louisiana		
LA–1	Capital Area Legal Services Corporation	1,511,082
LA–10	Acadiana Legal Service Corporation	2,140,390
LA–11	Legal Services of North Louisiana, Inc	2,008,214
LA–12	Southeast Louisiana Legal Services Corporation	2,705,597
MLA	Texas RioGrande Legal Aid, Inc	29,363
Maine		
NME–1	Pine Tree Legal Assistance, Inc	68,877
ME–1	Pine Tree Legal Assistance, Inc	1,259,927
MMX–1	Pine Tree Legal Assistance, Inc	133,172
Maryland		
MMD	Legal Aid Bureau, Inc	96,945
MD–1	Legal Aid Bureau, Inc	4,229,777
Massachusetts		
MA–11	Vol. Lawyers Project of the Boston Bar Association	2,171,301
MA–12	New Center for Legal Advocacy, Inc	973,255
MA–4	Merrimack Valley Legal Services, Inc	884,960
MA–10	Massachusetts Justice Project, Inc	1,608,471
Michigan		
MI–12	Legal Services of South Central Michigan	1,362,366
MMI	Legal Services of South Central Michigan	641,844
MI–14	Legal Services of Eastern Michigan	1,461,076
MI–9	Legal Services of Northern Michigan, Inc	752,922
MI–15	Legal Aid of Western Michigan	1,777,900
MI–13	Legal Aid and Defender Association, Inc	4,080,124
NMI–1	Michigan Indian Legal Services, Inc	175,912
Micronesia		
MP–1	Micronesian Legal Services, Inc	1,758,765
Minnesota		
MN–1	Legal Aid Service of Northeastern Minnesota	445,607
MN–6	Central Minnesota Legal Services, Inc	1,396,463
MN–4	Legal Services of Northwest Minnesota Corporation	399,378
MMN	Southern Minnesota Regional Legal Services, Inc	213,340
MN–5	Southern Minnesota Regional Legal Services, Inc	1,297,900
NMN–1	Anishinabe Legal Services, Inc	255,379
Mississippi		
MS–9	North Mississippi Rural Legal Services, Inc	2,139,788
MS–10	Mississippi Center for Legal Services	3,205,135
NMS–1	Choctaw Legal Defense	88,831
MMS	Texas RioGrande Legal Aid, Inc	60,856
Missouri		
MMO	Legal Aid of Western Missouri	86,865
MO–3	Legal Aid of Western Missouri	1,893,515
MO–4	Legal Services of Eastern Missouri, Inc	2,090,522
MO–5	Mid-Missouri Legal Services Corporation	416,737
MO–7	Legal Services of Southern Missouri	1,803,968
Montana		
MT–1	Montana Legal Services Association	1,207,781
NMT–1	Montana Legal Services Association	170,153
MMT	Montana Legal Services Association	58,202

Service area	Applicant name	Estimated annualized grant amount
Nebraska		
MNE	Legal Aid of Nebraska	45,084
NE–4	Legal Aid of Nebraska	1,545,534
NNE–1	Legal Aid of Nebraska	35,323
Nevada		
MNV	Nevada Legal Services, Inc	2,683
NNV–1	Nevada Legal Services, Inc	142,099
NV–1	Nevada Legal Services, Inc	2,026,017
New Hampshire		
NH–1	Legal Advice & Referral Center, Inc	763,949
New Jersey		
NJ–15	Legal Services of Northwest Jersey	418,888
MNJ	South Jersey Legal Services, Inc	128,665
NJ–16	South Jersey Legal Services, Inc	1,426,013
NJ–18	Northeast New Jersey Legal Services Corporation	1,894,206
NJ–8	Essex-Newark Legal Services Project, Inc	1,159,185
NJ–12	Ocean-Monmouth Legal Services, Inc	709,998
NJ–17	Central Jersey Legal Services, Inc	1,163,969
New Mexico		
NNM–2	DNA–Peoples Legal Services, Inc	24,277
NM–1	DNA–Peoples Legal Services, Inc	231,458
NM–5	New Mexico Legal Aid	2,919,726
MNM	New Mexico Legal Aid	93,128
NNM–4	New Mexico Legal Aid	496,521
New York		
NY–21	Legal Aid Society of Northeastern New York, Inc	1,432,907
NY–24	Neighborhood Legal Services, Inc	1,433,676
NY–7	Nassau/Suffolk Law Services Committee, Inc	1,483,179
NY–9	Legal Services for New York City	16,281,457
NY–23	Legal Assistance of Western New York, Inc	1,841,152
MNY	Legal Aid Society of Mid-New York, Inc	295,154
NY–22	Legal Aid Society of Mid-New York, Inc	1,878,198
NY–20	Legal Services of the Hudson Valley	1,907,837
North Carolina		
NC–5	Legal Aid of North Carolina, Inc	8,883,975
MNC	Legal Aid of North Carolina, Inc	571,490
NNC–1	Legal Aid of North Carolina, Inc	233,222
North Dakota		
MND	Southern Minnesota Regional Legal Services, Inc	123,595
NND–3	Legal Services of North Dakota	287,855
ND–3	Legal Services of North Dakota	600,922
Ohio		
OH–20	Community Legal Aid Services, Inc	1,776,943
OH–18	Legal Aid Society of Greater Cincinnati	1,535,839
OH–21	The Legal Aid Society of Cleveland	2,260,819
OH–17	Ohio State Legal Services	1,821,199
OH–5	Ohio State Legal Services	1,359,624
OH–23	Legal Aid of Western Ohio, Inc	2,658,017
MOH	Legal Aid of Western Ohio, Inc	134,316
Oklahoma		
NOK–1	Oklahoma Indian Legal Services, Inc	874,972
OK–3	Legal Aid Services of Oklahoma, Inc	4,778,395
MOK	Legal Aid Services of Oklahoma, Inc	66,724
Oregon		
NOR–1	Legal Aid Services of Oregon	197,267
MOR	Legal Aid Services of Oregon	593,958
OR–6	Legal Aid Services of Oregon	3,240,238
Pennsylvania		
PA–1	Philadelphia Legal Assistance Center	3,272,619
MPA	Philadelphia Legal Assistance Center	176,728
PA–5	Laurel Legal Services, Inc	813,058
PA–25	MidPenn Legal Services, Inc	2,345,178
PA–8	Neighborhood Legal Services Association	1,772,268
PA–24	North Penn Legal Services, Inc	1,916,960
PA–11	Southwestern Pennsylvania Legal Services, Inc	590,703

Service area	Applicant name	Estimated annualized grant amount
PA–26	Northwestern Legal Services	773,487
PA–23	Legal Aid of Southeastern Pennsylvania	1,201,685
Puerto Rico		
PR–1	Puerto Rico Legal Services, Inc	17,262,485
MPR	Puerto Rico Legal Services, Inc	310,018
PR–2	Community Law Office, Inc	365,459
Rhode Island		
RI–1	Rhode Island Legal Services, Inc	1,187,098
South Carolina		
MSC	Georgia Legal Services Program	210,913
SC–8	South Carolina Legal Services, Inc	5,192,794
MSC	South Carolina Legal Services, Inc	210,913
South Dakota		
SD–2	East River Legal Services	430,940
MSD	Dakota Plains Legal Services, Inc	4,231
NSD–1	Dakota Plains Legal Services, Inc	997,769
SD–4	Dakota Plains Legal Services, Inc	510,703
Tennessee		
TN–9	Legal Aid of East Tennessee	2,315,480
TN–4	Memphis Area Legal Services, Inc	1,515,836
TN–10	Legal Aid Soc. of Middle TN and the Cumberlands	2,759,548
TN–7	West Tennessee Legal Services, Inc	707,187
MTN	Texas RioGrande Legal Aid, Inc	67,632
Texas		
TX–14	Legal Aid of NorthWest Texas	8,068,757
TX–13	Lone Star Legal Aid	10,226,812
NTX–1	Texas RioGrande Legal Aid, Inc	33,445
TX–15	Texas RioGrande Legal Aid, Inc	10,972,712
MTX	Texas RioGrande Legal Aid, Inc	1,481,128
Utah		
UT–1	Utah Legal Services, Inc	1,962,715
NUT–1	Utah Legal Services, Inc	87,916
MUT	Utah Legal Services, Inc	72,326
Vermont		
VT–1	Legal Services Law Line of Vermont, Inc	538,823
Virgin Islands		
VI–1	Legal Services of the Virgin Islands, Inc	344,529
Virginia		
VA–15	Southwest Virginia Legal Aid Society, Inc	874,959
VA–16	Legal Aid Society of Eastern Virginia	1,511,526
VA–18	Central Virginia Legal Aid Society, Inc	1,073,751
MVA	Central Virginia Legal Aid Society, Inc	168,176
VA–17	Virginia Legal Aid Society, Inc	910,812
VA–19	Blue Ridge Legal Services, Inc	757,598
VA–20	Legal Services of Northern Virginia, Inc	1,179,720
Washington		
MWA	Northwest Justice Project	778,310
WA–1	Northwest Justice Project	5,261,580
NWA–1	Northwest Justice Project	304,414
West Virginia		
WV–5	Legal Aid of West Virginia, Inc	3,075,741
MWV	Legal Aid of West Virginia, Inc	38,979
Wisconsin		
MWI	Legal Action of Wisconsin, Inc	97,083
WI–5	Legal Action of Wisconsin, Inc	3,417,143
WI–2	Wisconsin Judicare, Inc	939,355
NWI–1	Wisconsin Judicare, Inc	165,766
Wyoming		
WY–4	Legal Aid of Wyoming, Inc	527,007
NWY–1	Legal Aid of Wyoming, Inc	184,660
MWY	Legal Aid of Wyoming, Inc	13,266

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2010.

Dated: October 21, 2009.

Janet LaBella,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. E9–26005 Filed 10–28–09; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and the Board's Six Committees; Correction

Corrected Notice; Include the Legal Citations for Closure of Part of the October 31, 2009 Finance Committee Meeting

NOTICE: The Legal Services Corporation (''LSC'') is announcing a correction to the notice of the October 30–31, 2009 meetings of the Board of Directors and the Board's Six Committees. The correction is for the Finance Committee meeting only scheduled for Saturday, October 31, 2009. The Committee meeting was announced in the Federal Register on Friday, October 23, 2009. The sole correction to the notice is to add the legal citations for closure of part of the Saturday, October 31, 2009 Finance Committee meeting as follows.

Finance Committee: Open, except that a portion of the meeting will be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on a staff report on the classification of LSC consultants.

A verbatim written transcript will be made of the closed session of the Committee meetings. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(g), and will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to listen to the meeting may notify Katherine Ward at (202) 295–1500 or *kward@lsc.gov.*

Dated: October 26, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–26138 Filed 10–27–09; 11:15 am]

BILLING CODE 7050–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Proposed Collection; Comment Request

AGENCY: Office of National Drug Control Policy.

ACTION: 60-Day notice.

SUMMARY: The Office of National Drug Control Policy (ONDCP) intends to submit the following information collection request to the Office of Management and Budget for review and approval. ONDCP seeks public comment.

Abstract: ONDCP will conduct face-to-face interviews and acquire urine samples from booked arrestees to obtain information concerning drug use; drug and alcohol treatment; and, drug market participation and arrests. Participation is voluntary.

Type of Information Collection: New Collection.

Title: Arrestee Drug Abuse Monitoring (ADAM II) Program Questionnaire.

Affected Public: Persons arrested and booked in one of 10 preselected booking facilities in the United States in one of two, 2-week data collection cycles spanning six months.

Estimated Burden: ADAM II proposes 10 sites that each conduct two cycles of surveys from 250 arrestees per cycle. The total number of participants is 5,000. The average survey estimate is 20 minutes. Total burden estimate is 1,667 hours.

Goals: ONDCP intends to obtain drug-use data that are directly comparable to data collected under the first three years of ADAM II (2007–2009) and the 2000–2003 National Institute of Justice sponsored Arrestee Drug Abuse Monitoring program; provide consistent data collection points to support statistical trend analysis for the use of heroin, cocaine, crack, marijuana and methamphetamine; monitor the spread or emergence of methamphetamine use; and, support ONDCP's efforts to estimate chronic drug use and examine drug market behaviors.

Comment Request: Public comments should address whether the proposed data are proper for the functions of the agency; whether the information will have practical utility; the accuracy of ONDCP's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; the quality, utility, and clarity of the information to be collected; and, the burden on proposed respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as electronic submission of responses. Comments will be accepted for sixty days.

Contact: Robert L. Cohen, ONDCP, Research/Data Analysis, 750 17th Street #835, Washington, DC 20503; telephone (202) 395–5598; facsimile (202) 395–6562.

Dated: October 23, 2009.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. E9–26016 Filed 10–28–09; 8:45 am]

BILLING CODE 3180–02–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANTIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9 a.m. to 5 p.m., on Thursday, November 12, 2009.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2010.

Because the proposed meeting will consider financial and commercial data

and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E9–26097 Filed 10–28–09; 8:45 am]

BILLING CODE 7536–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on November 12–13, 2009.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 12–13, 2009, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 12, 2009 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.
- Challenge Grants and Federal/State Partnership—Room 510A
- Digital Humanities and Public Programs—Room 421
- Preservation and Access—Room 415
- Research Programs—Room 315

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned
- Challenge Grants and Federal/State Partnership—Room 510A
- Digital Humanities and Public Programs—Room 421
- Preservation and Access—Room 415
- Research Programs—Room 315

The morning session of the meeting on November 13, 2009 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Budget Report
5. Reports on Policy and General Matters
   - a. Challenge Grants
   - b. Federal/State Partnership
   - c. Digital Humanities
   - d. Public Programs
   - e. Preservation and Access
   - f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michael McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E9–26108 Filed 10–28–09; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0475; Docket No. 030–31714]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 19–09760–02, for Termination of the License and Unrestricted Release of the Department of Health & Human Service's Facility Located in Baltimore, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5269 or by e-mail: *dennis.lawyer@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 19–09760–02. This license is held by the Department of Health & Human Services, National Institute on Drug Abuse (the Licensee) for its facilities located at 5500 and 5510 Nathan Shock Drive in Baltimore, Maryland (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated January 22, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the

publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's January 22, 2009, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 19–09760–02 was issued on July 13, 1990, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods and animal research.

The Facility is comprised of a 110,000 square foot building and an 11,520 square foot building consisting of office space and laboratories. The Facility is located within a university campus and is surrounded by a mixed residential/commercial area. Within the Facility, use of licensed materials was confined to an area of 23,637 square feet.

On May 1, 2008, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in subpart E of 10 CFR part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3, carbon-14, chlorine-36, cobalt-60, germanium-68/gallium-68, and cadmium-109. The cobalt-60 resulted from the operation of the Facility's particle accelerator. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides. The Licensee conducted a final status survey during the months of June through November 2008. This survey covered all areas affected by material usage. The final status survey report was attached to the Licensee's amendment request dated January 22, 2009. For hydrogen-3, carbon-14, chlorine-36, and cadmium-109, the Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criteria in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. However, because the NRC does not have a published DCGL for germanium-68 or gallium-68, the licensee used surface DCGLs of 5000 disintegrations per minute per 100 square centimeters. This value is two or more orders of magnitude lower than the NRC's DCGLs for similar beta/gamma emitting radionuclides. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. However, in the case of cobalt-60, the contamination resulted from activation of structures from the operation of the Facility's particle accelerator. The Licensee developed a DCGL for volumetric contamination with cobalt-60 by conducting site-specific dose modeling using input parameters specific to the Facility. The NRC reviewed the Licensee's methodology and proposed DCGLs and concluded that the proposed DCGLs for germanium-68/gallium-68 and cobalt-60 are acceptable for use as release criteria at the Facility. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Maryland Department of the Environment for review on August 7, 2009. On September 28, 2009, the Maryland Department of the Environment responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10, *Code of Federal Regulations,* part 20, subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, *Code of Federal Regulations,* part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;'' and
5. Department of Health & Human Services Termination Request dated January 22, 2009 (ML090410267).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 22nd day of October 2009.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–26069 Filed 10–28–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2008–0150]

Exelon Generation Company, LLC, Three Mile Island Nuclear Station, Unit 1; Notice of Issuance of Renewed Facility Operating License No. DPR–50 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Renewed Facility Operating License No. DPR–50 to Exelon Generation Company, LLC, (licensee), the operator of the Three Mile Island Nuclear Station, Unit 1, (TMI–1). Renewed Facility Operating License No. DPR–50 authorizes operation of TMI–1 by the licensee at reactor core power levels not in excess of 2568 megawatts thermal (852 megawatts electric), in accordance with the provisions of the TMI–1 renewed license and its technical specifications. The notice also serves as the record of decision for the renewal of Facility Operating License No. DPR–50, consistent with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.103, ''Record of Decision—General.'' As discussed in the final Supplemental Environmental Impact Statement for TMI–1 (NUREG–1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 37, Regarding Three Mile Island Nuclear Station, Unit 1,'' issued June 2009), the Commission has considered a range of reasonable alternatives that included fossil fuel generation, renewable energy sources, and demand-side measures such as energy conservation. The factors considered in the record of decision appear in Supplement 37.

TMI–1 is a pressurized water reactor located 10 miles southeast of Harrisburg, Pennsylvania. The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter 1, the Commission has made appropriate findings, which are set forth in the license.

Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on March 14, 2008 (73 FR 13923). For further details with respect to this action, see: (1) Exelon Generation Company, LLC, license renewal application for TMI–1 dated January 8, 2008, as supplemented by letters through May 31, 2009; (2) the Commission's safety evaluation report (SER) (NUREG–1928), published in October, 2009; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (FEIS) (NUREG–1437, Supplement 37), for TMI–1 published in June 2009. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

Copies of Renewed Facility Operating License No. DPR–50, may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the TMI–1 SER (NUREG–1928) and the Final Environmental Impact Statement (NUREG–1437, Supplement 37) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), 703–605–6000, or Attention: Superintendent of

Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or Visa or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 22nd day of October, 2009.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–26072 Filed 10–28–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m., Monday, November 2, 2009.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: 1. Review of postal-related Congressional actions (open). 2. Reports on Commissioner travel (open). 3. Pending litigation (*USPS* v. *PRC*) (closed). 4. Personnel matters (closed).

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, general counsel, Postal Regulatory Commission, 202–789–6820 or *stephen.sharfman@prc.gov.*

Dated: October 26, 2009.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–26145 Filed 10–27–09; 11:15 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Planetgood Technologies, Inc (n/k/a All American Coffee & Beverage, Inc.), Platronics, Inc., Plus Solutions, Inc., Portacom Wireless, Inc., Prime Holdings & Investments, Inc., Pro-After, Inc. (f/k/a PurchasePro.Com, Inc.), Project Group, Inc., ProLong International Corp., PSS, Inc., and Purus, Inc.; Order of Suspension of Trading

October 27, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Planetgood Technologies, Inc. (n/k/a All American Coffee & Beverage, Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Platronics, Inc. because it has not filed any periodic reports since the period ended June 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Plus Solutions, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Portacom Wireless, Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Prime Holdings & Investments, Inc. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pro-After, Inc. (f/k/a PurchasePro.Com, Inc.) because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Project Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ProLong International Corp. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PSS, Inc. because it has not filed any periodic reports since the period ended November 2, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Purus, Inc. because it has not filed any periodic reports since October 2, 1999.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 27, 2009, through 11:59 p.m. EST on November 9, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26158 Filed 10–27–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60861; File No. SR–ISE–2009–77]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Fees for Crossing Orders

October 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2009, International Securities Exchange, LLC (''ISE'' 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. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt a fee for certain customer orders executed in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

As of October 1, 2009, the Exchange has implemented a new order type, Professional Orders.[3] For competitive reasons, the Exchange has determined to charge the same execution fees for all customer orders, *i.e.,* for all orders that are not for the account of a broker-dealer, including Professional Orders.[4] ISE, however, believes that trading in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms is primarily activity that is conducted by broker-dealers. Thus, it is reasonable for the Exchange to charge non-broker-dealer orders that conduct a Professional Order business the same fee the Exchange charges broker-dealer orders. Accordingly, the Exchange now proposes to adopt a fee for Professional Orders that are executed in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms. Specifically, the Exchange proposes to charge a fee of $0.20 per contract for Professional Orders for their crossing activity, *i.e.,* their interaction in the Exchange's Facilitation, Solicitation and Price Improvement Mechanism.

ISE proposes to implement this fee change on October 1, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed rule change will allow the Exchange to charge a similar fee to both broker-dealer orders and non-broker-dealer orders that interact in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does 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 on this 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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. 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 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–ISE–2009–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–77. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–77 and should be submitted on or before November 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26021 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

[3] A ''Professional Order'' is defined by the Exchange to mean an order that is for the account of a person or entity that is not a Priority Customer. A ''Priority Customer'' is defined by the Exchange to mean a person or entity that is (i) not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[4] *See* Exchange Act Release No. 34–60334 [sic] (July 17, 2009), 74 FR 36802 (July 24, 2009).

[5] 15 U.S.C. 78s(b)(3)(A) [sic].

[6] 17 CFR 19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60862; File No. SR–NASDAQ–2009–088]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

October 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2009, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change 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

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ proposes to implement this rule change as of October 1, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing changes to the fees associated with the use of the NASDAQ Market Center. First, NASDAQ is proposing to modify the level of activity required to receive NASDAQ's most favorable rate for accessing liquidity in securities listed on NASDAQ or the New York Stock Exchange (''NYSE''). During the months of August and September 2009, members paid a fee of $0.0027 per share executed if they had an average daily volume during the month of (i) more than 140 million shares of liquidity routed, removed and/or provided, and (ii) more than 35 million shares of liquidity provided. On October 1, 2009, the level of liquidity routed, removed and/or provided needed to receive the favorable rate had been scheduled to revert automatically to its pre-August level of 150 million shares. The 140 million share level for August and September 2009 had been established to reflect lower trading volumes anticipated during those months. Instead of allowing the rate to revert to 150 million shares, however, NASDAQ proposes to set the level at 145 million shares. As trading volumes revert to higher levels with the end of the summer, the change will make it easier for members to receive the favorable ''take'' rate. NASDAQ is also deleting obsolete fee language referencing NASDAQ Rule 4758(a)(1)(A), portions of which had formerly governed ''flash'' orders and were recently deleted.[3] NASDAQ discontinued flash orders at the beginning of September 2009.

Commission approval is required to make the change retroactive to the beginning of the month of October. NASDAQ notes that the change to the level of liquidity routed, removed and/or provided needed to receive a favorable take rate will make it easier for members to obtain this rate than would have been the case in the absence of the change. Thus, the change effectively constitutes a price reduction for members that are able to achieve the 145 million share level but not able to achieve the 150 million share level. Accordingly, NASDAQ believes that the Commission should approve the filing on an accelerated basis to allow the change to be effective for the month of October 2009.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is adjusting the level of activity in NASDAQ required to receive its most favorable rate for accessing liquidity, making it easier for members to receive this rate.

The impact of the change upon the net fees paid by a particular market participant will depend upon a number of variables, including the availability of liquidity at the NASDAQ Market Center, the prices of the market participant's quotes and orders, and its overall volume of liquidity routed, removed and/or provided through NASDAQ. NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ believes that its fees remain competitive with other venues and are reasonable and equitably allocated to those members on the basis of whether they opt to direct orders to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 60570 (August 26, 2009), 74 FR 45504 (September 2, 2009) (SR–NASDAQ–2009–079).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–088 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–088. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–NASDAQ–2009–088 and should be submitted on or before November 19, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a 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 exchange.[6] In particular, approval of the retroactive application of the proposal is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities.

The Commission notes that the changes outlined in this proposed rule change were also contained in an September 30, 2009 submission by NASDAQ for immediate effectiveness pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(2)[9] thereunder; however that submission was rejected because it was not filed in accordance with the requirements of the Act and the rules and regulations thereunder.[10] The proposed fee changes would otherwise qualify for immediate effectiveness pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(2).[12] However, because the proposed rule change seeks retroactive application of a fee change, NASDAQ filed pursuant to Section 19(b)(2) of the Act.[13]

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[14] for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** with such approval retroactive to October 1, 2009. Retroactive approval of this proposal allows the proposed rule change to take effect for the month of October 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2009–088) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26022 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See* 19 CFR 240.19b–4 and 19 CFR 249.819 Appendix A.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60863; File No. SR–BX–2009–055]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Retroactively Correct an Error in Rule 7018

October 22, 2009.

On August 28, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') 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 apply retroactively to the period from April 1, 2009 through August 16, 2009 the correction made by SR–BX–2009–049[3] of an error formerly in Rule 7018. BX believes that all of its members that trade on the NASDAQ OMX BX Equities System are cognizant of the correct fee. BX has been billing members in accordance with the correct fee since the effective date of April 1, 2009 in a previous BX proposed rule change,[4] but due to an error the credit incorrectly appeared as ''$0.006'' in Exhibit 5 to the BX Fee Filing. Notice of the proposed rule change was published for comment in the **Federal Register** on September 17, 2009.[5] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes the proposed rule change matches both the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60603 (September 1, 2009), 74 FR 46266 (September 8, 2009) (SR–BX–2009–049).

[4] *See* Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR–BX–2009–018) (''BX Fee Filing'').

[5] *See* Securities Exchange Act Release No. 60634 (September 8, 2009), 74 FR 47849.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

original intent of the BX Fee Filing and the fee BX currently charges its members. The proposed rule change will retroactively correct the error by assessing the fees pursuant to the now accurate Rule 7018. The Commission believes it is important for BX's rules to be accurate and applied correctly in order to remove impediments to and perfect the mechanism of a free and open market and a national market system.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–BX–2009–055), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26023 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60864; File No. SR–CBOE–2009–076]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

October 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

CBOE proposes to amend its rules relating to the Penny Pilot Program. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to extend and expand the Penny Pilot Program, which commenced on January 26, 2007, in accordance with the proposed expansion that the SEC approved on September 23, 2009.[5]

Background:

The Penny Pilot Program currently is in effect in fifty-eight multiply-listed option classes.[6] For all classes in the Program except for the QQQQs, the minimum increment for bids and offers is 0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, the minimum increment is $0.01 for all option series. The Penny Pilot Program is scheduled to expire on October 31, 2009.[7]

On May 20, 2009, CBOE filed SR–CBOE–2009–31, which filing proposed to extend the Pilot Program, and also proposed to significantly expand the Pilot Program to all equity and ETF option classes, such that at the end of a brief roll-out period all equity and ETF option classes would be included in the Penny Pilot Program.[8] Moreover, in all Pilot classes, option series of less than $1 premium value would be quoted in penny increments, and series at $1 or above would be quoted in nickel increments. CBOE believed that extending and expanding the Penny Pilot Program as proposed was balanced, responsible, and reasonable. It would benefit investors by expanding the Pilot Program in all equity and ETF option classes over a relatively short period of time, which would enable investors to obtain the benefits of penny quoting and trading in those option contracts that customers actually trade. CBOE also believed that its proposal was balanced in that it recognized that the Pilot Program, while providing certain benefits such as reducing spreads, also resulted in a significant reduction in liquidity at the BBO, a decrease in volume in some classes, and a significant rise in quote traffic. Moreover, CBOE's plan eliminated investor confusion as to which options are quoted in penny increments, and helps to reduce the growth of quote traffic.

Proposed Expansion:

In light of the SEC's recent approval the NYSEArca's proposed expansion of the Penny Pilot Program (*see* SR–NYSEArca–2009–44), CBOE has determined to withdraw its proposal to expand the Pilot Program as described in SR–CBOE–2009–31. Instead, CBOE now proposes to extend the Pilot Program from November 1, 2009 until December 31, 2010, and expand the Penny Pilot Program by adding the 300 most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as ''high premium'' if, at the time of selection, the underlying security was priced at $200 per share or above, or the underlying index level was at 200 or above. These determinations shall be based on the price at the close of trading on Expiration Friday prior to the class being added to the Pilot Program. CBOE believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from excluding such issues is minimal because of the high price of at-the-money options.

The 300 option classes would be added in groups of 75 classes each quarter beginning on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010. The option classes will be identified based on national average daily volume

---

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 60711 (September 23, 2009), approving SR–NYSEArca–2009–44.

[6] CBOE's rules also provide that for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, are $0.01 for all option series below $3, and $0.05 for all option series $3 and above. See CBOE Rule 6.42.03.

[7] *See* Securities Exchange Act Release No. 60223 (July 1, 2009), 74 FR 32993 (July 9, 2009), granting immediate effectiveness to SR–CBOE–2009–43.

[8] *See* Securities Exchange Act Release No. 60018 (June 1, 2009), 74 FR 27211 (June 8, 2009).

in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the six month analysis.[9] CBOE will not include option classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. CBOE will announce the classes to be added by circular, in addition to filing a proposed rule change identifying the option classes.

In the event an option class included in the Pilot Program is delisted, the Exchange may replace it on a semi-annual basis with the next most actively-traded, multiple-listed option class that is not yet participating in the Pilot Program, based on national average daily volume in the preceding six months. Any replacement class would be added on the second trading day following January 1, 2010 and July 1, 2010.[10] CBOE will employ the same parameters to prospective replacement issues as approved and applicable under the Penny Pilot Program, including excluding high-priced underlying securities. CBOE will announce any replacement classes by circular.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Penny Pilot Program in identifying the 300 option classes that will be added to the Pilot Program, as well as any replacement class for an option class included in the Pilot Program that has been delisted.

CBOE will submit to the SEC semi-annual reports that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active option classes added to the Pilot Program. This proposed sampling approach provides an appropriate means by which to monitor and assess the Penny Pilot Program's impact. CBOE will also identify, for comparison purposes a control group consisting of the ten least active option classes from the existing 58 Penny Pilot Program classes. This report will include, but is not limited to the following: (1) Data and analysis of the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on CBOE's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[12] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an expansion of the Penny Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay will allow the Pilot Program to continue uninterrupted and allow CBOE to adopt the same expansion schedule as other exchanges.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to implement the 75 additional classes on November 2, 2009 and permit the Penny Pilot Program to continue uninterrupted, consistent with other exchanges.[17] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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 furtherance of the purposes of the Act.

[9] Thus, the 75 classes to be added on November 2, 2009 would be identified based on OCC volume data from April 1, 2009 through September 30, 2009; the 75 classes to be added on February 1, 2010 would be identified based on OCC volume data from July 1, 2009 through December 31, 2009; the 75 classes to be added on May 3, 2010 would be identified based on OCC volume data from October 1, 2009 through March 31, 2010; and the 75 classes to be added on August 2, 2010 would be identified based on OCC volume data from January 1, 2010 through June 30, 2010.

[10] The month immediately preceding their addition to the Pilot Program, *i.e.,* December or June, would not be used for purposes of the six month analysis. For example, a replacement class to be added on the second trading following January 1 would be identified based on OCC volume data from June 1 through November 30.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

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–CBOE–2009–076 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–076. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–076 and should be submitted on or before November 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26024 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60872; File No. SR–OCC–2009–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Clear Options Based on Index-Linked Securities

October 23, 2009.

I. Introduction

On August 12, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2009–14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on September 8, 2009.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change permits OCC to clear options based on index-linked securities (''Index-Linked Securities'').

Index-Linked Securities are non-convertible debt of major financial institutions that typically have a term of at least one year but not greater than thirty years and that provide for payment at maturity based upon the performance of an index or indices of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing. Index-Linked Securities are traded on national securities exchanges and meet the definition of ''NMS Stock'' under regulation NMS.[3] The options exchanges will treat options on Index-Linked Securities (''Index-Linked Security Options'') as standardized equity options for listing and trading purposes and will generally govern their trading by the same rules that are applicable to trading in other equity options. Exercises of Index-Linked Security Options will be settled by delivery of the underlying securities in the same manner as exercises of equity options.

OCC is amending its By-Laws and Rules to accommodate Index-Linked Security Options. OCC is adding a definition of ''index-linked security'' to Article I of its By-Laws, amending the definition of ''stock option contract'' in Article I of its By-Laws to include Index-Linked Security Options, and amending the definition of ''non-equity securities option contract'' in Article I of its By-Laws to clarify that Index-Linked Security Options are excluded from the definition. OCC is amending Interpretation and Policy .05 to Article VI, Section 11A of its By-Laws to clarify that a call of an entire class of Index-Linked Securities will result in an adjustment of Index-Linked Security Options in the event of a cash merger but that a partial call will not result in an adjustment. OCC is adding Interpretation and Policy .10 to Article VI, Section 11A of the By-Laws that would state that interest payments on Index-Linked Securities generally will be considered ''ordinary cash dividends or distributions'' within the meaning of paragraph (c) Article VI, Section 11A. OCC is adding language to Rule 604(b)(4)(iii) to state that for the purposes of Rule 604, Index-Linked Securities will be treated as stock, assuming they meet the basic listing requirement applicable to stocks. OCC is amending Rule 604(b)(4) to conform its language to its practice of limiting the value of securities with the same CUSIP number, as opposed to securities of the same issuer, to 10% of the margin requirement of an account. OCC is adding Interpretation and Policy .14 to Rule 604(b)(4), which states that OCC may disapprove for margin credit a security that otherwise meets the Rule 604(b) criteria if other factors warrant such a disapproval.

III. Discussion

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 registered clearing agency. In particular, the Commission believes that by amending its By-Laws and Rules to provide for the clearance and settlement of Index-Linked Security

---

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 60602 (Sep. 1, 2009), 74 FR 46278.

[3] Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496 (Jun. 29, 2005). ''NMS Stock'' is defined in Rule 600(b)(47) of Regulation NMS as ''any NMS security other than an option.'' The definition of ''NMS Security'' in Rule 600(b)(46) of Regulation NMS includes any security for which transaction reports are collected and disseminated under an effective national market system plan. Because Index-Linked Securities are exchange traded, they fall within this definition.

Options, the proposal is consistent with the requirements of Section 17A(b)(3)(F),[4] which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–OCC–2009–14) be, and hereby is, approved.[7]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26027 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–60866; File No. SR–ISE–2009–81]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, to Extend the Pilot Program to Expose All-Or-None Orders for an Additional One Month

October 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. On October 19, 2009, ISE filed Amendment No. 1 to the proposed rule change. On October 21, 2009, ISE withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to implement a broadcast message that will inform members when a non-marketable all-or-none limit order is placed on the limit order book. The text of the proposed rule change is as follows, with deletions in [brackets] and additions *underlined:*

Rule 717. Limitations on Orders

* * * * *

Supplementary Material to Rule 717

.01–.03 No Change.

.04 A non-marketable all-or-none limit order shall be deemed ''exposed'' for the purposes of paragraphs (d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. This provision shall be in effect on a pilot basis expiring [October 9, 2009] *November 9, 2009.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—Pursuant to ISE Rule 717(d) and (e), Electronic Access Members must expose agency orders on the Exchange for at least one second before entering a contra-side proprietary order or a contra-side order that was solicited from a broker-dealer, or utilize one of the Exchange's execution mechanisms that have one second exposure periods built into the functionality.[4]

The Exchange operates an integrated system that consolidates all market maker quotes and orders, and automatically disseminates the best bid and offer. If a limit order is designated as all-or-none, the contingency that the order must be executed in full makes it ineligible for display in the best bid or offer. Nevertheless, such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.[5] Upon the receipt of a non-marketable all-or-none limit order, the system automatically will send a broadcast message to all members notifying them that an all-or-none order to buy or to sell a specified number of contracts at a specified price has been placed on the book.

On July 9, 2009, the Exchange adopted a proposed rule change on a three-month pilot basis to specify that a non-marketable all-or-none limit order is deemed ''exposed'' for the purposes of Rule 717(d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. Thus, all of the terms of the order will be disclosed to all members. The current pilot program is set to expire on October 9, 2009.[6] The Exchange now proposes to extend the current pilot program for another month, until November 9, 2009.

(b) *Basis*—The basis under the Securities Exchange Act of 1934 (''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, under the proposed rule change all-or-none orders will continue to be exposed to all members so that there is a greater opportunity for market participants to interact with such orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2, the Exchange made technical, non-substantive corrections to the filing.

[4] *See* ISE Rule 716(d) (Facilitation Mechanism), Rule 716(e) (Solicited Order Mechanism) and Rule 723 (Price Improvement Mechanism for Crossing Transactions).

[5] Supplementary Material .02 to ISE Rule 713.

[6] *See* Exchange Act Release No. 60311 (July 15, 2009), 74 FR 36290 (July 22, 2009).

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 on this 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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay will permit the existing pilot to continue for one month without further delay. The Commission also notes that no comments were received to date on the existing pilot.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2009–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2009–81. 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 changes 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–81 and should be submitted on or before November 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26025 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

[10] *Id.*

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60865; File No. SR–ISE–2009–82]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Penny Pilot Program

October 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules relating to a pilot program to quote and to trade certain options in pennies. The text of the proposed rule change is as follows, with deletions in [brackets] and additions in italics:

Rule 710. Minimum Trading Increments

(a) The Board may establish minimum trading increments for options traded on the Exchange. Such changes by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule 710 within the meaning of subparagraph (3)(A) of Section 19(b) of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

(1) If the options contract is trading at less than $3.00 per option, $.05; and

(2) If the options contract is trading at $3.00 per option or higher, $.10.

(b) Minimum trading increments for dealings in options contracts other than those specified in paragraph (a) may be fixed by the Exchange from time to time for options contracts of a particular series.

(c) Notwithstanding the above, the Exchange may trade in the minimum variation of the primary market in the underlying security.

Supplementary Material to Rule 710

.01 Notwithstanding any other provision of this Rule 710, the Exchange will operate a pilot program to permit options classes to be quoted and traded in increments as low as *$.01.* The Exchange will specify which options trade in such pilot, and in what increments, in Regulatory Information Circulars filed with the Commission pursuant to Rule 19b–4 under the Exchange Act and distributed to Members.

The Exchange may replace, on a semi-annual basis, any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day following January 1, 2010 and July 1, 2010.

.02 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the SEC approved ISE's rule filing, SR–ISE–2006–62, which initiated a pilot program to quote and to trade certain options in penny increments (the ''Penny Pilot Program'').[3] Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The QQQQs are quoted in $0.01 increments for all options series. Through subsequent expansions, the Penny Pilot now consists of 63 underlying securities,[4] and is scheduled to expire on October 31, 2009.[5] ISE now proposes to extend the Penny Pilot Program through December 31, 2010.

The Exchange also proposes to expand the number of issues included in the Penny Pilot Program. Specifically, ISE proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Penny Pilot Program (''Top 300''). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume in the prior six calendar months preceding their addition to the Penny Pilot Program except that the one month preceding their addition to the Penny Pilot Program would not be used for the purpose of the six month analysis.[6] In determining the identity of the Top 300, the Exchange will exclude options classes with high premiums. The Exchange notes that it will submit proposed rule changes pursuant to Rule 19b–4 under the Exchange Act announcing the names of the options classes selected to participate in the Penny Pilot Program.[7] The Exchange represents that after the addition of the 300 options classes, as proposed under this rule change, it has the necessary system capacity to support the listing of additional series under the Penny Pilot Program.

ISE believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from including such issues is minimal because of the high price of at-the-money options.[8] The Exchange believes an appropriate threshold for designation as ''high priced'' at the time of selection of new issues to be included in the Penny Pilot Program is $200 per share or a calculated index value of 200. At $200 per share or a calculated index value of 200, strike prices are in $10 increments, so the ''at the money'' strike is more likely to carry an intrinsic value of $3 or more, and thus not trade in a penny increment. With a greater distance between strikes, there are fewer series that are actively traded. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Penny Pilot Program.

The Exchange proposes to phase-in the additional classes to the Penny Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes on November 2, 2009; February 1, 2010; May 3, 2010; and August 2, 2010. The classes to be added on November 2, 2009 will be based on the most actively traded multiply listed classes for the six month period from April 1, 2009 through September 30, 2009. The classes to be added on February 1, 2010 will be based on the most actively traded multiply listed classes for the six month period from July 1, 2009 through December 31, 2009. The classes to be added on May 3, 2010 will be based on the most actively traded multiply listed classes for the six month period from October 1, 2009 through March 31, 2010. The classes to be added on August 2, 2010 will be based on the most actively traded classes for the six month period from January 1, 2010 through June 30, 2010.

Additionally, the Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Penny Pilot Program, based on trading activity in the previous six months. The replacement issues would be added to the Penny Pilot Program on the second

[3] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (the ''Initial Filing''). The Penny Pilot Program was subsequently extended for an additional two month period, until September 27, 2007. *See* Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007).

[4] *See* Securities Exchange Act Release Nos. 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007) and 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008).

[5] *See* Securities Exchange Act Release No. 34–60222 (July 1, 2009), 74 FR 32994 (July 9, 2009).

[6] The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. For purposes of assessing national average daily volume, the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

[7] ISE will also issue a Regulatory Information Circular, which will be published on its Web site, identifying the options classes added to the Penny Pilot Program.

[8] For instance, as of August 12, 2009, the near term at the money call in GOOG (August 460 Calls) was trading at $6.50 with the underlying at $459.84. The lowest strike price September call trading below $3 (with the underlying at the same price) was the September 500 Call.

trading day following January 1, 2010 and July 1, 2010.[9] The Exchange will employ the same parameters to prospective replacement issues as approved and applicable under the Penny Pilot Program, including excluding high-priced underlying securities.

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program.[10] As the Penny Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Penny Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing 63 Penny Pilot Program classes. This report will include, but is not limited to: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Penny Pilot Program on the capacity of the ISE's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Penny Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for a measured expansion of the Penny Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does 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 on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative for 30 days after the date of filing. However, Rule 19b 4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Penny Pilot Program to continue uninterrupted. Further, the exchange represents that this proposed rule change is based on proposals submitted by another exchange regarding the expansion and extension of the Penny Pilot Program[15] and the phase-in dates for the additional classes that will be added to the Penny Pilot Program.[16]

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to implement the 75 additional classes on November 2, 2009 and permit the Penny Pilot Program to continue uninterrupted, consistent with other exchanges.[17] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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–ISE–2009–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–82. 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

[9] The replacement issues will be announced to the Exchange's membership via Regulatory Information Circulars and published by the Exchange on its Web site.

[10] The Exchange will continue to provide data concerning the existing 63 Penny Pilot Program classes.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009).

[16] *See* Securities Exchange Act Release No. 60833 (October 16, 2009).

[17] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–ISE–2009–82 and should be submitted on or before November 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26061 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60868; File No. SR–NYSE–2009–83]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Its Initial Listing Fees for Operating Companies

October 22, 2009.

I. Introduction

On August 26, 2009, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its schedule of initial listing fees for operating companies. The proposed rule change was published in the **Federal Register** on September 17, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend its initial listing fees for operating companies as set forth in Section 902.03 of the Listed Company Manual, with retroactive application to any initial listing of new classes of securities on or after the date August 26, 2009. Currently, companies initially listing a new class of securities on the Exchange pay $0.0048 per share for up to and including 75 million shares, $0.00375 per share for any additional shares over 75 million shares up to and including 300 million shares, and $0.0019 per share for any additional shares over 300 million shares. Additionally, the first time an issuer lists a class of common shares, the issuer is subject to an additional one-time special charge of $37,500. The current minimum and maximum listing fees applicable to an issuer that lists a class of common shares the first time on the Exchange are $150,000 and $250,000, respectively, which includes the one-time special charge of $37,500.

The Exchange proposes to replace the current listing fee schedule with a flat rate initial listing fee of $0.0032 per share with respect to shares listed at the time a class of common shares is first listed on the Exchange.[4] NYSE further proposes to increase the one-time special charge from $37,500 to $50,000. Finally, the Exchange proposes to maintain the maximum initial listing fee of $250,000, but decrease the minimum initial listing fee from $150,000 to $125,000.[5]

Because the current listing fee schedule applied to both new listings and additional listings, the Exchange has proposed to create a new category for the listing of additional shares (the ''Listing of Additional Shares Fee Schedule''). In its filing, the Exchange states that the current fee schedule will remain unchanged for the listing of additional shares of a class of previously listed securities.[6] Consistent with its current approach, the Exchange will include the shares with respect to which the company paid fees at the time of the initial listing of that class in calculating the fees for additional shares pursuant to the Listing of Additional Shares Fee Schedule. As noted above, the fees for listing additional shares will not be changed under the proposal. However, the Exchange is proposing to make certain non-substantive and clarifying changes to the Listing of Additional Shares Fee Schedule which includes a new example to explain how the additional listing fees are calculated.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) and (b)(5) of the Act,[7] which require, among other things, that the rules of an exchange (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and (ii) are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

According to the Exchange, the lower initial listing fees will enable the Exchange to compete more effectively on a cost basis with other securities exchanges for listings of companies undertaking initial public offerings. Particularly, the Exchange states that smaller companies that have historically listed on the Exchange now qualify for listing under the recently adopted Assets and Equity Test[8] and many of these companies would benefit from the lower minimum initial listing fee.

Additionally, the Exchange represents that under the proposal no company will pay higher initial listing fees, and companies whose fees are not limited by the $250,000 maximum will pay a reduced initial listing fee. The Exchange asserts that although companies that are subject to the $250,000 maximum fee under both the current and the proposed fee schedule would not benefit from a reduction in fees, this is appropriate because these companies already benefit from a lower effective listing fee per share than other companies. As noted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60644 (September 10, 2009), 74 FR 47842 (hereinafter referred to as ''Notice'').

[4] Under the proposal, initial listing fees for the following types of listings will also be charged at a rate of $0.0032 per share: (i) At the time it first lists, an issuer lists one or more classes of preferred stock or warrants, whether or not common shares are also listed at that time; and (ii) once listed, an issuer lists a new class of preferred stock or warrants.

[5] In it filing, the Exchange states that the proposed increase to the one-time special charge is intended to offset a portion of the reduction in listing fee revenue attributable to the proposed lower listing fee per share and proposed lower minimum listing fee.

[6] *See* Notice, *supra* note 3.

[7] 15 U.S.C. 78f(b)(4) and (b)(5).

[8] *See* Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (November 19, 2008) (SR–NYSE–2008–98).

above, the tiered fee structure charges less per share for the number of shares being issued above certain limits.

Finally, the Exchange believes that the listing fees, as amended, should be retroactively applied to any new classes of common or preferred equity securities and warrants listed on or after August 26, 2009, as it will enable companies to benefit from any applicable reduction in listing fees without having to delay their listing until after Commission approval solely for the purpose of benefitting from the fee reduction.

Based on the above, the Commission believes that the Exchange's proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among issuers, in that it applies uniformly to all new classes of common or preferred equity securities and warrants. The Commission also believes that the proposal does not unfairly discriminate between issuers as all companies will be subject to the same fee schedule. Further, the Commission notes that despite the fact that the one time special charge for new issues will be universal and the flat rate is higher than currently exists on a per share basis as compared to some of the current tiered fees, no company will pay higher initial listing fees under the revised listing fee schedule because the maximum fees are staying the same and some companies will actually benefit from a reduced initial listing fee. The Commission notes that the Exchange has represented that despite these reductions, the Exchange will continue to have sufficient revenue to continue to adequately fund its regulatory activities.

Finally, the Commission believes it is appropriate that the proposed listing fees, as amended, be applied retroactively to any new classes of common or preferred equity securities and warrants listed on or after August 26, 2009, as no company will be subject to increased fees as a result of the proposal. Further, it will allow companies that have listed new classes of securities after the date of filing of this proposed rule change to benefit from any applicable reduction in initial listing fees. The Commission also notes that the changes, including the retroactive effect, were published for notice and comment in the **Federal Register** and we did not receive any comments.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.[9]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2009–83) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–26026 Filed 10–28–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(4). In approving the proposed rule change, the Commission has considered the proposed rule's impact in efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1, 2009, through September 30, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued

1. J–W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C–10H, ABR–20090901, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: September 1, 2009.

2. Ultra Resources, Inc., Pad ID: Kjelgaard Pad, ABR–20090902, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 1, 2009.

3. Ultra Resources, Inc., Pad ID: T Pierson Pad, ABR–20090903, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: September 1, 2009.

4. Chesapeake Appalachia, LLC, Pad ID: Bonnie, ABR–20090904, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

5. Chesapeake Appalachia, LLC, Pad ID: Hunsinger, ABR–20090905, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

6. Chesapeake Appalachia, LLC, Pad ID: Martin, ABR–20090906, Granville Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

7. Chesapeake Appalachia, LLC, Pad ID: Farr, ABR–20090907, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 1, 2009.

8. Alta Operating Company, LLC, Pad ID: Turner Pad Site, ABR–20090403.1, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 2, 2009.

9. Alta Operating Company, LLC, Pad ID: Fiondi Pad Site, ABR–20090404.1, Middletown Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 2, 2009.

10. Anadarko E&P Company, LP, Pad ID: C.O.P. Tract 343 Pad C, ABR–20090908, Noyes Township, Clinton County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 3, 2009.

11. East Resources, Inc., Pad ID: Becker 404, ABR–20090909, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

12. East Resources, Inc., Pad ID: White 262–1H, ABR–20090910, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

13. East Resources, Inc., Pad ID: Stefanowich 269–1H, ABR–20090911, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

14. East Resources, Inc., Pad ID: Knight 271–1H, ABR–20090912, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

15. Chesapeake Appalachia, LLC, Pad ID: Sharer, ABR–20090913, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 8, 2009.

16. East Resources, Inc., Pad ID: Empson 235–1H, ABR–20090914, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 8, 2009.

17. Alta Operating Company, LLC, Pad ID: Knosky Pad Site, ABR–20090915, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 8, 2009.

18. Alta Operating Company, LLC, Pad ID: Carty Pad Site, ABR–20090916, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 8, 2009.

19. EOG Resources, Inc., Pad ID: PHC 23H/24H, ABR–20090917, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: September 8, 2009.

20. EOG Resources, Inc., Pad ID: PHC 28H/29H, ABR–20090918, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: September 8, 2009.

21. East Resources, Inc., Pad ID: Bowers 408, ABR–20090919, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 9, 2009.

22. Chief Oil & Gas, LLC, Pad ID: Falk Unit #1H, ABR–20090920, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 9, 2009.

23. Chief Oil & Gas, LLC, Pad ID: Spotts Unit Drilling Pad #1, ABR–20090921, Mifflin Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

24. Chief Oil & Gas, LLC, Pad ID: Kensinger Unit Drilling Pad #1, ABR–20090922, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

25. Chief Oil & Gas, LLC, Pad ID: Maguire Unit Drilling Pad #1, ABR–20090923, Watson Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

26. Chief Oil & Gas, LLC, Pad ID: Stroble Unit Drilling Pad #1, ABR–20090924, Mifflin Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

27. Chief Oil & Gas, LLC, Pad ID: Poor Shot Unit Drilling Pad #1, ABR–20090925, Anthony Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 10, 2009.

28. Pennsylvania General Energy Company, LLC; Pad ID: Pine Hill 1941 A–B, ABR–20090926, Eulalia Township, Potter County, Pa.; Consumptive Use of up to 4.900 mgd; Approval Date: September 10, 2009.

29. Anadarko E&P Company, LP, Pad ID: COP Tr 244 #1000H, ABR–20090927, Rush Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 15, 2009.

30. Anadarko E&P Company, LP, Pad ID: COP Tr 244 #1001H and #1002H, ABR–20090928, Rush Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 15, 2009.

31. Pennsylvania General Energy Company, LLC, Pad ID: Pine Hill West B Pad, ABR–20090929, Sylvania Township, Potter County, Pa.; Consumptive Use of up to 4.900 mgd; Approval Date: September 17, 2009.

32. Cabot Oil & Gas Corporation, Pad ID: ShieldsG P1, ABR–20090930, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 18, 2009.

33. Cabot Oil & Gas Corporation, Pad ID: HunsingerA P2, ABR–20090931, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 18, 2009.

34. Fortuna Energy, Inc., Pad ID: DCNR 587 Pad #17, ABR–20090932, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: September 18, 2009.

35. Seneca Resources Corporation, Pad ID: D.M. Pino Pad H, ABR–20090933, Covington Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 19, 2009.

36. Seneca Resources Corporation, Pad ID: Marvin 1V Pad, ABR–20090934, Covington Township, Tioga County, Pa.; Consumptive Use of up to 0.500 mgd; Approval Date: September 19, 2009.

37. East Resources, Inc., Pad ID: Sherman 234–1H, ABR–20090935, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 21, 2009.

38. East Resources, Inc., Pad ID: Cole 236, ABR–20090936, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 21, 2009.

39. Cabot Oil & Gas Corporation, Pad ID: Hoover P1, ABR–20090937; Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 22, 2009.

40. Alta Operating Company, LLC, Pad ID: Micks Pad Site, ABR–20090938, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: September 22, 2009.

41. Chief Oil & Gas, LLC, Pad ID: Chase A–1H Drilling Pad #1, ABR–20090939, Boggs Township, Clearfield County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: September 23, 2009.

42. Chesapeake Appalachia, LLC, Pad ID: Welles 2, ABR–20090940, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 25, 2009.

43. Stone Energy Corporation, Pad ID: Stang Well No. 1, ABR–20090941, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: September 25, 2009.

44. Stone Energy Corporation, Pad ID: Loomis Well No. 1, ABR–20090942, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: September 29, 2009.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: October 19, 2009.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E9–26076 Filed 10–28–09; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 10, 2009

The following Applications for: Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0249.

Date Filed: October 8, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 2009.

Description: Application of Gulf Coast Airways, Inc. requesting issuance of

commuter air carrier authority to enable it to engage in interstate and foreign scheduled air transportation operations utilizing small aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–26068 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 10, 2009

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0245.

Date Filed: October 7, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC31 North & Central Pacific/TC3—Central America, South America Resolutions and Specified Fares Tables (Memo 0498).

Intended Effective Date: April 1, 2010.

Docket Number: DOT–OST–2009–0246.

Date Filed: October 7, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC31 North & Central Pacific/Japan—North America, Caribbean Resolutions and Specified Fares Tables, (Memo 0499).

Intended Effective Date: April 1, 2010.

Docket Number: DOT–OST–2009–0247.

Date Filed: October 7, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC31 North & Central Pacific—Areawide Resolutions (Memo 0497).

Intended Effective Date: April 1, 2010.

Docket Number: DOT–OST–2009–0248.

Date Filed: October 8, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC31 North & Central Pacific, TC3 (except Japan)—North America, Caribbean (except between Korea (Rep. of), Malaysia and USA). Resolutions and Specified Fares Tables, (Memo 0500).

Intended Effective Date: April 1, 2010.

Docket Number: DOT–OST–2009–0251.

Date Filed: October 9, 2009.

Parties: Members of the International Air Transport Association.

Subject:

TC31 North & Central Pacific, Between Korea (Rep. of), Malaysia and USA, Resolutions and Specified Fares Tables (Memo 0501).

Intended Effective Date: April 1, 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–26066 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Altamont Corridor Rail Project From Stockton to San Jose, CA

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: FRA is issuing this Notice to advise other agencies and the public that FRA and the California High-Speed Rail Authority (Authority) will be preparing an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Altamont Corridor Rail Project proposed by the Authority and the San Joaquin Regional Rail Commission (SJRRC) from Stockton to San Jose via the Altamont Pass and Tri Valley area, connecting the Northern San Joaquin Valley and the San Francisco Bay Area. The Authority and SJRRC are proposing to develop a dedicated regional rail corridor through the Altamont Pass and the Tri Valley area capable of supporting intercity and commuter rail passenger services. The project EIR/EIS will be prepared in compliance with relevant Federal and State laws, in particular the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The Federal Transit Administration (FTA) will serve as a cooperating agency for the preparation of the EIR/EIS.

FRA is issuing this Notice to alert interested parties and solicit public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by the Authority, the SJRRC, and their representatives will be considered in the preparation of the combined EIR/EIS.

DATES: Written comments on the scope of the Altamont Corridor Rail Project EIR/EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated and the methodologies to be used in the evaluations, should be provided to the Authority by December 4, 2009. Public scoping meetings are scheduled from November 10 to November 18, 2009, at the times and dates listed below in Livermore, Stockton, Fremont, and San Jose, California.

ADDRESSES: Written comments on the project scope should be sent to Mr. Dan Leavitt, Deputy Director, ATTN: Altamont Corridor Rail Project EIR/EIS, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, or via e-mail with the Subject line ''Altamont Corridor Rail Project EIR/EIS'' to: *comments@hsr.ca.gov*. Comments may also be provided orally or in writing at the scoping meetings scheduled at the following locations:

- Livermore, CA, November 10, 2009, from 3 p.m. to 8 p.m., Robert Livermore Community Center, 4444 East Avenue, Livermore, CA.
- Stockton, CA, November 12, 2009, from 3 p.m. to 8 p.m., San Joaquin Council of Governments, 555 E. Weber Avenue, Stockton, CA.
- Fremont, CA, November 17, 2009, from 3 p.m. to 8 p.m., Fremont Teen Center, 39770 Paseo Padre Parkway, Fremont, CA.
- San Jose, CA, November 18, 2009, from 3 p.m. to 8 p.m., Le Petit Trianon Theatre, 72 North Fifth Street, San Jose, CA.

The project's purpose and need and the description of alternatives currently under consideration for the proposed action will be presented at these meetings. The meeting facilities will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Ms. Kim Christensen at (415) 955–2800 or *kim.christensen@aecom.com* at least 48 hours before the scoping meeting. Also, scoping materials will be made available through the Authority's Internet site: *http://www.cahighspeedrail.ca.gov/*.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Environmental Program Manager, Office of Passenger and Freight Programs, USDOT/Federal Railroad Administration, 1200 New Jersey Avenue, SE. (Mail Stop 20),

Washington, DC 20590 (telephone 202–493–6368); or Mr. Dan Leavitt, Deputy Director, ATTN: Altamont Corridor Rail Project EIR/EIS, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814 (telephone: 916–322–1397).

SUPPLEMENTARY INFORMATION:

Scoping

The FRA, the Authority, and SJRRC invite all interested individuals, and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated and the evaluation methods to be used. Comments should focus on: Alternatives that may be less costly or have fewer environmental or community impacts while achieving similar transportation objectives and the identification of any significant social, economic, or environmental issues related to alternatives.

The Proposed Project

The Authority and SJRRC are proposing to develop a dedicated regional rail corridor through Altamont Pass and the Tri Valley area capable of supporting intercity and commuter rail passenger services. The project would improve the existing Altamont Commuter Express (ACE) service managed by SJRRC by accommodating more trains per day, reducing travel times, and eliminating freight railroad delays by providing separate passenger tracks. The Altamont Corridor will serve as a feeder to the statewide High-Speed Train (HST) System being planned and developed by the Authority. The project will consider connections between the Altamont corridor and the HST mainline between Stockton and Modesto and HST-compatible infrastructure that would allow trains to run from one rail line to the other in order to accommodate intercity travel between stations along the Altamont Corridor and regional stops on the greater statewide HST System.

The preparation of this Altamont Corridor Rail Project EIR/EIS will involve development of preliminary engineering designs and assessment of environmental effects associated with the construction, operation, and maintenance of the project including track, ancillary facilities, and stations along the Altamont Corridor.

Agency Responsibilities

The Authority was established in 1996 and is authorized and directed by statute to undertake the planning for the development of a proposed statewide HST System that is fully coordinated with other public transportation services. The Authority has jurisdiction for planning passenger rail service capable of speeds over 125 miles per hour (mph); high-speed equipment may attain speeds higher than 125 miles per hour when operating on the proposed Altamont Corridor Rail Project. The SJRRC manages and operates the current ACE between Stockton and San Jose. Because the proposed Altamont Corridor Rail Project may include high-speed compatible equipment capable of attaining speeds higher than 125 mph, this undertaking is within the Authority's statutory authority. It is anticipated that the SJRRC would provide regional rail service between the northern San Joaquin Valley and the Bay Area through the improved alignment which would be provided by the Project.

The FRA has responsibility for overseeing the safety of railroad operations, including the safety of any proposed high-speed rail transportation system. For the proposed project, FRA may need to take certain regulatory actions prior to operation. The FRA is also authorized to provide Federal funding for intercity passenger rail capital investments through high-speed and intercity passenger rail grant programs created in the Passenger Rail Investment and Improvement Act of 2008. The FTA has responsibility for providing Federal funding for intra-city commuter rail capital investments. FTA has funded improvements in this corridor in the past including intermodal stations and park and ride lots.

To ensure compliance with the various State and Federal environmental laws, the Authority is the State lead agency for purposes of compliance with CEQA and the FRA is the lead Federal agency for purposes of compliance with NEPA. Since FTA maintains an interest in transportation improvements in the corridor, it will be a cooperating agency in this endeavor in accordance with 40 CFR 1501.6.

The Altamont Corridor Partnership Working Group (Working Group) was established by the Authority to bring together local partners for the purpose of identifying goals, objectives, and key features of a joint-use regional rail improvement in the corridor. Members include the San Joaquin Council of Governments, the California Partnership for the San Joaquin Valley, Great Valley Center, the Tri Valley Policy Advisory Committee, the Alameda County Congestion Management Agency, the Metropolitan Transportation Commission, and the Sacramento Area Council of Governments, along with service providers including Altamont Commuter Express, Bay Area Rapid Transit District (BART), Capitol Corridor, SamTrans, and Caltrain. The Working Group recognizes the importance of the corridor for regional transportation needs and has reached consensus on the corridor limits (Stockton to San Jose), principal features including key intermodal connections, and goals and objectives which include improving the ACE service in the near term as well as developing capability to accommodate high-speed trains through connections to the HST System and HST-compatible equipment. The Working Group will continue to support the project as it moves forward in the planning and implementation process.

Past Planning Efforts

The Altamont Corridor was studied by the Authority and identified as a candidate route to the Bay Area in the Statewide HST System Program EIR/EIS. The Authority and FRA further examined the corridor in the 2008 Bay Area to Central Valley HST EIR/EIS and selected the Pacheco Pass via Gilroy as the route to connect the main line of the HST network in the Central Valley with the Peninsula and San Francisco. However, in the Bay Area to Central Valley HST EIR/EIS, the Authority also indicated that they would pursue a regional joint-use rail project in the Altamont Corridor as an independent project to meet a purpose and need separate from the proposed HST System, which might provide both HST compatible infrastructure and connection(s) to the statewide HST System.

Subsequently, the Authority began to work with a regional partnership to plan a joint-use rail line through the Altamont Pass that would support new regional intercity and commuter rail services operating in Northern California between Stockton and San Jose and capable of accommodating HST-compatible equipment. Accordingly, the Authority and the SJRRC reached an agreement and are proposing to develop a new regional rail line from Stockton to San Jose through the Altamont Pass as well as eastern and southern Alameda County to provide both commuter and intercity passenger rail service that would improve connectivity and accessibility between the Northern San Joaquin Valley and the Bay Area. The rail line would be designed and equipped to accommodate electrified light-weight passenger trains and would be useable by HST-compatible equipment.

The development of the Altamont Corridor Rail Project as a complement to the Statewide HST System is consistent with the Metropolitan Transportation Commission (MTC) *Bay Area Regional Rail Plan*, which identified the Altamont Corridor as a key future northern California regional rail route and also noted that development of this corridor in conjunction with implementation of the statewide HST System could provide greater benefits to the State and region.

The Altamont Corridor Rail Project EIR/EIS will build upon the *Bay Area Regional Rail Plan* and upon relevant decisions made with the statewide HST and Bay Area to Central Valley HST program EIR/EISs. The Altamont Corridor EIR/EIS will be carried out in accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR 1500 *et seq.*), State CEQA Guidelines (14 California Code of Regulations 15168(b)) and FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999).

In concert with the spirit of the CEQ's NEPA regulations, FRA will encourage incorporation by reference (40 CFR 1502.21) of preceding planning and environmental documents. Also, it is one of the mandates of the CEQ regulations that Federal agencies reduce paperwork (§ 1500.4), produce a reasonable number of pages without being overwhelming (§ 1502.7) and create environmental documents that are written in plain language and are highly accessible to the reader (§ 1502.8). The NEPA document will emphasize graphics, virtual simulation, and an accessible narrative format. Technical documentation will be established in appendices.

The FRA and the Authority will assess the site characteristics, size, nature, and timing of the project to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. The Altamont Corridor Rail Project EIR/EIS will identify and evaluate reasonable and feasible site-specific alignment alternatives, evaluate the impacts from construction, operation, and maintenance of the project, and identify mitigation measures. Information and documents regarding the Altamont Corridor Rail Project environmental review process will be made available through the Authority's Internet site: *http://www.cahighspeedrail.ca.gov/*.

Purpose and Need of the Proposed Project

The purpose of the Altamont Corridor Rail Project is to develop a joint-use regional rail corridor for intercity passenger rail and commuter rail services between Stockton and San Jose via the Altamont Pass and the Tri Valley area providing connecting links with the statewide HST System. This transportation improvement is necessary to facilitate regional intercity and local travel and connectivity through the Altamont Pass gateway between the San Francisco Bay Area and the Northern San Joaquin Valley. It would provide important regional links to the statewide HST network, and replace the ACE with new, faster, more frequent intercity and commuter rail services with more trains per day and extended hours of operation, consistent with key project goals of providing improved travel times and expanded service both to address the regional need for an intercity and commuter rail mobility option in the I–580/I–205 corridor as well as provide a feeder to the statewide HST System.

The need for the Altamont Corridor Rail Project stems from the social and economic ties and travel demand that bind together the Northern San Joaquin Valley, the Tri Valley, and the South Bay Area as well as high levels of existing and future anticipated growth, travel demand, and congestion that will cause environmental degradation and higher risks to safety if not addressed. This need cannot be met by the existing ACE service or infrastructure which has significant operating limitations including:

- Limited capacity single track for much of the route;
- Slow average operating speeds;
- Reliance on dispatching by a third party;
- Service limitations; and
- A Common passenger and freight railroad right-of-way.

Alternatives

The Altamont Corridor Rail Project EIR/EIS will consider a No Action or No Project Alternative and project build alternatives.

No Action Alternative

The No Action (No Project or No Build) Alternative is defined to serve as the baseline for assessment of the project alternatives. The No Action Alternative represents the region's transportation system (highway, air, and conventional rail) as it exists in 2009, and as it would exist after completion of the programs or projects currently planned for funding and implementation by 2035. The No Action Alternative defines the existing and future intercity transportation system for the Altamont Corridor based on programmed and funded improvements to the intercity transportation system through 2035, according to the following sources of information: the State Transportation Improvement Program (STIP), Regional Transportation Plans (RTPs) for all modes of travel, airport plans, and intercity passenger rail plans.

Project Alternatives

At this time, no proposed alignments have been identified for the Altamont Corridor Rail Project; however, the corridor limits are between Stockton and San Jose, California, which are the terminal stations for the current ACE service. Specific alignments and station locations will be identified along this corridor and evaluated through the preparation of this project environmental document. The Altamont Corridor Rail Project is intended to include a potential branch east of Tracy to allow operation of trains between the Bay Area and points north including Stockton and Sacramento as well as points south including Modesto and beyond within the statewide HST System. Project alternatives are intended to provide intermodal connections to the Bay Area Rapid Transit (BART) to serve the Oakland Airport, the cities of Oakland and San Francisco as well as other East Bay and South Bay locations via BART. Intermodal connections to BART would be provided in the Livermore vicinity, should the Dublin/Pleasanton BART line be extended, as well as in the Fremont/Union City vicinity, either meeting the existing Fremont line or the Warm Springs/San Jose extension. The Altamont Corridor Rail Project may also accommodate a future connection to the Dumbarton rail service in the Fremont/Union City vicinity as well as an intermodal connection to the Valley Transportation Authority (VTA) light rail network in Santa Clara County. Additionally, the project will accommodate feeder and connecting bus services providing access to proximate market areas and interfacing with regional bus links where appropriate.

Selected Planning Requirements: To meet the purpose and need, the following initial considerations and potential requirements for project alternatives have been identified:

- *Number of Tracks*—Two main tracks with appropriately located crossovers should be sufficient to support frequent intercity and regional

service in the Altamont Corridor. Although the operating plan may include regional trains making all stops in addition to regional limited service intercity trains which would skip selected stops, two track stations are expected to be sufficient.

• *Maximum Speed/Horizontal Curves*—The ultimate project goal is to accommodate lightweight electric multiple-unit trains which could be operated on other parts of the statewide HST network. The existing corridor has sections which pass through rural areas with stations 12 or more miles apart. Under these conditions, speeds in excess of 125 mph, possibly exceeding 150 mph could be attained (as was identified for sections in the San Joaquin Valley in Bay Area to Central Valley HST EIR/EIS). A maximum speed will not be established until alignment options and station locations are identified in more detail. The ultimate alignment speed will be determined by identifying a cost-effective solution taking into account station spacing, profile grades, safety, and vehicle technology. Accordingly, the planning standard for horizontal curves will be developed to support the highest feasible speed where the alignment is unconstrained.

Alternatives Analysis: Further engineering studies will examine and refine alignments in the selected corridor, including previously considered alignment alternatives contained in the *Bay Area Regional Rail Plan,* the 2008 Bay Area to Central Valley HST EIR/EIS, alternatives that may be suggested in scoping, and other alternatives within the study corridor that would satisfy the purpose and need of the project. Alignment options for evaluation in the EIR/EIS will be selected by the Authority and FRA, in cooperation with the SJRRC and FTA, after considering the project purpose and need, practicality, feasibility, travel time, train speed, cost, safety, local access times, potential connections with other modes of transportation, ridership potential, the distribution of population and major destinations along the route, local planning constraints/conditions, and environmental considerations.

Station location options will be identified in conjunction with candidate alignments and evaluated by the Authority and FRA taking into account travel time, train speed, cost, local access times, potential connections with other modes of transportation, ridership potential, the distribution of population and major destinations along the route, and local planning constraints/conditions. Station area development policies to encourage transit-friendly development near and around proposed stations will be prepared in coordination with local and regional planning agencies to promote higher density, mixed-use, pedestrian-oriented development around the stations. Although no specific station sites have been identified, candidate locations developed in cooperation with the Working Group include: Stockton, Modesto, Tracy, Livermore, Pleasanton, Fremont/Union City, Milpitas, and San Jose. Additional station locations may be considered, including those suggested in scoping. Multimodal opportunities would also be considered at stations in Stockton, Modesto, Livermore, Fremont/Union City, Milpitas, and San Jose to connect with the HST mainline, BART, Caltrain, and VTA.

Implementation Phasing: Due to the length of the corridor, it is anticipated that the project would be implemented in phases. Although specific phasing cannot be identified until the project alternatives are defined and evaluated, consideration will be given to identifying ''building blocks'' both with regard to geographic segments as well as levels of investment (*e.g.,* improved conventional service vs. high-speed electrified service) which would be combined in a logical fashion to provide a corridor development plan. As a result, portions of the project could be implemented to provide near-term improvements to the existing ACE service. As connecting with BART is essential to provide access to the greater Bay Area including Oakland, consideration will be given to project phases meeting BART either in Livermore (with a BART extension) or in the Fremont/Union City vicinity.

The EIS Process and the Role of Participating Agencies and the Public

The purpose of the EIR/EIS process is to explore in a public setting the potentially significant effects of implementing the proposed action on the physical, human, and natural environment. Areas of investigation will be developed during the scoping process and may include, but not be limited to, transportation impacts; safety and security; land use and zoning; indirect and cumulative impacts; land acquisition, displacements, and relocations; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife; and ecosystems, including endangered species and temporary construction impacts.

FRA and the Authority will comply with all environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the CEQ implementing NEPA (40 CFR parts 1500–1508), State CEQA Guidelines (14 California Code of Regulations 15168(b)) and FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999), project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93(b)), Section 404(b)(1) EPA guidelines (40 CFR part 230), Executive Orders 11988, 11990, and 12898 regarding floodplains, wetlands, and environmental justice, respectively, Section 106 of the National Historic Preservation Act (36 CFR part 800), Section 7 of the Endangered Species Act (50 CFR part 402), and Section 4(f) of the Department of Transportation Act (49 USC 303). Measures to avoid, minimize, and mitigate all adverse impacts will be identified and evaluated.

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies, Native American Tribes, and the public at large so that the full range of issues related to the proposed action and all reasonable alternatives are addressed and that all significant issues are identified. In particular, FRA is interested in learning whether there are areas of environmental concern where there might be a potential for significant impacts. Public agencies with jurisdiction are requested to advise FRA and the Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the project EIS/EIR.

Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will be advertised locally and

additional public notice will be provided separately with the dates, times, and locations of these scoping meetings.

Issued in Washington, DC, on October 23, 2009.

Mark E. Yachmetz,

Associate Administrator for Railroad Development, Federal Railroad Administration.

[FR Doc. E9–26098 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement and the Alaska National Interest Lands Conservation Act Section 810 Analysis of Impacts to Subsistence Resources for Proposed Improvement Activities at the Sitka Rocky Gutierrez Airport, Sitka, AK

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is publishing this notice to advise the public that the FAA has issued a Record of Decision (ROD) for the Final Environmental Impact Statement (Final EIS) and Alaska National Interest Lands Conservation Act (ANILCA) Section 810 Evaluation for Proposed Improvement Activities at the Sitka Rocky Gutierrez Airport (SIT) on September 28, 2009. The ROD provides final agency determinations and approvals for the proposed airport improvement activities.

Record of Decision Availability: Copies of the ROD may be viewed during regular business hours at the following locations:

1. Kettleson Memorial Library, 320 Harbor Drive, Sitka, AK 99835. (907) 747–8708.

2. Downtown Juneau Public Library, 292 Marine Way, Juneau, AK 99801. (907) 586–5249.

The ROD is posted to the following Web site: *http://www.faa.gov/airports/environmental/records_decision/.* Additionally, the FAA, Airports Division has a limited number of copies of the ROD available for public distribution. Please contact the FAA at (907) 271–5438 for a copy.

SUPPLEMENTARY INFORMATION: The ROD provides final determinations and approvals by the FAA for federal actions needed to enhance aviation safety and protect current and future aviation uses at Sitka Rocky Gutierrez Airport, Sitka, Alaska. Included within the ROD are descriptions of the six projects proposed by the Airport Sponsor (the Alaska Department of Transportation and Public Facilities) and the documented need for each project, alternatives to the proposed actions, environmental impacts associated with the actions and alternatives, and mitigation measures required to avoid or minimize environmental harm. The ROD also discloses the federal, state, and local actions needed prior to the implementation of each of the projects and provides findings, certifications, and determinations concerning resources of special concern. Conditions of approval that must be met by the Alaska Department of Transportation and Public Facilities prior to construction are also listed. The ROD identifies the FAA's preferred and environmentally preferred alternatives, as well as those alternatives selected by the FAA for implementation. Additionally, the ROD explains the authorization that must be granted by the Department of Interior's Bureau of Land Management to convey federal lands to the state of Alaska for aviation and airport uses.

The FAA's selected alternatives identified in the ROD are:

- Runway Safety Area Alternative 5: Declared Distances with 280-Foot Landmass Expansion on Runway End 29 and Additional Runway Pavement
- Parallel Taxiway Alternative 3: Partial Extension of the Parallel Taxiway to Charcoal Island
- Seaplane Pullout Alternative 2: Construction of Fixed Ramp Seaplane Pullout on Charcoal Island
- Approach Lighting System Alternative 1: No Action
- Seawall Alternative 1: No Action
- Land Transfer Alternative 2: Transfer of Property Rights within Airport Boundary to Alaska from the United States using a Combination of Title Conveyance and Long-Term Lease or Easement

The ROD also provides the final determination on the ANILCA Section 810 Evaluation for the actions included in the Final EIS. Section 810 of ANILCA requires an evaluation of the effects of alternatives presented in this Final EIS on subsistence activities occurring on public lands located in the planning area. The evaluation in the Final EIS indicates that none of the alternatives significantly restrict subsistence activities.

The notice of availability for the Final EIS was published by the Environmental Protection Agency on May 22, 2009. The FAA issued its ROD on the Final EIS on September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Sullivan, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue, #14, Anchorage, AK 99513–7504. Ms. Sullivan may be contacted during business hours at (907) 271–5454 (phone) and (907) 271–2851 (facsimile).

Issued in Anchorage, Alaska on October 19, 2009.

Patricia A. Sullivan,

Acting Manager, Airports Division, Alaskan Region.

[FR Doc. E9–25834 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2009–0289]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 41 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before *November 30, 2009.*

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0289 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this

Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 41 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Richard A. Becker

Mr. Becker, age 31, has had ITDM since 1991. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Becker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arkansas.

David M. Bridges

Mr. Bridges, 54, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bridges meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Maine.

Eric M. Butz

Mr. Butz, 28, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Gerald F. Crowley

Mr. Crowley, 38, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crowley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Paul J. Dematas

Mr. Dematas, 22, has had ITDM since 2001. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dematas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Scott J. Denham

Mr. Denham, 35, has had ITDM since 1980. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Denham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Larry E. Dickerson

Mr. Dickerson, 37, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands

diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dickerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Lance W. Essex

Mr. Essex, 45, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Essex meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Ferral F. Ford

Mr. Ford, 61, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

David E. Ginter

Mr. Ginter, 54, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ginter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

William H. Goebel

Mr. Goebel, 60, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goebel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Joseph L. Gray III

Mr. Gray, 42, has had ITDM since 1999. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Ryan R. Harris

Mr. Harris, 32, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Carroll J. Hartsell

Mr. Hartsell, 31, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hartsell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

James S. Heinen

Mr. Heinen, 45, has had ITDM since 1985. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heinen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Rita A. Hopman

Ms. Hopman, 27, has had ITDM since 2003. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Hopman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from Connecticut.

Shelton P. Huber

Mr. Huber, 50, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Keith M. Huels

Mr. Huels, 30, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huels meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Daniel R. Jackson

Mr. Jackson, 64, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ricky D. Jameson

Mr. Jameson, 48, has had ITDM since 1968. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jameson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class F operator's license from Missouri.

Michael A. Johnson

Mr. Johnson, 36, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Justin D. Jones

Mr. Jones, 25, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Curtis W. Keelin, Jr.

Mr. Keelin, 41, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keelin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wyoming.

Andrew S. Knight

Mr. Knight, 52, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knight meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Patrick J. Krueger

Mr. Krueger, 42, has had ITDM since 1970. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Krueger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Tammy L.F. Manuel

Ms. Manuel, 43, has had ITDM since 2009. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Manuel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from South Carolina.

Francisco J. Martinez

Mr. Martinez, 44, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss

of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martinez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Alan J. Maza

Mr. Maza, 64, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Maza meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

Allan C. Moore

Mr. Moore, 47 has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Andrew W. Myer

Mr. Myer, 27, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Myer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Robert R. Napier

Mr. Napier, 53 has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Napier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Chad A. Nelson

Mr. Nelson, 29 has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nelson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

David W. Olson

Mr. Olson, 38 has had ITDM since 1991. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Mark Otto

Mr. Otto, 54, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Otto meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Terry L. Riddell

Ms. Riddell, 54, has had ITDM since 2007. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Riddell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Mark E. Pascoe

Mr. Pascoe, 50, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pascoe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Rodney R. Rupe

Mr. Rupe, 41 has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rupe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Kentucky.

Darrell S. Seibold

Mr. Seibold, 41 has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seibold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Roger L. Summerfield

Mr. Summerfield, 54 has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Summerfield meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Daren D. White

Mr. White, 39 has had ITDM since 2003. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Utah.

Jimmy P. Wright

Mr. Wright, 31, has had ITDM since 1992. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Texas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). [1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: October 21, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–26004 Filed 10–28–09; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 11–C

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 11–C, Occupational Tax and Register Return for Wagering.

DATES: Written comments should be received on or before December 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6242, 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 R. Joseph Durbala, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Occupational Tax Wagering.

OMB Number: 1545–0236.

Form Number: 11–C.

Abstract: Form 11–C is used to register persons accepting wages, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411 and to verify that the tax on wagers is reported on Form 730, Tax on Wagering.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 23,000.

Estimated Time per Respondent: 5 hours, 21 minutes.

Estimated Total Annual Burden Hours: 126,175.

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: October 21, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–26009 Filed 10–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8712]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, TD 8712, Definition of Private Activity Bonds (§§ 1.141–1, 1.141–12, 1.142–2, and 1.148–6).

DATES: Written comments should be received on or before December 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Definition of Private Activity Bonds.

OMB Number: 1545–1451.

Regulation Project Number: TD 8712.

Abstract: Internal Revenue Code section 103 provides generally that interest on certain State or local bonds is excluded from gross income. However, under Code sections 103(b)(1) and 141, interest on private activity bonds (other than qualified bonds) is not excluded. This regulation provides rules, for purposes of Code section 141, to determine how bond proceeds are measured and used and how debt service for those bonds is paid or secured.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,100.

Estimated Time per Respondent: 2 hours, 50 minutes.

Estimated Total Annual Burden Hours: 30,100.

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: October 22, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–26010 Filed 10–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–54–90]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, IA–54–90 (TD 8459), Settlement Funds (§§ 1.468B–1, 1.468B–2, 1.468B–3, and 1.468B–5).

DATES: Written comments should be received on or before December 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala at (202) 622–3634, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Settlement Funds.

OMB Number: 1545–1299. *Regulation Project Number:* IA–54–90.

Abstract: This regulation prescribes reporting requirements for settlement funds, which are funds established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. The regulation relates to the tax treatment of transfers to these funds, the taxation of income earned by the funds, and the tax treatment of distributions made by the funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not for-profit institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 2 hours, 22 minutes.

Estimated Total Annual Burden Hours: 3,542.

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: October 21, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–26012 Filed 10–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2063

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 2063, U.S. Departing Alien Income Tax Statement.

DATES: Written comments should be received on or before December 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6242, 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 R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Departing Alien Income Tax Statement.

OMB Number: 1545–0138.

Form Number: 2063.

Abstract: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,540.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 17,049.

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: October 21, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–26013 Filed 10–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–46–94]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, CO–46–94 (TD 8594), Losses on Small Business Stock (§ 1.244(e)–1.

DATES: Written comments should be received on or before December 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Losses on Small Business Stock.

OMB Number: 1545–1447.

Regulation Project Number: CO–46–94.

Abstract: Section 1.1244(e)–1(b) of the regulation requires that a taxpayer claiming an ordinary loss with respect to section 1244 stock must have records sufficient to establish that the taxpayer satisfies the requirements of section 1244 and is entitled to the loss. The records are necessary to enable the Service examiner to verify that the stock qualifies as section 1244 stock and to determine whether the taxpayer is entitled to the loss.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 2,000.

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: October 21, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–26014 Filed 10–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Amendment—Employers Insurance Company of Wausau, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company, Peerless Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570, 2009 Revision, published July 1, 2009, at 74 FR 31536.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The underwriting limitations for the following companies have been amended:

Employers Insurance Company of Wausau (NAIC # 21458), which was listed in the Treasury Department Circular 570, published on July 1, 2009, is hereby amended to read $75,367,000.

Liberty Mutual Fire Insurance Company (NAIC # 23035), which was listed in the Treasury Department Circular 570, published on July 1, 2009, is hereby amended to read $82,527,000.

Liberty Mutual Insurance Company (NAIC # 23043), which was listed in the Treasury Department Circular 570, published on July 1, 2009, is hereby amended to read $663,431,000.

Peerless Insurance Company (NAIC # 24198), which was listed in the Treasury Department Circular 570, published on July 1, 2009, is hereby amended to read $193,624,000.

Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2009 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: October 15, 2009.

Laura Carrico,

Acting Director, Financial Accounting and Services Division.

[FR Doc. E9–25836 Filed 10–28–09; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
October 29, 2009

Part II

Department of Education

34 CFR Parts 600, 668, 675, et al. General and Non-Loan Programmatic Issues; Final Rule

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0005]

34 CFR Parts 600, 668, 675, 686, 690, and 692

RIN 1840–AC99

General and Non-Loan Programmatic Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for Institutional Eligibility Under the Higher Education Act of 1965, the Student Assistance General Provisions, the Federal Work-Study (FWS) Programs, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Leveraging Educational Assistance Partnership Program (LEAP) to implement various general and non-loan provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA) and other recently enacted legislation.

DATES: *Effective Date:* These regulations are effective July 1, 2010.

Implementation date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions may, at their discretion, choose to implement the new and amended provisions of §§ 600.32(d), 668.28, 668.23(d)(4), 668.43, 675.16, 675.18(g), 675.18(i), 686.41, and 686.42 on or after November 1, 2009. For further information, see the section entitled *Implementation Date of These Regulations* in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For general information or information regarding these regulations related to the non-title IV revenue requirement (90/10), John Kolotos. Telephone: (202) 502–7762 or via the Internet at: *John.Kolotos@ed.gov*.

For information related to all Federal Pell Grant Program issues and the LEAP/GAP Program, Fred Sellers and Jacquelyn Butler. Telephone: (202) 502–7502 and (202) 502–7890, respectively or via the Internet at: *Fred.Sellers@ed.gov* or *Jacquelyn.Butler@ed.gov*.

For information related to the provisions for readmission for servicemembers, teach-outs, peer-to-peer file sharing, baccalaureate in liberal arts, and institutional plans for improving the academic program, Wendy Macias. Telephone: (202) 502–7526 or via the Internet at: *Wendy.Macias@ed.gov*.

For information related to all FWS Program issues, Nikki Harris and Harold McCullough. Telephone: (202) 219–7050 and (202) 377–4030, respectively, or via the Internet at *Nikki.Harris@ed.gov* or *Harold.McCullough@ed.gov*.

For information related to the provisions for fire safety standards, missing students procedures, hate crime reporting, emergency response and evacuation, and students with intellectual disabilities, Jessica Finkel. Telephone: (202) 502–7647 or via the Internet at: *Jessica.Finkel@ed.gov*.

For information related to the provisions for extenuating circumstances under the TEACH Grant Program, Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet at: *Jacquelyn.Butler@ed.gov*.

For information related to the consumer information requirements, Brian Kerrigan. *Telephone:* (202) 219–7058 or via the Internet at: *Brian.Kerrigan@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On August 21, 2009, the Secretary published a notice of proposed rulemaking (NPRM) for general and non-loan programmatic issues in the **Federal Register** (74 FR 42380).

In the preamble to the NPRM, the Secretary discussed on pages 42383 through 42415 the major regulations proposed in that document to implement provisions of the HEOA, including the following:

- Amending §§ 690.63(h), 690.64, and 690.67 to establish the conditions under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year.
- Amending §§ 686.12(c), 686.41, and 686.42(c) to establish the extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation.
- Amending § 675.18(g) to permit institutions to use FWS funds to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation.
- Amending § 675.18 by adding paragraph (i) to allow institutions located in major disaster areas to make FWS payments to disaster-affected students.
- Amending §§ 675.41 and 675.43 to revise definitions and terms relating to work colleges.
- Adding § 668.28 to establish the requirement that proprietary institutions derive at least 10 percent of their revenue from sources other than Title IV, HEA program funds and specify how institutions calculate the revenue percentage.
- Amending § 668.41(a) and (d) and § 668.45 to expand the information that institutions must make available to prospective and enrolled students to include information on: the employment and placement of students; the retention rates of first-time, full-time undergraduate students; the placement rate for any program offered by the institution, if the institution calculates this rate; and the completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance.
- Amending § 668.41(e) to provide that institutions that maintain on-campus housing facilities must publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department.
- Amending § 668.46 by adding paragraph (h) to require institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information.
- Amending § 668.46(c) to expand the list of crimes that institutions must include in the hate crimes statistics reported to the Department.
- Amending § 668.46 by adding paragraph (g) to require institutions to include in their annual security report a statement of emergency response and evacuation procedures.
- Adding subpart O to 34 CFR part 668, to specify the conditions under which students with intellectual disabilities may receive Federal Pell Grant, FWS, and FSEOG Program funds.
- Adding § 668.18 to establish requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution.
- Amending § 600.32(d) to provide that an institution that conducts a teach-out at a site of a closed institution may,

under certain conditions, establish that site as an additional location.

• Amending § 600.5(a) and (e) to include in the definition of ''proprietary institution of higher education'' an institution that provides a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier.

• Amending § 668.14(b) to provide that an institution must have developed and implemented written plans to effectively combat unauthorized distribution of copyrighted material and that the institution will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property.

• Amending § 668.43(a) to include, as part of the information an institution must make available to prospective and enrolled students, a description of any plans the institution has to improve its academic program.

• Amending § 692.10(b) to provide that the non-Federal share of student grants or work-study jobs under the LEAP Program must be State funds and that the non-Federal share no longer has to come from a direct appropriation of State funds.

• Amending § 692.21(k) to provide that the State program must notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and, for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners.

• Adding subpart C to 34 CFR part 692 to establish the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program.

Technical Amendments

In addition to the changes necessary to implement provisions of the HEOA, these final regulations also incorporate technical amendments made to the HEA by The Higher Education Technical Corrections (Pub. L. 111–39), enacted on July 1, 2009. These changes are as follows: In § 690.75(e) we proposed that a student whose parent was in the Armed Forces and died in Iraq or Afghanistan could receive the maximum Federal Pell Grant eligibility if the student was under 24 years old or enrolled in an institution of higher education at the time the parent died, in accordance with section 401(f)(4) of the HEA, as amended by the HEOA. However, Public Law 111–39 removed section 401(f)(4) from the HEA and added new sections 473(b) and 420R effective July 1, 2009. Section 401(f)(4) provided that, for purposes of Federal Pell Grants only, a student was deemed to have an expected family contribution (EFC) of zero if the student's parent was in the Armed Forces and died in Iraq or Afghanistan when the student was under 24 years old or enrolled in an institution of higher education at the time the parent died.

Section 473(b) was added to Part F—Need Analysis of the HEA and provides that, beginning with the 2009–2010 and succeeding award years, each student with a Federal Pell Grant-eligible EFC whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, will be determined to have an EFC of zero that will generally apply to all Title IV, HEA programs. Because part F of the HEA, where these changes are reflected, is subject to section 478(a) of the HEA, which generally prohibits regulating the requirements in part F, we are removing proposed § 690.75(e).

Section 420R of the HEA establishes a new, non-need-based program called the Iraq and Afghanistan Service Grants Program (IASG Program) starting in the 2010–2011 award year. To qualify for an IASG, a student must have a parent or guardian who died as a result of military service in Iraq or Afghanistan after September 11, 2001, and must be, at the time of the parent or guardian's death, less than 24 years of age or enrolled at an institution of higher education. A qualifying student who is not eligible for a Federal Pell Grant would be eligible to receive an IASG that is the same amount as a maximum Federal Pell Grant to assist in paying the student's cost of attendance at an institution of higher education. Grants under the IASG Program may not exceed the student's cost of attendance, and payments are adjusted like Federal Pell Grants if the student is enrolled less than full-time; unlike Federal Pell Grants, IASG Program grants are not considered to be estimated financial assistance. Under this program, the student's EFC will not be changed as a result of a parent or guardian's service. Regulations are necessary to implement this Title IV, HEA program. However, section 409 of Public Law 111–39 waives the provisions of sections 482 and 492 of the HEA concerning the master calendar for regulatory effective dates and the requirement to use negotiated rulemaking to formulate regulations for the IASG Program. We, therefore, expect to initiate the regulatory process without negotiated rulemaking and adopt the necessary regulations that would be effective on July 1, 2010, for the 2010–2011 award year.

• Section 401(a)(6) of Public Law 111–39 also amended section 415E(b)(1)(B) of the HEA governing allotments to States under the Grants for Access and Persistence Program (GAP). The allotment formula provides that a State with a prior year allotment shall receive not less than that amount in the next year's allotment. The HEA provides that, if a State received an allotment for 2010–2011 under 34 CFR part 692, subpart B, the Special Leveraging Educational Assistance Partnership Program (SLEAP), the State's 2011–2012 allotment for the GAP Program shall not be less than its 2010–2011 SLEAP allotment. We are revising § 692.110(a) to reflect this statutory change. We are also revising appendix A to subpart C of part 692 that provides a case study illustrating the requirements for allotting funds under the GAP Program to reflect these changes to the regulations.

We have also made a number of minor technical corrections and conforming changes. Changes that are statutory or that involve only minor technical corrections are generally not discussed in the *Analysis of Comments and Changes* section.

Waiver of Proposed Rulemaking for Additional Conforming Changes

These final regulations incorporate a statutory change made to the HEA by the HEOA that was not included on Team V's negotiating agenda or in the NPRM published on August 21, 2009. However, this statutory change in section 485(h) of the HEA is referenced in § 602.24 of the Team III (Accreditation) final regulations published in the **Federal Register** as Docket ID ED–2009–OPE–0009. We are amending § 668.43(a) of these regulations to reflect the statutory provisions by adding new paragraph (a)(11).

We are also amending § 690.6 by adding paragraph (e) to reflect a statutory change made by the HEOA to section 401(c)(5) of the HEA. Section 690.6(e) provides that, if a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than the equivalent of nine Scheduled Awards.

Because these amendments implement changes to the HEA that were not negotiated, we do not discuss them in the *Analysis of Comments and Changes* section.

Under the Administrative Procedure Act (5 U.S.C. 553) (APA), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, both the APA and the HEA provide for exemptions from these rulemaking requirements. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for Title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary, or contrary to the public interest within the meaning of the HEA.

Although the regulations implementing the HEOA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary determined that it was unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the changes needed in § 668.43. These changes simply amend the Department's regulations to reflect statutory changes made by the HEOA to paragraph (h) of section 485 of the HEA, and these changes are already effective. The Secretary does not have discretion in whether or how to implement these changes. Accordingly, negotiated rulemaking and notice-and-comment rulemaking are unnecessary.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the Title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the following new and amended provisions for early implementation, at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate:

- The closed school teach out provisions in § 600.32(d).
- The readmission requirements for returning servicemembers in § 668.18.
- The 90/10 revenue requirements in §§ 668.28 and 668.23(d)(4).
- The institutional information requirements in § 668.43.
- The FWS provisions in §§ 675.16, 675.18(g), and 675.18(i).
- The teach grant provisions regarding extenuating circumstances in §§ 686.12, 686.41, and 686.42.

In addition, the revisions to §§ 690.63, 690.64, and 690.67 of the Federal Pell Grant Program regulations may apply to the crossover payment period that is in both the 2009–10 and 2010–11 award years, *i.e.,* a payment period that includes June 30, 2010, and July 1, 2010. If an institution does not implement these regulations prior to July 1, 2010, but, prior to July 1, 2010, designates a student's 2010 crossover payment period as being in the 2009–10 award year, the Secretary does not consider these revisions to be applicable to the crossover payment period. Nothing will prevent the institution from subsequently designating the 2010 payment period as being in the 2009–10 award year with the revisions to §§ 690.63, 690.64, and 690.67 then being applicable.

Analysis of Comments and Changes

Except as noted under *Waiver of Proposed Rulemaking for Additional Conforming Changes,* the regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach consensus on the proposed regulations that were published on August 21, 2009. The Secretary invited comments on the proposed regulations by September 21, 2009. More than 113 parties submitted comments, a number of which were substantially similar. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended

Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions (§ 600.5)

Comments: One commenter supported the proposed change, stating that it was a reasonable way to clarify the term *program leading to a baccalaureate degree in liberal arts.* One commenter stated that the requirement that an institution ''has provided that program since January 1, 2009'' should be interpreted to mean that any new liberal arts program added from January 1, 2009, forward will qualify an otherwise eligible institution as an eligible proprietary institution, so long as the institution has been accredited by a recognized regional accrediting agency or association since October 1, 2007, or earlier.

Discussion: The Department does not agree that the requirement that the institution ''has provided that program since January 1, 2009'' should be interpreted to mean that any new liberal arts program added from January 1, 2009, forward will qualify an otherwise eligible institution as an eligible proprietary institution. Rather, the requirement means that an institution was providing the program (*i.e.,* was enrolling students in the program) on January 1, 2009, and has continued to do so.

Changes: Section 600.5(a)(5)(i)(B)(*1*) has been revised to clarify that an institution meets the definition of a *proprietary institution of higher education* if, in addition to being accredited by a recognized regional accrediting agency or association continuously since October 1, 2007, it has provided a program leading to a baccalaureate degree in liberal arts continuously since January 1, 2009.

Institutional Requirements for Teach-Outs and Eligibility and Certification Procedures (§§ 600.2, 600.32, 668.14)

Comments: Several commenters supported the proposed changes. One commenter stated that § 600.32(d) should be expanded to provide that the exemptions from the two-year in existence requirement, the assumption of liabilities, and the assumption of the cohort default rate apply when an institution conducts a teach-out at an institution that closes because a guaranty agency initiated an action to limit, suspend, or terminate (LS&T) the participation of an institution, or took an emergency action against the institution. One commenter explained that a closing can be a very confusing time for students if they were not given accurate information about what was happening at their institution, and urged the Department to monitor closely the process for establishing an additional location under these regulations. The commenter noted that accurate and effective communication to students is especially critical when the teach-out institution is establishing a permanent location at a closed institution. The commenter asserted that an institution establishing a permanent location at the site of a closed institution must be able to provide a teach-out option that meets appropriate quality standards even in cases when the prior institution did not meet these standards. The commenter stated that the mere submission of a teach-out plan should not be viewed as evidence that these standards were met for purposes of the closed school discharge.

Discussion: LS&T and emergency actions initiated by a guaranty agency against an institution are promptly reported to the Department, and the Department investigates those reports to determine whether to initiate a separate LS&T or emergency action against the institution. Therefore, we do not believe it is necessary to include as a trigger an LS&T or emergency action initiated by a guaranty agency that would provide the two-year requirement, liability, and default rate exemptions to an institution conducting a teach-out at a closed institution. Because of the interplay between the actions taken by a guaranty agency and the Department, there may be some instances when an institution may close prior to the Department initiating an LS&T or emergency action. In other instances, an institution may close precipitously before the Department has time to initiate an appropriate action under the circumstances. To address these instances, the final regulations have been modified so that the action taken by the Department may be initiated after the institution closes. The Department recognizes that a school closure and teach-out can be a confusing time for students, and intends to work closely with the States and accrediting agencies to make sure that students are given accurate information about their options during this transition. The opportunity for another institution to perform the teach-out, and open a permanent location under this exemption, should also ensure that the teach-out is adequately staffed and designed to serve the students that attended the closed school.

Changes: Section 600.32(d)(1)(i) is revised to clarify that an institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if the closed institution ceased operations because the Secretary has taken an LS&T or emergency action, regardless of whether the Secretary took that action before or after the institution closed.

Part 668 Student Assistance General Provisions

Readmission Requirements for Servicemembers (§ 668.18)

Comments: One commenter supported the proposed regulations, including the proposed requirement limiting the institutional charges that an institution may charge a returning servicemember. Several commenters opposed the proposed requirement limiting the institutional charges that an institution may charge a returning servicemember because they stated it would be administratively and financially burdensome for institutions. For the same reason, some of these commenters also opposed the requirement that an institution waive charges for previously purchased equipment for the first academic year in which the servicemember returns if the returning servicemember is readmitted to the same program for the same reason. Many of these commenters asserted that, because many of the affected servicemembers will receive full tuition and fee benefits under the Post-9/11 GI Bill, charging the returning servicemember the current institutional charges for a program, rather than the same charges that the returning servicemember was or would have been assessed for the academic year during which he or she left the institution, will not penalize the student for having left to serve in the uniform services. One commenter added that this argument is supplemented by the fact that at least one State waives any tuition charges not paid by the GI Bill at public universities. One of these commenters stated that limiting charges to the first year only would create an unrealistic expectation for returning servicemembers for the full cost of the program. A few of the commenters stated that limiting institutional charges for returning servicemembers would be unfair to other students at the institution who would assume higher costs, or noted that the proposed requirement could preempt State requirements.

Several commenters asserted that the forced manual billing determinations that the regulations would require of institutions would be unduly burdensome as the billing software used by most institutions, which uses pre-programmed data, including current year charges, does not accommodate special case situations, such as the proposed regulations would create. Specifically, a few commenters noted that institutions would be forced to maintain multi-faceted data tables over an undetermined number of years to recreate the prior institutional charges for servicemembers who may or may not return, as institutions do not keep student financial records for the entire period covered by the readmission requirements and billing systems are not designed to archive the data necessary to calculate institutional charges years later. The commenters contended that, even if an institution has all the information necessary, recreating the institutional charges would be complicated as institutional charges cover many types of charges involving variations by program. One commenter asserted that some Department of Defense tuition assistance systems, such as GoArmy, do not allow variations in tuition rates and could potentially delay tuition assistance processing for both impacted and nonimpacted servicemembers. A few commenters stated that determining institutional charges for returning servicemembers who may have been admitted, but were not enrolled or attending prior to leaving to serve, would be particularly difficult as they had never incurred specific charges, with one of these commenters noting that their institution has an open admission policy resulting in a large number of these students.

One commenter generally supported the requirement limiting the institutional charges that an institution may charge a returning servicemember, but stated that an institution should be permitted to charge a returning servicemember for new classes when a program has changed, requiring the servicemember to take additional

classes in the form of prerequisites or new requirements. A few commenters noted that requiring an institution to provide, if necessary, refresher courses at no extra cost seemed to preclude an institution from collecting funding from other entities to cover those expenses. One commenter stated that requiring an institution to make reasonable efforts to help the servicemember become prepared to resume the program or to enable the servicemember to complete the program at no extra cost, would impose an undue financial hardship and administrative burden on the institution. The commenter asserted that, when there is only the normal reasonable progression from one year to the next, rather than any actual change to the program in the servicemember's absence, it is the servicemember's responsibility to retain the knowledge attained in the normal course of educational progression. In addition, the commenter stated that the definition of ''reasonable efforts'' is ambiguous and would be difficult to determine.

Discussion: The Department believes that the goal of these provisions is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a servicemember to return to an institution without penalty for having left because of that service. We believe that limiting charges for the year in which the servicemember returns to the charges the servicemember was or would have been assessed for the academic year during which the servicemember left is an important part of this goal, and may necessitate additional efforts by institution as well as the absorption of some costs. However, we agree that this goal would still be achieved if any increase in charges from the amount the servicemember was or would have been assessed for the academic year during which the servicemember left the institution is covered by veterans' or servicemember education benefits. In addition, we believe that requiring institutions to maintain only past tuition and fee charges, rather than requiring them to maintain all institutional charges and waive charges for new equipment required in lieu of equipment previously paid for, will accomplish this goal, while minimizing burden to institutions that may have had difficulty determining the previous institutional charges beyond tuition and fees, as well as difficulty determining which of the current institutional charges beyond tuition and fees would be covered by veterans' and servicemember education benefits. Therefore, for a servicemember who is readmitted to the same program, an institution will be considered to have admitted the servicemember with the same academic status if, for the first academic year in which the servicemember returns, the institution does not increase the tuition and fee charges above the prior amount the servicemember was or would have been assessed for the academic year when the servicemember left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Consider, for example, a servicemember who is readmitted to the same program and was assessed tuition and fee charges of $5,000 for the academic year when the servicemember left the institution. The current tuition and fee charges for the program are $7,000, a $2,000 increase over the charges formerly assessed the student. In addition to the original $5,000 in charges, the institution may charge the readmitted servicemember for any portion of that $2,000 increase that will be covered by veterans' education benefits or other servicemember education benefits. If this student receives $1,000 in veterans' education benefits or other servicemember education benefits for tuition and fees, the institution may assess the student tuition and fee charges of up to $6,000. If the student receives $2,000 or more in veterans' education benefits or other servicemember education benefits for tuition and fees, the institution may assess up to $7,000, the tuition and fee charges for other students admitted to the program for the current academic year. This approach will significantly reduce the burden on institutions to track many of the variable charges that were included in the proposed regulation, and will simplify the determinations of what tuition or fee amounts would be subject to the one-year transition period for a returning servicemember. The portion of tuition and fees that are subject to this temporary restriction may also be reduced or eliminated by other policies set by the institution, or under State law, but the Federal requirement will provide a consistent base line for all institutions in every State and serve the purpose intended by this provision in the law.

We agree that students who are not informed of any increase in tuition and fee charges for subsequent years may have unrealistic expectations of the total cost of the program. We would expect that an institution would actively inform affected servicemembers upon readmission of any subsequent increase and the total expected charges for the program (an institution is required to make this information available at all times and include it in its annual distribution of institutional and financial information to all enrolled students in accordance with § 668.41(c) and (d)). To the extent that this temporary restriction on the amount of tuition and fees for returning servicemembers is a benefit not provided to the other students at an institution, it is provided under the law to ease the transition back to the institution for the returning servicemembers. We also believe that this provision will not create conflicts for benefits provided to other servicemembers under the GoArmy education program.

Although we appreciate that current institutional billing software may not easily accommodate affected servicemembers, we believe that any burden incurred by an institution that must manually process such a student is outweighed by the benefit to the returning servicemember. We also believe that limiting the covered costs to tuition and fees significantly simplifies this provision for institutions.

In accordance with § 668.18(a)(2)(iv), an institution may not charge a returning servicemember for additional classes offered by the institution that are prerequisites for the program. The institution does not have to readmit such a servicemember if the institution can demonstrate that providing the classes at no cost places an undue hardship on the institution. If new classes are required for the program and those classes are taken by the servicemember in the academic year in which he or she returns, the institution may not charge the additional tuition and fees for those programs unless doing so does not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when he or she left the institution, or there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. In requiring an institution to provide, if necessary, refresher courses at no extra cost, we did not intend to preclude an institution from collecting funding from other assisting agencies to cover those expenses. Also, we note that any reasonable efforts an institution must make to help the student become prepared to resume the program, or to enable the student to complete the

program must be provided at no extra cost to the student. We do not agree that requiring an institution to make reasonable efforts to help a servicemember become prepared to resume the program or to enable the servicemember to complete the program at no extra cost, would automatically impose an undue financial hardship and administrative burden on the institution, nor do we agree that, in cases where there is only the normal reasonable progression from one year to the next, rather than any actual change to the program in the servicemember's absence, it is the servicemember's responsibility to retain the knowledge attained in the normal course of educational progression. Again, the goal of these provisions is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a servicemember to return to an institution without penalty for having left because of that service. Holding a servicemember responsible for retaining all knowledge attained through previous attendance of the program would be penalizing the servicemember for having left to serve. ''Reasonable efforts'' are actions that do not place an undue hardship on an institution. An action places an undue hardship on an institution if it requires significant difficulty or expense to the institution. The mere fact that the readmission of a student will create additional expenses or burden to the institution is not enough for an institution to deny a student readmission. The expenses must be significant when considered in light of the overall financial resources of the institution and the impact otherwise of such action upon the operation of the institution. An institution carries the burden to prove by a preponderance of the evidence that the expense or difficulty of readmitting a student would be significant.

Changes: Section 668.18(a)(2)(iii)(E) is revised to provide that, for a servicemember who is readmitted to the same program, an institution will be considered to have admitted the servicemember with the same academic status if, for the first academic year in which he or she returns, the institution does not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when the student left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Proposed § 668.18(a)(2)(iii)(F), which would have required an institution to waive charges for previously purchased equipment, is removed. Section 668.18(a)(2)(iv)(A) has been revised: (1) To make clear that any reasonable efforts an institution must make to help the servicemember become prepared to resume the program, or to enable the servicemember to complete the program must be provided at no extra cost, and (2) to make clear that those efforts must be provided at no extra cost to the student, to permit an institution to collect from other entities for costs associated with making such reasonable efforts. The definition of *undue hardship* in § 668.18(a)(2)(iv)(C)(*2*) is amended to clarify that difficulty and expenses must be significant when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

Comments: One commenter asked what would be required of an institution to ''promptly readmit'' an affected servicemember if the program to which the servicemember was previously admitted is offered infrequently, or is no longer offered. One commenter asked how long a servicemember may delay readmission to an institution by requesting to be readmitted at a later date, and at what point the institutional charges would be locked in. The commenter also questioned whether the unusual circumstances under which an institution may admit a servicemember at a date later than the next class or classes in the program pertain to the institution or just to the servicemember.

Discussion: If the program to which the servicemember was previously admitted is no longer offered, § 668.18(a)(2)(iii)(A) requires the institution to admit the servicemember to the program that is most similar to that program, unless the student requests or agrees to admission to a different program. An institution readmits a servicemember ''promptly'' if, in accordance with § 668.18(a)(2)(ii), the institution readmits the servicemember into the next class or classes in the program beginning after he or she provides notice of his or her intent to re-enroll, unless the servicemember requests a later date of readmission or unusual circumstances require the institution to admit the servicemember at a later date.

These regulations presume that a returning servicemember who provides notice of his or her intent to reenroll at an institution plans to do so soon after providing such notice. The provision that an institution must admit a returning servicemember to the next class or classes in the student's program unless the student requests a later date of admission was included to ensure that an institution could not delay a servicemember's readmission until, for example, the next semester if classes in the student's program were offered during the upcoming semester. However, the regulations do not preclude the returning servicemember from deciding that a later admission date, such as the next semester, is acceptable. No matter when the student actually resumes his or her program, if the returning servicemember is within the window of eligibility in § 668.18(c)(iii), the requirements of this section apply. Thus, for the first academic year in which the servicemember returns, the institution cannot increase the tuition and fee charges above the prior amount the servicemember was or would have been assessed for the academic year when the servicemember left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Unusual circumstances under which an institution may admit a servicemember at a date later than the next class or classes in the program may pertain to the institution or to the servicemember. There are a number of factors an institution may consider when determining whether unusual circumstances require a later date of readmission, such as the length of any necessary retraining or intervening changes in the circumstances of the institution. State laws or requirements (including any local law or ordinance) or institutional requirements that restrict enrollment, due to class size, for example, or otherwise conflict with the requirements of this section are not ''unusual circumstances'' as such laws and requirements are superseded by the requirements of this section for the initial enrollment period. Institutions should take reasonable steps to resolve such restrictions as soon as possible to come into compliance with those provisions.

Changes: None.

Non-Title IV Revenue Requirement

Compliance Audits and Audited Financial Statements (§ 668.23)

Comments: A few commenters asked the Department to clarify the proposed requirement in § 668.23(d)(4) under which a proprietary institution must disclose in a footnote to its audited financial statements the 90/10 revenue percentage and the components of that percentage. The commenters suggested

that the Department specify that the reference in the regulations to Federal revenue means Title IV, HEA revenue and confirm their understanding that an institution must disclose: (1) The dollar amount of the numerator and denominator of the 90/10 ratio; (2) the dollar amount of the temporary relief attributed to institutional loans under the Net Present Value (NPV) calculation; and (3) the amount of loan funds that exceed the loan limits in effect before ECALSA that are treated as non-Federal revenue in the denominator of the 90/10 ratio.

Discussion: Under proposed § 668.23(d)(4), a proprietary institution would have to disclose, by source, the amount of Federal and non-Federal revenue the institution included in its 90/10 calculation. We are amending the regulations to clarify that ''source'' means the individual categories of revenues identified in Appendix C to subpart B of part 668. To calculate its 90/10 percentage, an institution would have to compile the information detailed in Appendix C, particularly the aggregated and adjusted amounts in section 2. We therefore believe that it is reasonable to require the institution to disclose this information. Given the added complexities that come from these additional categories of revenue, disclosing the institution's calculation will simplify the presentation in the financial statements and facilitate the review of that information by the Department.

Changes: Section 668.23(d)(4) is amended to provide that a proprietary institution must disclose in a footnote to its audited financial statements, the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of Appendix C to part 668.

Revenue Generated From Programs and Activities (§ 668.28)

Comments: One commenter asked the Department to clarify whether the revenue from students taking a course offered by an institution as part of an eligible Title IV, HEA educational program counts for 90/10 purposes if the students are taking the course to prepare for an industry recognized credential or to transfer to another institution. For example, students that are not enrolled in a Title IV, HEA-eligible program take an Accounting 400 course, normally offered as part of a Title IV, HEA-eligible accounting program, as a refresher course to sit for the Certified Public Accounting exam or to transfer the credits from the course to another institution.

Discussion: An institution may count the revenue described by the commenter as long as the course or program is offered for the purpose of preparing students for taking an examination for an industry recognized credential, or for any other purpose described in § 668.28(a)(3)(iii) that would otherwise qualify the revenue from that course or program to be included in the 90/10 calculation. However, payments from a student taking the class for transfer credits would not count as revenue because the student is not taking the class for any of these purposes. An institution should make sure that it appropriately documents any revenue the institution includes from these classes in its 90/10 calculation.

Changes: None.

Revenue Generated From Institutional Aid (§ 668.28)

Comments: A few commenters asked the Department to clarify whether installment sales contracts are considered to be loans made to students under § 668.28(a)(5)(i). Other commenters noted that funds are not advanced to a student under an installment sales contract, and funds are not paid in full to a student's account. Rather, an installment sales contract is paid over time by the student to the institution. As a result, the commenters concluded that installment sales contracts should not be treated as loans under the NPV formula.

Some commenters asked for clarification of the preamble discussion (74 FR 42390) regarding the disposition of third-party loans made to students that are subsequently acquired by the institution.

Other commenters urged the Department to reconsider the provision in § 668.28(a)(5)(iv) that a tuition discount is a form of a scholarship that must be disbursed from a restricted account with funds from an outside source. The commenters stated that treating a tuition discount in this way is inconsistent with the intent of the HEOA and would encourage students to incur more debt.

A few commenters asked the Department to clarify that payments made by students on financing arrangements that do not qualify as institutional loans count as cash collected by the institution for 90/10 purposes.

Discussion: An installment sales contract was included in the proposed regulations because we believed that it could be structured to satisfy all of the conditions of an institutional loan that were set forth in proposed § 668.28(a)(5)(i). However, although we noted in the preamble to the NPRM (74 FR 42389) that, to be included in the NPV calculation, an installment sales contract that would be classified as an institutional loan would have to be credited in full to the student's account, this condition was not included in the proposed regulations. To address the confusion reflected in the comments over the qualifying conditions for institutional loans, and the general public view that a typical installment sales contract does not provide for funds to be credited to a student's account, we agree to remove installment sales contracts from this section of the regulations.

With regard to a loan made by a third party to a student at an institution, in the normal course, the proceeds of the loan would be credited to the student's account, and the amount credited that paid for tuition and fees not covered by Title IV, HEA aid would count as non-Title IV, HEA revenue in the 90/10 calculation. If the institution made the same loan itself, it would only be permitted to count the NPV of the loan in the 90/10 calculation. In both cases the institution has credited loan proceeds of the same value to the student's account but the institution would derive a greater benefit for 90/10 purposes from the loan that was made by the third party. For example, assuming the loan proceeds from a third party pay $1,000 for tuition and fees not covered by Title IV, HEA aid, the entire $1,000 is counted as non-Federal revenue for 90/10 purposes. If the institution made the same loan, the amount of funds counted as non-Federal revenue would be less because of the NPV calculation. For instance, if the institution uses the simpler alternative NPV approach, the amount of the non-Federal revenue would be $500 or 50% of the loan. This different treatment of the loan proceeds is based upon which party is making the loan to the student without transferring it afterwards to, or from, the institution. These provisions are not intended to permit an institution to arrange with a third party to transfer student loans after they are made in order to distort the way the revenue from those loans is treated under this provision. To equalize the outcome between an institution and a third party making and purchasing a loan, an institution that purchases a student loan must treat it for 90/10 purposes as if the institution made the loan itself.

Similarly, if an institution makes a loan and transfers it to a third party, the Department would not view that loan as a loan that could be included in any NPV calculation pursuant to section 487(d)(1)(d)(III) of the HEA. That section

requires a loan that is included in the NPV calculation to be subject to regular loan repayment and collection. Any institutional loan that is sold to a third party within a year of when it was made must be treated for 90/10 purposes as a loan made by a third party. The amount the institution may count as non-Federal revenue may not be more than the amount paid to the institution for that loan, less any amount the institution agrees to pay the third party if the loan goes into default or otherwise triggers a contingent payment by the institution. Consistent with the Department's current treatment of recourse loans and the requirement to use the cash basis of accounting, the institution must adjust its 90/10 revenue for any such payment on an institutional loan in the fiscal year when the payment is made.

We disagree with the commenters that the proposed regulations regarding tuition discounts are inconsistent with the intent of the law. The regulations simply reflect section 487(d)(1)(D)(iii) of the HEA by specifying that an institution may include scholarships as revenue if the scholarships are disbursed from an established restricted account and that funds in that account represent designated funds from an outside source or from income earned on those funds. That section of the HEA states that scholarships may be provided by an institution in the form of monetary aid or tuition discounts.

With regard to financing arrangements that are not loans, there is no change in the Department's policy that cash payments made under those arrangement count as non-Title IV, HEA revenue for 90/10 purposes.

Changes: Section 668.28(a)(5)(i) is revised to provide that, to be included as an institutional loan for NPV purposes, a loan made to a student must be credited in full to the student's account.

Net Present Value (NPV)

Comments: Several commenters objected to the provision in § 668.28(b)(2) that an institution may not sell a loan it made to student until the loan is in repayment for at least two years. Although this provision would apply only if an institution chose to use the alternative approach to calculating the NPV of its loans (using 50 percent of loans made as the NPV), the commenters argued that holding the loans for at least two years is contrary to both statutory intent and institutional mission. The commenters reasoned that in response to the loss of availability of private student loans, the NPV approach provided by the HEOA is intended to give an immediate benefit to an institution that had to fill a funding gap itself by making loans to its students. To the second point, the commenters stated that the primary mission of an institution is to provide education and training, not to become a lender or remain in the lending business.

Other commenters agreed with the rationale for the two-year ban on selling loans, but argued that the two-year period was too long and would unfairly impact an institution that provided loan funds to students who are not ''high risk'' and whose loans would perform within commercially acceptable norms. To mitigate this impact, the commenters recommended reducing the ban to one year.

One commenter questioned whether the proposed regulations ensure that the calculation of the NPV for institutional loans takes into account the possibility that institutions do not intend to collect the loans they make to students. The commenter asserted that this practice calls into question an institution's willingness or ability to accurately report estimates of annual payments due, as well as annual payments collected on these loans. The commenter also asked whether institutional loans that default are properly accounted for 90/10 purposes and if the Department has the authority to require, or would require, an institution to disclose information about its loan defaults.

Discussion: As stated in the NPRM (74 FR 42391), we proposed the alternative approach for calculating the NPV as an administrative convenience for an institution that either prefers a simpler method to determine the NPV or does not need the additional non-Federal revenues that might be counted if the NPV formula is used. It is solely up to the institution whether to use this alternative method or the actual NPV calculation. Each approach has costs and benefits that must be weighed by the institution. If the institution believes the alternative approach is too restrictive or somehow not in keeping with its mission, it should use the NPV calculation.

With regard to the comments about an institution's unwillingness to collect the loans it makes, we note that the institution might benefit initially from the NPV calculation, but because its collection rate would decrease significantly if it continues this practice, the institution would derive no benefit from future NPV calculations. We also note that the two-year ban on selling institutional loans, which applies to institutions that choose to use the alternate NPV approach, is necessary to ensure that the Department and other oversight entities have sufficient time to monitor whether the loans are subjected to routine collection efforts.

Changes: None.

Revenue From Loan Funds (§ 668.28)

Comments: A few commenters noted that, although the proposed regulations in § 668.28(a)(6) provide that an institution may count as non-Title IV, HEA revenue the amount of a loan disbursement for a payment period that exceeds the amount a student would have received before the enactment of ECALSA, the regulations did not address how an institution should treat the excess loan funds when a student withdraws during a payment period. The commenters suggested that the excess loan funds should be returned in proportion to the overall loan disbursement for the payment period. Another commenter requested that when a student takes sequential courses within a non-term program, and is charged on a course-by-course basis, the excess loan funds should be attributed within a payment period on a course-by-course basis. In this case, several courses make up the payment period.

Discussion: When some of a student's loan funds are classified as funds in excess of loan limits existing prior to ECASLA, those excess loan amounts are included as revenue from a source other than Title IV, HEA program funds under § 668.28(a)(6) if those excess amounts pay for institutional charges remaining on the student's account after Title IV, HEA funds are applied. The determination of which loan funds are classified as ''post-ECASLA'' funds, *i.e.,* are funds in excess of loan limits existing prior to ECASLA, is generally made on a payment period basis. That is, if a student's loan for the loan period contains a post-ECASLA amount and the post-ECASLA amount is ⅓ of the total loan amount, then each payment period's loan disbursement is generally considered to consist of ⅓ post-ECASLA loan funds and ⅔ pre-ECASLA loan funds. However, if a student takes sequential courses within a non-term program where several courses make up a payment period, and the student is charged on a course-by-course basis, then the determination of which loan funds are classified as post-ECASLA funds may be determined on a course-by-course basis. Under § 668.28(a)(7)(iv), loan funds that are returned pursuant to § 668.22 when a student withdraws from school are excluded from school revenues. The Secretary intends that, when a school determines the amount of loan funds that are excluded from revenues under

§ 668.28(a)(7)(iv), it considers the returned loan funds to be pre-ECASLA loan amounts and post-ECASLA loan amounts based on the ratio that existed for those categories of funds in the student's loan for the loan period.

Changes: Section 668.28(a)(7)(iv) is amended to provide that, in determining the amount of loan funds that are excluded from 90/10 revenues under § 668.28(a)(7)(iv) when a student withdraws pursuant to § 668.22, and the institution returns loan funds from a loan disbursement considered to consist of pre-ECASLA loan funds and loan funds that were in excess of loan limits existing prior to ECASLA, the funds that the institution returns are pre-ECASLA loan amounts and post-ECASLA loan amounts based on the proportion of those loan amounts that existed in the loan disbursement used in the Return calculation. For example, a student's loan disbursement for a payment period is $3,000, and $1,000 represents the funds in excess of loan limits existing prior to ECASLA. The proportional breakdown of the funds returned under the Return calculation is two-thirds pre-ECALSA loan funds and one-third post-ECASLA loan funds.

Application of Funds (§ 668.28)

Comments: A few commenters noted that the proposed regulations did not address how military education benefits are treated for 90/10 purposes. The commenters argued that because students have earned these benefits through employment in difficult and often dangerous conditions, and are free to use the benefits at an eligible institution, the benefits should be treated for 90/10 purposes as earned employment benefits. However, a student receiving these benefits, which are essentially restricted to pay for tuition and fees, may also be fully eligible for Title IV, HEA aid. Consequently, the commenters asked the Department to revise the regulations to provide that military education benefits overcome the presumption that Title IV, HEA funds are used first to pay for tuition and fees.

Discussion: Section 487(d)(1)(C) of the HEA contains the list of funds or sources of aid that overcome the presumption that Title IV, HEA funds are used first to pay for tuition and fees. The Department does not have the authority to expand that list.

Changes: None.

Notification to the Department (§ 668.28)

Comments: Several commenters objected to the proposal in § 668.28(c)(3) that an institution must notify the Department that it failed the 90/10 requirement no later than 45 days after the end of its fiscal year. Some of the commenters stated that there was no reason to shorten the current 90-day notification period. Other commenters argued that because the penalty for failing 90/10 (especially for a second consecutive year) is so severe, an institution should not be required to report unaudited data. According to the commenters, this may result because the small number of independent auditors who are experts in 90/10 calculations may be unavailable to the large percentage of for-profit institutions that have fiscal years ending December 31, because this is time that the auditors would normally be busy doing audit and tax work.

Discussion: We are not persuaded that an institution that knows it is close to failing the 90/10 requirement could not plan for or take the steps necessary to engage an audit firm in time to meet the 45-day reporting deadline.

Changes: None.

Institutional Plans for Improving the Academic Program (§ 668.43(a))

Comments: A few commenters stated that the requirement in the proposed regulations that an institution make readily available to enrolled and prospective students any plans by the institution for improving the academic program of the institution should include the statement in the preamble of the NPRM that an institution is allowed to determine what a ''plan'' is, including when a plan becomes a plan.

Discussion: We agree that including the concept that an institution has the discretion to determine when a plan exists would clarify the intent of the regulations.

Changes: Section 668.43(a)(5)(iv) is amended to clarify that an institution must make readily available to students any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists.

Peer-to-Peer File Sharing and Copyrighted Material (§§ 668.14(b)(30) and 668.43(a)(10))

Comments: A few commenters supported the proposed changes asserting that they represented a fair interpretation of the intent of the statute and would aid institutions in both interpreting and properly following the new statute. One commenter asked whether the requirement that an institution offer, to the extent practicable, legal alternatives to illegal downloading or otherwise acquiring copyrighted material could be satisfied by the institution simply not blocking legal alternatives. One commenter expressed concern that the requirement that, as a part of an institution's plans for combating the unauthorized distribution of copyrighted material, the institution must include the use of one or more technology-based deterrents as well as procedures for periodically reviewing the effectiveness of the plans would be unduly financially and administratively burdensome for institutions.

Discussion: We do not believe that simply not blocking legal alternatives for downloading or otherwise acquiring copyrighted material qualifies as ''offering'' legal alternatives. The requirements of § 668.14(b)(30)(ii)(A) and (B), that an institution must periodically review the legal alternatives and make available the results of the review to its students through a Web site or other means, support the notion that an institution's actions in this area must be active, rather than passive. We note, however, that an institution must offer such legal alternatives ''to the extent practicable.'' Thus, how or whether the institution offers such alternatives is controlled by the extent to which it is practicable for the institution to do so. As stated in the preamble to the NPRM (74 FR 42393), the Department anticipates that individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists of legal alternatives to illegal downloading that may be referenced for compliance with this provision.

The requirement that, as a part of an institution's plans for combating the unauthorized distribution of copyrighted material, the institution must include the use of one or more technology-based deterrents is statutory (see section 485(a)(1)(P) of the HEA) and we do not have the authority to remove this requirement. Moreover, we believe that the requirement that an institution's plans include procedures for periodically reviewing the effectiveness of the institution's plans for combating the unauthorized distribution of copyrighted material is essential for institutions to comply with the requirements in section 485(a)(1)(P) and 487(a)(29) of the HEA.

Changes: None.

Consumer Information (§§ 668.41 and 668.45)

Comment: One commenter suggested that we remove the definition of ''Retention rate'' from the regulations in § 668.41. The commenter stated that it is unnecessary because the regulations already instruct institutions to disclose

retention rates as they are reported to the Integrated Postsecondary Education Data System (IPEDS) and IPEDS provides the definition on its Web site for institutions when they report that information. Of greater importance is the fact that, if the National Center for Education Statistics decides to modify the definition in the future, it would be better for them not to be constrained by having the current definition codified in the regulations.

Discussion: We agree.

Changes: We have removed the definition of ''Retention rate'' from the regulations.

Comments: Although some commenters agreed with some or all of the proposed regulations addressing consumer information disclosures, a number of them objected to the proposed provision in § 668.41(d)(5)(iii) that would require an institution to disclose any placement rates it calculates, noting that, regarding placement, the statute only requires disclosure of information, not an actual rate. The statute addresses the requirement to report information about the ''placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs.'' Because the statute specifically uses the term ''rates'' when it addresses graduation, completion, and retention, but not when it addresses placement, the commenters stated that the reporting of a ''rate'' for placement information exceeds the scope of the statute.

For similar reasons, some of the commenters objected to the requirement to report the methodology that the institution uses in determining placement information, because a methodology would appear to be applicable only to an officially calculated rate. Further, some commenters noted that, although institutions may calculate various placement rates for their own purposes, those rates are not necessarily intended to be disclosed to the public. One commenter added that requiring institutions to report placement rate data that they voluntarily produce for their own purposes (such as for internal assessment of their programs) would be a disincentive to the institution to engage in that activity.

This commenter did, however, support the concept of requiring an institution to make available to students any placement data that are used in advertising, marketing, or recruitment. Noting that some rates might be calculated on individual programs or other subcategories of the institution, several commenters suggested that the requirement to report placement rates that the institution voluntarily calculates should only be applicable to institution-wide placement rates. One commenter noted that reporting placement rates for individual programs is not required by the statute, cannot reasonably be implemented, and is unnecessary. The commenter specifically noted that current regulations addressing an institution's requirement to have a program participation agreement require an institution that advertises job placement rates as a means of attracting students to provide information about its employment and graduation statistics.

A number of commenters stated that the reporting of actual placement rates would be excessively burdensome for institutions and that the burden would outweigh the value of this reporting. A couple of commenters expressed concern that the regulations would force colleges to obtain information from graduates that the graduates are not obligated to provide, resulting in biased responses that would ''taint'' the information made available to students. On the other hand, a couple of other commenters stated that ''when an institution has calculated placement rates, suggesting that it wants to know whether, when, and where its graduates are employed, then it is reasonable to think that the subject is of interest and value to students and prospective students as well, and should be shared with them.'' Finally, although these same two commenters supported removing the words ''upon request'' from the several places in the regulations where institutions are required to make certain information available to students and prospective students, another commenter stated that the Department should not delete those words when describing the institution's responsibility to make job placement information available to its consumers. The commenters who supported removing those words stated that removing them would make it clearer that the consumer information in question must be easily available. However, the commenter who opposed removing those words stated that, because the words were in the HEA, the Department did not have the authority to exclude them from the regulatory language implementing that part of the HEA.

Discussion: The Department believes that, in addressing information dissemination activities, congressional intent was that students and prospective students be provided pertinent information related to an institution's completion, graduation, transfer-out, and placement record. Only when sufficient information is available in these areas can students and prospective students make informed choices about the institution. The statute allows institutions to use placement information that the institution obtains from sources such as alumni and student satisfaction surveys, and it does not mandate that institutions calculate an actual rate for this purpose. However, when an institution has voluntarily calculated a placement rate, regardless of whether it is an institution-wide placement rate or a placement rate of only one or more programs or other subcategories of the institution, and regardless of whether the institution advertises its job placement rates, we believe that it is consistent with congressional intent to have the institution disclose this information to its consumers. Thus, although the regulations do not mandate that the institution calculate a placement rate, when the institution has voluntarily chosen to do so, the regulations require it to provide that information to its students and prospective students. To help ensure that the information is as meaningful as possible, the regulations require that the institution disclose not only the source of the information provided, but the time frames and methodology associated with the calculation or production of the information.

Finally, regarding the exclusion of ''upon request'' when describing the institution's responsibility to make job placement information available to its students and prospective students, the Department notes that institutions typically compile and make the information available on their Web sites, but possibly in paper form as well. Consequently, we view the inclusion of the phrase ''upon request'' to mean that this information is readily available to students who wish to see it. As a matter of course, students coming to an institution's Web site to learn about the institution should be able to find this information, and students inquiring directly may be referred to the Web site or provided with the information on paper.

Changes: None.

Comment: With regard to the disaggregation of completion or graduation rates by receipt or non receipt of certain types of aid, one commenter expressed concern that the wording in § 668.45(a)(6)(ii), which states that ''students shall be considered to have received the aid in question only if they received such aid in the period specified in paragraph (a)(3) of this section,'' would exclude students

who received aid for the first term (the period in question), but who had the receipt of that aid delayed beyond the period in question due to an unanticipated deferral of payment, such as for verification. The commenter stated that receipt of aid in this circumstance would have the same effect on access and enrollment as if the aid were paid in the first term. The commenter expressed hope that the Department's intent was not to have the students listed as not receiving the aid in question.

Discussion: We agree that students who receive aid in a second term that was intended for the first term should be listed in the same category as students who actually received their aid in the first term.

Changes: We have changed the word ''in'' to ''for'' in § 668.45(a)(6)(ii).

Comment: Several commenters expressed concern that recordkeeping and reporting requirements in § 668.45 could serve as a disincentive to institutions to offer a comprehensive transition and postsecondary education program (as addressed in subpart O of the regulations, Financial Assistance for Students with Intellectual Disabilities). The commenters questioned whether these students would negatively affect an institution's completion or graduation rate because students with intellectual disabilities do not typically matriculate and graduate with a regular diploma.

Discussion: Section 668.45 requires an institution to prepare a completion or graduation rate (and sometimes a transfer out rate) for its certificate- or degree-seeking, first-time, full-time undergraduate students. If an institution has a comprehensive transition and postsecondary education program, some of its students with intellectual disabilities who are enrolled in that program may factor into the institution's completion and graduation rate. It is unlikely that they would be part of an institution's transfer out rate. A comprehensive transition and postsecondary education program may be a degree or certificate program, or it may be a non-degree or non-certificate program. Certificate or degree-seeking, first-time, full-time undergraduate students with intellectual disabilities who are enrolled in a comprehensive transition and postsecondary education program will be part of an institution's completion and graduation rate calculations. As with other students, if they complete or graduate from their degree or certificate program within the time frames listed in § 668.45(b), they will be listed. The Department does not believe that first-time, full-time, undergraduate students with intellectual disabilities who are enrolled in a comprehensive transition and postsecondary education program designed to lead to a degree or certificate will necessarily have completion or graduation rates significantly different from first-time, full-time, undergraduate students without intellectual disabilities. Students with intellectual disabilities who are enrolled in a comprehensive transition and postsecondary education program that does not lead to a degree or certificate will not be a factor in an institution's graduation and completion rate.

Changes: None.

Comments: Two commenters noted that removing the reference to paragraph (d) in § 668.48(b) leaves out the exclusion of students who have left school to serve in the Armed Forces, to serve on official church missions, or to serve with a foreign aid service of the Federal Government from the completion or graduation, or transfer-out rate information required by § 668.48.

Discussion: The commenters are correct. The proposal to remove the reference to paragraph (d) and replace it with paragraph (e) was a mistake.

Changes: None.

Campus Safety Provisions

Reporting and Disclosure of Information (§ 668.41(a))

Comment: One commenter requested clarification of what would be considered an ''on-campus student housing facility.'' Specifically, the commenter questioned how this definition should be applied in cases in which there are public-private partnerships or third parties who may own or control property on areas contiguous to the campus or on university-owned property.

Discussion: The Department recognizes that there are a myriad of possible arrangements that an institution may have for housing facilities for students. Regarding whether a particular student housing facility is an ''on-campus'' facility, we refer to the current definition of the term ''campus'' in § 668.46(a). To clarify, any student housing facility that is owned or controlled by the institution, or is located on property that is owned or controlled by the institution, and is within the reasonably contiguous geographic area that makes up the campus is considered an on-campus student housing facility.

Changes: None.

Missing Student Notification Procedures (§ 668.46(h))

Comment: A number of commenters requested clarification of how the proposed requirement in § 668.46(h) relates to requirements under the Family Educational Rights and Privacy Act (FERPA). Under this section, institutions must provide students living in an on-campus student housing facility an option to register a confidential contact person to be notified in the case that the student is determined missing.

Discussion: Although missing student contact information would be considered part of a student's education records under FERPA, section 485(j) of the HEA, as amended by section 488(g) of the HEOA, requires that students be provided the option to register ''confidential'' contact information. This indicates that a student's contact information should receive greater privacy protections than FERPA provides. Under section 485(j) of the HEA, only authorized campus officials and law enforcement officers in furtherance of a missing person investigation may have access to this confidential contact information. We view a student's identification of a contact person pursuant to section 485(j) of the HEA and § 668.46(h) as providing permission for law enforcement personnel to contact the identified individual under the circumstances identified in these statutory and regulatory provisions.

Changes: None.

Comment: Some commenters expressed concern that the proposed notification procedures in § 668.46(h)(2) may lead to unnecessary alarm on the part of parents, guardians, and emergency contact persons, as well as a needless burden on campus and local law enforcement agencies. Specifically, they requested clarification that the notification procedures would only take effect if, after a brief investigation, the missing student report is found to be valid. In addition, several commenters requested clarification about the 24 hour time period requirements associated with the notification procedures, suggesting that an institution's policy statement must explicitly state that the institution must make the notification within 24 hours after an official determination has been made that the student has been missing for 24 hours.

Discussion: The proposed regulations in § 668.46(h)(2) specify that an institution's notification procedures must go into effect within 24 hours after a student has been officially determined to have been missing for 24 hours by the

campus security department or local law enforcement agency, as applicable. This does not preclude an institution from either making a determination that a student is missing before the student has been missing for a full 24 hours or initiating notification procedures as soon as it determines that the student is missing. A brief investigation as suggested by the commenter would presumably be included in this official determination, *e.g.,* authorities could check sources such as Facebook in trying to determine whether the student is missing. We agree, nevertheless, that the regulations could be clearer in delineating the 24 hour time periods.

Changes: Section 668.46(h) is revised to clarify the time frame within which notification must occur.

Comment: A commenter stated that the regulations in § 668.46 were unclear and suggested a new structure.

Discussion: We reviewed the commenter's suggested language, but we continue to believe the current structure is sufficiently clear. This language reflects the tentative agreement reached by the Team V committee during negotiated rulemaking, and the Department wishes to preserve this agreement.

Changes: None.

Annual Fire Safety Report—Definitions of Terms (§ 668.49(a))

Comment: One commenter suggested that the definition of *value of property damage* should be revised to include only the damage to property, furnishings, and equipment that is owned, leased, or otherwise controlled by the institution. The commenter argued that it could be burdensome for institutions to determine the value of property and contents that are owned by third parties and that this information could be deemed private by the other party. In addition, the commenter suggested that institutions should have the option to provide explanatory text and clarifying information for estimates of property damage. The concern was that a high dollar value may create false concern as to the safety on campus, when in reality, a high value could be from damage to a single piece of expensive equipment.

Discussion: The definition of the *value of property damage* applies to an on-campus student housing facility and includes the value of property and the contents within. The Department recognizes that many of the contents on a property may be owned by third parties. However, because the statute requires that information be provided about damage caused by fires in on-campus student housing facilities, this estimate should include the value of property that is not owned or controlled by the institution. Although an institution may not be able to determine the exact value of the contents, it must give the most accurate estimate possible in order to be in compliance with the regulation. With regard to explanatory text, institutions have the flexibility to include additional information in the annual fire safety report. In reporting statistics to the Department, the Web-based collection tool will include space for institutions to include explanatory text for each item that will be viewable on the public Web site.

Changes: None.

Comment: One commenter stated that the definition of *fire* in § 668.49(a) was ambiguous and needed to be clarified. Specifically, the commenter suggested that phrases such as ''open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner'' and ''place'' could be interpreted differently by institutions and, therefore, could undermine the consistency of the definition of ''fire'' for statistical and comparative purposes. Further, the commenter suggested an alternate definition drawn from insurance law that would include the concept of a ''hostile fire,'' or one that includes any combustion that cannot be controlled, escapes from where it was initially set and confined, and that was not intended to exist. The commenter also questioned the feasibility of gathering statistics on each instance of a fire that does not result in injury, death, or property damage, suggesting that reports of insignificant fires will obscure attention to serious fire problems or trends.

Discussion: Section 485(i)(1)(A) of the HEA requires that institutions collect and report statistics on the number of fires in each on-campus student housing facility, and section 485(i)(3) of the HEA further requires that institutions maintain a log of all fires that occur in any on-campus student housing facility. The Department and non-Federal negotiators worked diligently to define the term *fire,* understanding that it is difficult to devise a definition that will cover all of the fires that we intend to be included yet still exclude the ones that we do not. The negotiators reached a tentative agreement on the definition of *fire,* and the Department wishes to preserve this language. We continue to believe that the definition set forth in the proposed regulations can reasonably be interpreted and applied by institutions.

In addition, under the HEA all fires will be included in the institution's statistics and in the fire log. Therefore, the definition of *fire* arguably may not be limited to only fires that result in injury, death, or property damage. Further, as stated in the preamble to the NPRM, an institution's policies regarding fire safety do not affect the classification of whether a fire meets the definition of fire. As an example, one commenter suggested that a candle wick might be a ''place'' that is intended to contain burning, but that student residence hall policies might prohibit candles, rendering the candle wick no longer a ''place'' intended to contain a flame because the candle should not be there at all. However, a candle wick is still a place intended to contain burning, regardless of whether candles are prohibited under an institution's policies. The Department anticipates including additional examples in a revised version of the Handbook for Campus Crime Reporting to provide guidance to institutions in complying with these regulations.

Changes: None.

Annual Fire Safety Report—Statistics (§ 668.49(b) and (c))

Comment: One commenter suggested that an institution should not be responsible for tracking an individual with a fire-related injury who has separated from the university for the purpose of potentially including that individual in the institution's statistics on fire-related deaths. If that individual dies within one year of sustaining injuries as a result of a fire, then the institution may not know whether that individual died as a result of those injuries.

Discussion: The regulations do not require an institution to track an individual that separates from, and is no longer in contact with, the institution. However, the institution is expected to make a reasonable effort to ascertain whether an individual's death is considered a fire-related death, as defined in § 668.49(a). For example, if an individual with fire-related injuries is hospitalized a few miles from the institution, the institution may reasonably be expected to track this person for potential inclusion in the institution's statistics. By contrast, if an individual separates from the institution and travels to another country, the institution may not be expected to track them for inclusion in the institution's statistics.

Changes: None.

Annual Fire Safety Report—Description of Policies (§ 668.49(b))

Comment: One commenter suggested that we revise the language related to the reporting of fire statistics under

proposed § 668.49 to specify that these statistics include fires that are reported to a ''campus fire authority.''

Discussion: Institutions are expected to collect information about, and report on, all fires regardless of whether they were reported to a campus fire authority. Fires may be reported to a variety of authorities at an institution other than a campus fire authority (*e.g.,* to a residence life officer). The intent of the regulations is to include these fires in an institution's statistics and fire log.

Changes: None.

Comment: Two commenters suggested that the Department require that institutions have fire doors and other doors in the path of exit from a fire inspected at least annually and disclose in their annual fire safety report how often the doors are inspected. The commenters noted that proper maintenance and inspection of every fire safety system element is critical to ensure that these elements can function in the case of a fire.

Discussion: We define a *fire safety system* in § 668.49(a) as ''any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire,'' listing elements including, among others, sprinkler systems, fire detection devices, stand-alone smoke alarms, and fire doors and walls as examples of what might be included in a fire safety system. The commenter correctly states that maintenance and inspection of a fire safety system can help ensure that the elements are properly functioning. Institutions are required to describe the fire safety system in each on-campus student housing facility, and an institution may provide information about how often the elements of each fire safety system are inspected or maintained in this description. The Department expects that an institution will adequately maintain the elements of its fire safety systems. However, we do not intend to specify a maintenance or inspection schedule for each of these elements.

Changes: None.

Annual Fire Safety Report—General (§ 668.49)

Comment: One commenter suggested a number of minor changes to a variety of provisions, including:

- Replacing the phrase ''may include'' in the definition of a fire-related injury in § 668.49(a) with the word ''includes'';
- Replacing the words ''faculty, staff'' in the definition of a fire-related injury in § 668.49(a) and in the requirement that an institution include policies regarding fire safety education and training programs in its annual fire safety report in § 668.49(b)(6) with the word ''employees'';
- Replacing the words ''resulting from'' in the definition of a fire-safety system in § 668.49(a) with ''of'';
- Replacing the phrase ''smoke, water, and overhaul'' in the definition of value of property damage in § 668.49(a) with ''smoke and water''; and
- Revising the § 668.49(c)(1)(ii) to read ''The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center.''

Discussion: We agree to make some of these changes. In particular, we agree with the commenter that institutions should include the number of persons who received fire-related injuries, as opposed to the actual number of injuries, as a single person may have more than one injury. We also agree that the term ''employees'' is more precise than the words ''faculty, staff'' and have revised the regulations accordingly.

Changes: We have revised the language in § 668.49(c)(1)(ii) to clarify that the number of injuries refers to the number of people with fire-related injuries. We have also replaced the words ''faculty, staff'' with the word ''employees'' in both § 668.49(a) and § 668.49(b)(6).

Comment: One commenter suggested that we revise § 668.43 to include two additional disclosures specified in the HEOA that require institutions to disclose their policies on vaccination, and information on diversity of the student body.

Discussion: The Department is not addressing all of the self-implementing provisions of the HEOA in these regulations. We intend to publish separate regulations covering these new disclosures.

Changes: None.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Scope and Purpose (§ 668.230)

Comment: One commenter expressed concern that the limit on the amount of time for which a student can receive a Pell Grant would adversely affect the completion time of a student with an intellectual disability because the student may need to spend additional time in remedial or developmental classes. The commenter suggested that the Department waive the cap on the number of Federal Pell Grant awards a student with an intellectual disability may receive.

Discussion: The Federal Pell Grant statutory cap is 18 semesters or 9 years. Because students with intellectual disabilities are not yet enrolled in comprehensive transition and postsecondary programs approved by the Department under these regulations, we do not have any data that suggests that these students will need longer to complete their comprehensive transition and postsecondary programs. For this reason, we believe it is inappropriate to waive the Federal Pell Grant cap for these students as part of these regulations.

Changes: None.

Comment: Two commenters requested that proposed § 668.230 be revised to require the Secretary to waive any rules necessary to ensure that students enrolled in eligible comprehensive transition and postsecondary programs remain eligible for Federal Pell, FSEOG, and FWS program funds.

Discussion: Section 484(s)(3) of the HEA authorizes the Secretary to waive any statutory provision applicable to the Federal Pell Grant, FSEOG, and FWS programs—other than the need analysis provisions in part F of the HEA—as well as any institutional eligibility provisions that the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible may receive financial assistance. While this section of the HEA authorizes the Secretary to grant the waivers of the sort described by the commenters, it does not require the Secretary to do so. The Secretary generally does not regulate the Department's own procedures.

Changes: None.

Definitions (§ 668.231)

Comment: A few commenters expressed concern that the proposed regulations do not sufficiently convey the importance of employment as a desired outcome for students with intellectual disabilities who enroll in eligible comprehensive transition and postsecondary programs.

Discussion: We agree with the commenters that gainful employment is an important outcome for students with intellectual disabilities participating in comprehensive transition and postsecondary programs. In fact, the Department has a long history of providing national leadership for, and administration of, programs that develop and implement comprehensive and coordinated programs of vocational rehabilitation, supported employment and independent living for individuals with disabilities, through services, training and economic opportunities, in order to maximize their employability, independence and integration into the workplace and the community.

We believe that the regulations sufficiently ensure that the comprehensive transition and postsecondary programs approved by the Department will focus on ensuring that enrolled students will be prepared for gainful employment. Specifically, in the definition of the term comprehensive transition and postsecondary program in § 668.231, paragraph (a)(3) provides that the program is one that is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment. Under § 668.232(a), an institution applying to offer a comprehensive transition and postsecondary program as an eligible program under title IV of the HEA must provide to the Secretary a detailed description of that program, including a description that addresses all of the components of the program, as defined in § 668.231. Because § 668.231(a)(3) specifically references that a comprehensive transition and postsecondary program is one that is designed to prepare enrolled students for gainful employment, the detailed description required under § 668.232(a) must include a description of how the program meets this definitional requirement. We, therefore, believe that the regulations sufficiently ensure that any comprehensive transition and postsecondary program will focus on the outcome of gainful employment for students participating in these programs.

Changes: None.

Comment: Two commenters requested clarification of how half-time participation for students with intellectual disabilities should be determined, specifically, whether ''half-time'' is based on real time or credit hours, and whether it is calculated per semester or across the length of the program. In a related issue, commenters also suggested that the proposed regulations place too much emphasis on the academic portions of the program, arguing that the half-time integration criterion should not be linked exclusively to coursework and internships but should be expanded to include outside activities.

Discussion: Section 668.231(a)(5) specifies that a comprehensive transition and postsecondary program is a program that requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of a variety of activities that integrate students with intellectual disabilities into academic contexts with students without disabilities. Institutions have a fair degree of flexibility in determining the meaning of ''half-time participation'' in designing a comprehensive transition and postsecondary program: It may be reasonably based on real hours, credit hours, or a combination of the two, and it may be calculated across the span of the program or by term, as long as an institution clearly explains in its application to add an eligible program how this will be determined.

With regard to the comments stating that the proposed regulations place too much emphasis on the academic portions of the program, we disagree. Section 668.231(a)(5) only requires that the program require enrolled students to have at least one half of their participation in the program focus on academic components. We fully expect that the remaining portion of the program will consist of other activities that include having enrolled students with intellectual disabilities participate with students without disabilities in such non-academic settings as clubs, organizations, service projects, or other university or community life activities.

Changes: None.

Comment: A few commenters expressed concern that the proposed definition of a *student with an intellectual disability* in § 668.231(b) does not exist in the Individuals with Disabilities Education Act (IDEA). Specifically, several commenters asked which students would be considered students with intellectual disabilities under the HEA.

Discussion: Under § 668.231(b), a *student with an intellectual disability* is defined as a student with mental retardation or a cognitive impairment characterized by significant limitations in intellectual and cognitive functioning and adaptive behavior, as expressed in conceptual, social, and practical adaptive skills, and who is currently, or was formerly eligible for special education or related services under the IDEA. The Department recognizes that disabilities other than mental retardation, such as certain forms of autism and traumatic brain injury, may be considered intellectual disabilities. Under § 668.233(c), a student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under subpart O of part 668 (Financial Assistance for Students with Intellectual Disabilities) if the institution that offers the eligible comprehensive transition and postsecondary program obtains a record from a local educational agency (LEA) that the student is or was eligible for special education and related services under the IDEA. This section clarifies that if that record does not specifically identify the student as having an intellectual disability, the institution must review all documentation obtained, such as a documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or a record of the disability from an LEA or State educational agency (SEA), or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability. Ultimately, the institution determines whether a student meets the definition of a student with an intellectual disability for the purposes of this subpart.

Changes: None.

Comment: Many commenters disagreed with the requirement that a student with an intellectual disability must have gone through the formal IDEA eligibility process to be eligible for Title IV, HEA program assistance. They argued that the Conference report indicates that Congress intended to include students who were home-schooled or went to a private school in the definition of a student with an intellectual disability. The commenters further suggested that if the Department maintains its position that only students who have gone through the formal IDEA eligibility process are eligible for Title IV, HEA program assistance, then the Department should issue guidance and alerts to States, LEAs, students, parents, parent training centers, and advocacy organizations, reminding them that the IDEA's Child Find and Free Appropriate Public Education (FAPE) in the Least Restrictive Environment requirements apply to all individuals who are still at an age at which they could receive special education services in their State.

Discussion: As discussed in the preamble to the NPRM, we interpret the statute as providing that a student who has not gone through the formal IDEA eligibility process does not meet the definition of a student with an intellectual disability. Specifically, section 760(2) states that a student with an intellectual disability means a student who ''is currently, or was formerly, eligible for a FAPE under the IDEA.'' While the Department does not wish to exclude students who have not gone through this process, we do not believe the statutory language permits the Department to make these students eligible. We encourage students to obtain an IDEA eligibility determination

while they are still age-eligible for IDEA services. The Department will continue to remind States and LEAs of their responsibilities under the IDEA, including under the child find provision in section 612(a)(3), that they locate, identify, and evaluate all children with disabilities residing in the State, including those who are in private schools or are home-schooled.

Changes: None.

Program Eligibility (§ 668.232)

Comment: One commenter suggested that, rather than requiring an institution to apply to have a comprehensive transition and postsecondary program for students with intellectual disabilities approved by the Department for Title IV, HEA funding, the Department simply require the institution to provide assurances that it offers a program that meets the criteria of a comprehensive transition and postsecondary program for students with intellectual disabilities. The commenter argued that this would provide a more streamlined application process. The commenter also noted that the HEOA authorizes a new model demonstration program and a coordinating center that will enable the Department to gather information on best practices and to work to develop model accreditation standards for these programs.

Discussion: The process for adding a comprehensive transition and postsecondary program to the list of eligible programs at an institution should not pose a large burden on institutions, because it will be part of the same process an institution now uses to notify the Department of any new program it seeks to include as an eligible Title IV, HEA program. As far as the model demonstration program and coordination center, the Department has a current National Institute of Disability and Rehabilitation Research center evaluating promising practices in this area.

Changes: None.

Comment: One commenter requested that the Department clarify whether only currently existing comprehensive transition and postsecondary programs can be eligible for Department approval under § 668.232. The commenter asked if any comprehensive transition and postsecondary program offered by an institution is an eligible comprehensive transition and postsecondary program.

Discussion: An institution may submit to the Secretary for approval under § 668.232 a comprehensive transition and postsecondary program that it currently offers or a program that it is ready to implement. The Secretary will consider for approval any comprehensive transition and postsecondary program that meets the definitional requirements in § 668.231(a) for which an institution submits an application in accordance with § 668.232. There are currently no comprehensive transition and postsecondary programs approved by the Department.

Changes: None.

Comment: Commenters suggested that we add a new provision in § 668.232 to require an institution to include in its application for approval of a comprehensive transition and postsecondary program, a description of how students with intellectual disabilities are socially and academically integrated into the campus community to the maximum extent possible.

Discussion: We do not believe that the suggested language is necessary. Section 668.232(a) requires that institutions provide a detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231, in their application for approval by the Department. One of those elements, in § 668.231(a)(6), specifies that a comprehensive transition and postsecondary program must provide students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities. To comply with these regulations, an institution applying to add an eligible comprehensive transition and postsecondary program must address this element by explaining how its program will ensure that students with intellectual disabilities are integrated socially and academically with students without disabilities.

Changes: None.

Comment: One commenter asserted that the concept of a program is different in special education than it is in higher education in that, in the special education context, a program is typically an individualized set of services and supports designed for a single student. This commenter stated that a set of services and supports designed for a single individual student to participate in regular college courses, internships, and the like should constitute a comprehensive transition and postsecondary program. The commenter questioned whether the Department would approve such a comprehensive transition and postsecondary program for a single student, and, if so, whether it would be necessary for each individualized set of services and supports to be approved by the Department as a separate program. The commenter believed that, as long as a basic structure of support is in place for these programs, the services may be individualized to meet the needs of a single student or a group of students and that the institution should only be required to apply once for the ''basic'' program structure, and then be able to offer individual variations of the program as needed to individuals without having to reapply for program eligibility for each version of the program.

Discussion: In general, an institution must demonstrate in its application that its comprehensive transition and postsecondary program satisfies the definitional criteria in § 668.231(a). An institution may have one, or more than one, comprehensive transition and postsecondary program. A program may be for only one student or for a group of students, but each program must be approved by the Department. To be clear, the Department will not approve a generalized structure that can later be modified by the institution to be a different program for specific students. That said, once a program is approved, it can be modified slightly for different students. For example, a program approved under § 668.231 may require a specific number and type of courses, along with other program requirements, but that does not mean that each student in that program will take exactly the same courses. Much like the variation in any student's curriculum that results from individual choices in elective coursework and required academic areas within a program, individual students enrolled in an approved comprehensive transition and postsecondary program may end up taking some different courses. All such courses must be part of the same approved program or part of a separately approved program.

Changes: None.

Comment: One commenter suggested that if a student with an intellectual disability is dually enrolled in an LEA and in a comprehensive transition and postsecondary program, then the State Accrediting Agency, SEA, and other stakeholders should have input into the accrediting process of the comprehensive transition and postsecondary program.

Discussion: The Department is not requiring programmatic accreditation as a condition for approving a comprehensive transition and postsecondary program. Under § 668.232(e), the institution is required to inform its institutional accrediting agency of its comprehensive transition and postsecondary program if the

institution applies to have that program approved by the Department as an eligible program for Title IV, HEA program purposes. The accrediting agency determines what it does with that information.

Changes: None.

Comment: One commenter asked how accreditation status was determined when an institution and a non-profit agency share responsibility for providing and operating a comprehensive transition and postsecondary program through a formal memorandum of agreement. The commenter suggested that the accreditation status of the non-profit agency should be considered in the accreditation of the program. Further, under a situation such as this, the commenter requested clarification as to whether Title IV, HEA program assistance could be applied toward the costs for services and fees provided by both the institution and the non-profit agency.

Discussion: Only an institution participating in the Title IV, HEA programs may offer an eligible *comprehensive transition and postsecondary program,* as that term is defined in § 668.231(a). For this reason, the Department will take into account only the institution's accreditation status in approving a comprehensive transition and postsecondary program. The accreditation of the non-profit agency would not have an impact on the eligibility of the program. Under § 668.5, an eligible institution may contract out a portion of the eligible program through a written arrangement with another eligible institution, an ineligible institution, or an ineligible organization to provide the educational program. Section 668.5(c)(3) of the regulations specifies that—

(1) The ineligible institution or organization may not provide more than 25 percent of the educational program; or

(2) The ineligible institution or organization may provide more than 25 percent but not more than 50 percent of the educational program, as long as—

(a) The eligible institution and ineligible institution or organization are not owned, or controlled by the same individual, partnership, or corporation; and

(b) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the **Federal Register** in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.

In terms of funding, the amount of Title IV, HEA program assistance that a student may receive for enrollment in a comprehensive transition and postsecondary program is based on the student's need, which is defined in section 471 of the HEA as the cost of attendance minus the student's expected family contribution minus any estimated financial assistance received by the student. Need-based aid that a student receives may be used toward any costs in the student's cost of attendance, including those incurred through parts of the program that have been contracted out to a non-profit agency or other institution or organization through a written arrangement with the eligible institution that offers the program.

Changes: None.

Student Eligibility (§ 668.233)

Comment: One commenter questioned whether a student with an intellectual disability would be disqualified from receiving Title IV, HEA program assistance if he or she has a legal guardian.

Discussion: Having a legal guardian would not preclude a student with an intellectual disability from receiving Federal student aid funds. It may, however, affect the student's dependency status, which is taken into account in determining a student's financial need. Therefore, having a legal guardian may affect the amount of financial aid funds for which the student may be eligible.

Changes: None.

Comment: Several commenters asked for clarification on whether a high school student who receives special education and related services can also be enrolled in a comprehensive transition and postsecondary program.

Discussion: It is the Department's longstanding position that a student with a disability may be dually enrolled in secondary school and a postsecondary institution, although such dual enrollment precludes the student from being eligible for Title IV, HEA aid.

The provisions in section 612(a)(2) of the IDEA and 34 CFR 300.110 require States to ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency. This would apply to dual enrollment programs in postsecondary or community-based settings. However, we do not believe that the IDEA, or its implementing regulations, requires public agencies to provide dual enrollment programs in postsecondary or community-based settings for students with disabilities, if such programs are not available to secondary school students without disabilities. In a State that offers dual enrollment programs to secondary school students, a high school student with an intellectual disability, as defined under § 668.231(b), who is receiving special education and related services may be dually enrolled in an eligible comprehensive transition and postsecondary program under § 668.232.

Changes: None.

Comment: Several commenters expressed concern regarding the provision of special education and related services to a student with an intellectual disability who is dually enrolled in secondary school and a comprehensive transition and postsecondary program. The commenters asked whether the LEA would pay for the comprehensive transition and postsecondary program or whether the student with an intellectual disability would apply for Federal Pell, FSEOG and FWS program assistance.

Discussion: Under section 612(a)(1) of the IDEA and 34 CFR 300.101, each State and its LEAs must make FAPE available to all children with specified disabilities residing in the State, in mandatory age ranges. Under 34 CFR 300.17(c) of the regulations implementing Part B of the IDEA, FAPE includes an appropriate preschool, elementary school, or secondary school education in the State involved. Under the IDEA, LEAs are not required to provide FAPE in postsecondary education settings. In general, Part B, IDEA funds could be used for appropriate education services included in an IEP that are provided outside of a public or private elementary or secondary school though, if, under State law, the education would be considered secondary school education.

A student with an intellectual disability is eligible to receive Federal Pell Grant, FSEOG, and FWS program assistance under § 668.233 if the student satisfies the general student eligibility requirements under § 668.32, except for paragraphs (a), (e), and (f) of that section. Section 668.32(b) states that a student is not eligible to receive Federal Pell Grant, FSEOG, or FWS program assistance if he or she is enrolled in elementary or secondary school. In other words, if a student is dually enrolled in a secondary school and an eligible comprehensive transition and postsecondary program, he or she is not eligible for Federal Pell, FSEOG, and FWS program assistance. Therefore,

while an LEA could use Part B, IDEA funds to support a dually enrolled student with a disability's participation in a comprehensive transition and postsecondary program if the services the student received in that program were considered secondary school education under State law and were included in the student's IEP, the student would not be eligible to apply for Federal Pell Grant, FSEOG, and FWS program assistance. The Department will monitor the establishment of these comprehensive transition and postsecondary programs, and may consider at some point in the future using the Secretary's waiver authority under the statute to permit qualifying students who are dually enrolled in these programs to also receive Federal Pell Grant, FSEOG, and FWS program assistance. If the Department were to adopt such an approach, we would provide additional information concerning the procedures and availability of any such waivers at that time.

Changes: None.

Comment: A few commenters requested that the regulations clarify whether the LEA is responsible for monitoring the progress of a student who is dually enrolled in a secondary school and a comprehensive transition and postsecondary program.

Discussion: If a student with an intellectual disability who is dually enrolled in a comprehensive transition and postsecondary program receives services in that program that are considered secondary education in the State and are included in the student's IEP, the SEA or LEA must monitor the student's progress toward annual academic and functional goals, because those entities are responsible, under the IDEA, for ensuring that the services identified in the student's IEP are provided. Additionally, eligible comprehensive transition and postsecondary programs, which operate through institutions, must meet the program requirements in § 668.232, including establishing a policy for determining whether a student enrolled in the comprehensive transition and postsecondary program is making satisfactory academic progress. In all cases, the Department encourages the SEA or LEA and the institution offering the comprehensive transition and postsecondary program to enter into a formal agreement of understanding that identifies what the SEA or LEA will provide to the dually-enrolled student, and what the institution will provide to meet the requirements of an eligible comprehensive transition and postsecondary program, and how the student's progress will be assessed. Furthermore, section 612(a)(12) of the IDEA and its implementing regulations at 34 CFR 300.154 require States to develop and implement interagency agreements or other written mechanisms for interagency coordination to ensure that services necessary to provide FAPE to children with disabilities within the State that are provided or paid for by other public agencies are provided or paid for. These provisions mean that if public agencies of a State operate comprehensive transition and postsecondary programs that dually enroll students who are covered by the IDEA to provide services included in the students' IEPs, the State must ensure that interagency agreements or other written mechanisms meeting these requirements are in place.

Changes: None.

Comment: A few commenters requested that the Department clarify the interaction between the receipt of Title IV, HEA aid and other benefits that the student may receive, such as Medicaid or vocational rehabilitation funding. Specifically, commenters expressed concern that a student's receipt of Medicaid benefits or other benefits may be disrupted due to the student's receipt of Federal Pell Grant, FSEOG, or FWS program assistance.

Discussion: These final regulations implement provisions of the HEA only. They do not attempt to address any overlap between the protections and requirements of the State Medicaid program under Title XIX of the Social Security Act. Additional information concerning eligibility requirements for other programs may be sought from the agency responsible for implementing those programs.

With respect to financial aid available to students under the HEA, a student's financial aid assistance may be affected by aid received under other programs, such as Medicaid. While a student's Federal Pell Grant award would not be reduced based on any other aid received, the amount of FSEOG and FWS program assistance for which a student is eligible is based, in part, on the student's total estimated financial assistance (EFA), as defined in § 673.5(c). A student's FSEOG and FWS awards, when combined with the student's other EFA, may not exceed the student's financial need. Therefore, a student's FSEOG and FWS awards may be affected by other aid the student receives.

Changes: None.

Comment: Several commenters expressed concern regarding the use of a student's summary of academic and functional performance to meet the requirements under § 668.233(c). Commenters stated that a student's summary of academic and functional performance should not serve as acceptable documentation to establish that the student has an intellectual disability.

Discussion: To better prepare for the student's enrollment in a comprehensive transition and postsecondary program, the Department encourages institutions to consider using a student's summary of academic achievement and functional performance (SOP) as described in 34 CFR 300.305(e)(3). That said, the Department recommends that institutions use the SOP only as supplemental information under § 668.233(c).

Section 300.305(e)(3) of the implementing regulations of the IDEA, consistent with section 614(c)(5)(B)(ii) of the IDEA, states that the summary required when a child graduates with a regular diploma or exceeds the age eligibility under State law must include information about the child's academic achievement and functional performance, as well as recommendations on how to assist the child in meeting the child's postsecondary goals. The Department believes that this supplemental information would provide the institution with a better understanding of a student's abilities and limitations in determining an appropriate comprehensive transition and postsecondary program for the student.

Changes: None.

Comment: A few commenters expressed concern that a student's documentation from an SEA under § 668.233(c) might not include terms such as ''intellectual disability'' or ''mental retardation'' and, therefore, may not be useful in establishing eligibility as student with an intellectual disability. One commenter stated that, in its school district, a student's IEP does not include a disability category. The commenter asked how a student's eligibility in this situation would be determined and whether the school district would have to complete an evaluation that states that the student has an intellectual disability. Another commenter asked if a student would need to have a specific diagnosis of intellectual disability to be eligible.

Discussion: The issue raised by these comments is similar to the one addressed in response to comments on § 668.231(b). Section 668.233(c) requires that an institution obtain a record from an LEA that the student is or was eligible for special education and related services under the IDEA, and if

the record does not identify the student as having an intellectual disability, documentation establishing that the student has an intellectual disability. The Department recognizes that documentation from an LEA (an IEP or transition plan, for example) may not state that a student has an intellectual disability. The Department believes that § 668.233(c)(1) and (c)(2) addresses this issue, by requiring the institution to review all documentation obtained to establish that the student has an intellectual disability. Nothing in these provisions, however, requires LEAs to perform or pay for evaluations that they do not need for purposes of meeting requirements of the IDEA.

Changes: None.

Comment: A few commenters suggested that, whenever possible, existing documentation from school records or other sources, such as previous evaluations conducted by qualified professionals from public agencies, be used to determine that the student has an intellectual disability, and that the process for making this determination should be minimally burdensome for students, families, and institutions.

Discussion: During negotiated rulemaking, some negotiators expressed concern that institutions would require updated evaluations that could be costly or cost prohibitive. In the preamble to the NPRM, the Department stated that an institution, as the party responsible for determining students' eligibility for the Federal Pell, FSEOG, and FWS programs, would be allowed to accept the most recent documentation, even if it is more than a few years old. To further clarify, we do not believe it is appropriate to require in these regulations that the documentation submitted by the student have a minimum or maximum age, as long as the information used is the best available under the circumstances. Under § 668.233(c), if the record from the LEA does not state that the student has an intellectual disability, the institution also would have to obtain documentation to establish that the student has an intellectual disability, as defined under § 668.231(b).

Changes: None.

Part 690 Federal Pell Grant Program

Two Federal Pell Grants in an Award Year (§§ 690.67, 690.64, and 690.63(h))

Student Eligibility for a Second Scheduled Award (§ 690.67)

Comments: Several commenters agreed with the proposed regulations that would amend § 690.67(a)(1) to provide that a student would be eligible for a second Scheduled Award if the student has earned in an award year at a minimum the credit or clock hours of the first academic year of the student's eligible program. However, a significant number of commenters objected to the proposed regulations as they would apply to term-based programs. In general, the commenters were concerned that the regulations would unduly limit the benefits to students of two Federal Pell Grants in an award year, would be overly complex and burdensome for institutions to administer, and would create confusion for students due to uncertainty in determining the students' Federal Pell Grants and due to the different eligibility requirements for a second Scheduled Award. The commenters also believed that enabling an individual student to enroll in additional coursework during an award year should be considered acceleration without reference to the program's length. Some commenters proposed that eligibility for payments be determined based on previous eligibility used and without reference to completion of the credit hours of an academic year. Some commenters proposed, as an alternative, for the Department to require that a student successfully complete the hours for which the Federal Pell Grant was paid to qualify for the second Scheduled Award.

One commenter was concerned that the requirements would adversely affect students taking noncredit and reduced credit remedial coursework.

Several commenters questioned the Department's concern that the satisfactory academic progress standards in 34 CFR 668.16(e), as well as the new limitation under section 401(c)(5) of the HEA that a student's lifetime eligibility is limited to nine Scheduled Awards if a student receives a Federal Pell Grant for the first time on or after July 1, 2008, did not provide sufficient minimum standards for ensuring a student's advancement in his or her eligible program. Two commenters recommended revising the satisfactory academic progress requirements as an alternative to the proposed regulations.

Discussion: We agree that the proposed regulations might unduly limit a Federal Pell Grant-eligible student's ability to meet the costs of attending additional courses that would enable the student in an award year to accelerate his or her progress toward program completion and that the final regulations should not impede such acceleration. In addition, we agree that the proposed regulations could be considered complex and burdensome for some institutions to administer. We agree, in principle, with the recommendations of some commenters that payment should be tied to successful completion of the credit or clock hours for which a student has received Federal Pell Grant payments. Based on these comments, we believe it would be appropriate to require that, for a student to be eligible for payments from a second Scheduled Award in an award year, the student must be enrolled in credit or clock hours that were attributable to the student's second academic year. A student in a term-based program would cease to be eligible for a payment from the second Scheduled Award if the student ceased to be enrolled in the credit hours attributable to the second Scheduled Award prior to the date for any recalculation for changes in enrollment status required by the institution's recalculation policies established under § 690.80(b).

The eligibility requirements for a second Scheduled Award in an award year must be different from those for a first award, in that section 401(b)(5)(A)(i) of the HEA requires enrollment on at least a half-time basis to receive a second Scheduled Award. This difference may be disconcerting to some students. However, we believe that students will be able to understand these requirements.

We do not believe the regulations would adversely affect a student enrolled in noncredit or reduced-credit remedial coursework. The student's remedial coursework would be considered in accordance with the requirements for determining equivalence to full-credit coursework under 34 CFR 668.20 when determining the student's eligibility for a second Scheduled Award in an award year.

We do not agree with the commenters concerning the efficacy of the current satisfactory academic progress standards and the new lifetime limit of nine Scheduled Awards in providing a sufficient basis for encouraging a student to accelerate program completion. Some institutions have adopted reasonable standards of satisfactory academic progress that would address our concerns. Others have used the flexibilities and options in the current regulations to fashion institutional standards that may meet the letter of the requirements in 34 CFR 668.16(e) but in our view allow students who are not progressing satisfactorily to continue to receive title IV aid. Because of this variability and our belief that the new lifetime limit for Federal Pell Grants does not provide sufficient encouragement to accelerate program completion, we do not agree with the

suggestions that a payment of a second Scheduled Award may be made without reference to a student's completion of the first academic year in an award year. Further, we believe that relying on current satisfactory progress standards would not be in accord with the student achievement and accountability principles for using additional funds appropriated for Federal Pell Grants under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). We agree with the commenters who recommended that we consider revising the satisfactory academic progress standards and have included this issue as a likely topic in the negotiated rulemaking on program integrity issues that is scheduled to commence on November 2, 2009. Information on this new negotiated rulemaking was published in the **Federal Register** on May 26, 2009 (74 FR 24728) and September 9, 2009 (74 FR 46399), respectively.

Changes: We are revising § 690.67(a)(1) to provide that an institution participating in the Federal Pell Grant Program shall award a payment of a second Scheduled Award to a student in an award year if an otherwise eligible student is enrolled for credit or clock hours that are attributable to the student's second academic year in the award year. As a result of this change, we are also making conforming changes in § 690.67(c) for special circumstances in determining whether a student may qualify for a second Scheduled Award and in § 690.64 as discussed under the heading ''Payment Period in Two Award Years (§ 690.64).''

Transfer Students (§ 690.67(b))

Comments: One commenter supported § 690.67(b) as a straightforward treatment of transfer students. Another believed no provision was needed for transfer students if the Secretary ceased to require that eligibility for payment from a second Scheduled Award be based on completing the hours of the first academic year. One commenter cited examples where the provisions in § 690.67(b) would result in inequitable treatment between continuously enrolled and transfer students. Another commenter believed that we should provide an ''hours-earned'' method as an option under which an institution with the necessary information may determine the credits or clock hours earned in the award year at other institutions that would be applicable to completing the first academic year. The commenter believed that there should also be a limitation on the need to recalculate a student's eligibility based on the receipt of information subsequent to disbursements of a second Scheduled Award. Some commenters believed that the determination of a transfer student's credit or clock hours should be based on the percentage of the student's Scheduled Award used at the prior institution.

Discussion: Based on the Department's revision of § 690.67(a)(1), determining a transfer student's credit or clock hours toward completion of the first academic year in an award year is still required. During negotiated rulemaking, the non-Federal negotiators noted that determination of the actual credits or clock hours earned at other institutions would be burdensome to the institution into which a student transfers and generally would be administratively difficult. To perform a determination of the actual credit or clock hours earned at other institutions, an institution would need to have the necessary information to determine whether credit or clock hours were earned in the current award year, regardless of whether the institution accepted them on transfer. The institution would also be required to resolve ambiguities such as whether the credit or clock hours of a summer payment period were considered earned in the current award year or whether credit or clock hours in a transcript were nonapplicable hours based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

While we recognized that there will be some inequities in applying the assumption method in § 690.67(b), we continue to believe that this method is appropriate for evaluating a transfer student's eligibility when the alternative would be administratively burdensome to an institution. However, we also agree with the commenter who recommended that, if an institution chooses to do so, it may use an hours-earned method to determine the actual credit or clock hours earned at other institutions during the award year.

Under § 690.67(b)(2) an institution that chooses to use the assumption method must determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. These same proportions are used to calculate the percentage of Scheduled Award used by a student. Following the provisions of § 690.67(b)(2) would yield a more accurate determination of the credit or clock hours considered to be transferred than merely applying the percentage of Scheduled Award used.

We agree with the concern regarding the receipt of additional information regarding a student's payments at other institutions subsequent to determining the student's eligibility for a second Scheduled Award and agree that some limitation on requiring a recalculation of prior payments would be appropriate. An institution may correctly make a determination of a student's eligibility for a second Scheduled Award for a prior payment period based on the information available at that time. We do not believe it is necessary to impose the burden of requiring the institution to adjust a determination for a prior payment period that was correctly made during that prior payment period. However, we believe it is appropriate to provide that the institution may, at its option, revise the student's eligibility for a prior payment based the receipt of additional information.

Changes: We are revising § 690.67(b) to provide that an institution may, on an individual student basis, use an hours-earned method for determining a student's credit or clock hours earned at other institutions in an award year as an alternative to the assumption method. We are also clarifying that an institution may, but is not required to, recalculate a student's payment in a prior payment period in an award year if the institution receives information that would change the student's eligibility for a second Scheduled Award in the prior payment period. The institution would be required to take into consideration the new information in determining eligibility for the current payment period if that payment period is in the same award year.

Nonapplicable Credit or Clock Hours (§ 690.67(d))

Comment: One commenter did not support excluding the AP, IB, testing out, life experience, or similar competency measures in determining a student's eligibility for a second Scheduled Award. The commenter believed that the exclusion would be burdensome to administer.

Discussion: We do not agree with the commenter. A student's eligibility for a second Scheduled Award is based, in part, on the student's progress in earning the credits or clock hours of the first academic year in the award year. We continue to believe that this provision ensures that only those credits or clock hours earned in the award year are considered in determining the

student's eligibility. While the provision may create some burden, it is essential to making a valid determination of a student's eligibility for a second Scheduled Award.

Changes: None.

Payment Period in Two Award Years (§ 690.64)

Comments: Several commenters supported the concept of requiring that a payment period scheduled to occur in two award years, a ''crossover'' payment period, be assigned to the award year in which the student would receive the greater payment for the payment period. A significant number of commenters believed these requirements would be administratively difficult to administer. Several commenters believed that the financial aid administrator should continue to have the discretion to assign a ''crossover'' payment period to either award year and should not be required to assign a crossover payment period to the award year in which the student would receive the greater payment for the payment period. The commenters also believed that a financial aid administrator should not be required to reassign the crossover payment period if subsequent information is received that would lead to a higher Federal Pell Grant for a student as required in § 690.64 in the case of students enrolled on at least a three-quarter-time basis. One commenter believed that these requirements mandated that a student must file a Free Application for Federal Student Aid (FAFSA) for a crossover payment period. One commenter believed that a deadline should be established for being required to make reassignments of crossover payment periods.

Several commenters believed that the determination of the higher payment should be made only at the time the Federal Pell Grant is initially awarded or packaged. Some commenters were concerned that increasing a crossover payment would necessitate cancelling all or a portion of a student's loan. One commenter believed the increased payments would lead to overpayments in Federal Work-Study (FWS) assistance. The commenters believed these adjustments in the students' awards would confuse students. Some commenters were concerned that requiring that the crossover payment period be in the second award year would adversely affect a student's eligibility for loans since the institution would be required to place the crossover payment period in the second award year for purposes of awarding FFEL and Direct Loans. Two commenters stated that the award year placement of a student's Federal Pell Grant may adversely affect the amount of the student's State grant aid. Commenters were also concerned that institutions would delay disbursement to students eligible for a higher payment from the second award year until Federal funds were available on July 1 for that year. One of these commenters noted that State law prohibited an institution from advancing funds not yet received. The commenter proposed that, if necessary due to State law, an institution should be allowed to disburse funds at the beginning of a crossover payment period from the first award year to a student eligible for a higher payment form the second award year and then make the necessary adjustments after July 1 to provide the higher payment from the second award year. The commenter believed that this process would ensure funds are available to the student at the start of the payment period but ultimately yield the greater payment. One commenter questioned whether the results of verifying application information could lead to a reassignment of the payment period and adversely affect a student. Several commenters recommended that if a payment must be assigned to the subsequent award year, the Federal Pell Grant should be considered disbursed for purposes of the return of title IV funds under 34 CFR 668.22 even when the student withdraws prior to July 1.

Discussion: We continue to believe that a crossover payment period should be assigned in a way that maximizes a student's eligibility for that payment period even if this causes some administrative difficulties. The Department would consider an institution that delays disbursing funds from the second award year until July 1 of that year, to be in compliance with these requirements if the institution disbursed funds at the beginning of the crossover payment period from the first award year to a student eligible for a higher payment from the second award year and then made the necessary adjustments after July 1 to provide the higher payment from the second award year as soon as funds were available on July 1. There is no requirement that a student submit a FAFSA for both award years to receive payment for a crossover payment period. We believe these benefits will be understood and appreciated by students. Further, with the changes made by the Department in these final regulations to § 690.67(a)(1), assigning a crossover payment period to the subsequent award year would generally no longer adversely impact a student's ability to establish eligibility for a second Scheduled Award in that subsequent year.

Contrary to the concerns expressed by some commenters, one of the major additional benefits for students of this requirement in § 690.64 is a reduction in student borrowing. The increase in the student's Federal Pell Grant payment would increase the student's estimated financial assistance and thus reduce the student's need for loan funds for the payment period. Also, while it is unlikely that a combination of an increased Federal Pell Grant payment and FWS would result in a need to reduce the FWS award as one commenter indicated, no overaward for earnings from work would be created in the very limited cases in which a student may need to have FWS assistance canceled.

We do not agree with the commenters who were concerned that requiring that the crossover payment period in the second award year would adversely affect a student's eligibility for loans. The commenters believed that the institution would be required to place the crossover payment period in the new award year for purposes of awarding FFEL and Direct Loans. Under the requirements of the Title IV, HEA programs, the award year assignment of a student's Federal Pell Grant has no affect on the award year assignment of the student's other Federal student assistance, including loans. The amount of the Federal Pell Grant is estimated financial assistance for determining the need in the other programs. Institutions should ensure that their information technology systems provide for this necessary flexibility to ensure that students receive appropriate assistance in each award year. System requirements should not be the basis for limiting the assistance for which a student is eligible.

We agree with the commenters that, in some limited instances under the current award regulations for State grant programs, a student's State grant may be reduced because of an increase in the student's Federal Pell Grant. We do not believe that we should use these limited circumstances as the basis for denying a student a higher Federal Pell Grant crossover payment. We believe that the States can make the necessary adjustments to their programs to maximize the overall aid available to these needy students.

We do not agree that a reassignment of the payment period as a result of verification of application information would adversely affect a student. If, as a result of verification of application information, a student's EFC and Federal Pell Grant eligibility changes for

an award year, that result would be taken into consideration in assigning a student's crossover payment. If, for example, the crossover payment period were assigned to the first award year because it yielded the maximum Federal Pell Grant payment but verification of application information resulted in a lower EFC and increased Federal Pell Grant eligibility for the second award year, the crossover payment period would be reassigned to the second award year.

With regard to the return of title IV funds, a disbursement for the subsequent award year may be made prior to July 1 using institutional funds rather than waiting to disburse when the subsequent award year Federal funds become available on July 1. Also, notwithstanding whether an institution chooses to make such a disbursement, the return of title IV funds takes into consideration both funds that were disbursed as well as funds that could have been disbursed.

Based on these comments, we will establish deadlines specifically for these determinations through publication of a **Federal Register** notice. We will clarify the deadline when the receipt of information would require reassignment for a higher crossover payment and a deadline for a subsequent period when the receipt of information would support, but not require, an institution to make reassignments for a higher crossover payment. We expect to set the initial deadline based on the last date for submitting Student Aid Reports or Institutional Student Information Records for the first award year or a similar date as appropriate. During the subsequent period of time prior to the second deadline, an institution may establish such policies concerning reassignment of the crossover payment period as it determines best meet the needs of its students and the institution.

Changes: We are revising proposed § 690.64(b) to require that, regardless of a student's enrollment status, the crossover payment period must be assigned to the award year in which the student would receive the greater payment for the payment period at the time the student's Federal Pell Grant is initially calculated. We are also clarifying the deadlines by which an institution must take into account any information that changes a student's payment by providing that an institution must make a reassignment to the award year providing the greater payment based on any additional information received by a deadline that the Secretary establishes through publication in the **Federal Register** for each award year. We are further providing that an institution may make, but is not required to make, a reassignment if additional information is received after the date established for required reassignments and not later than the deadline date for the first award year for administrative relief based on unusual circumstances that the Secretary establishes through publication in the **Federal Register** for each award year.

We are also removing proposed § 690.64(a)(2) and (c). Section 690.64(a)(2) provided that a student may request a determination concerning the assignment of a crossover payment period, and § 690.64(c) required the assignment of a payment period with more than six months scheduled to occur within one award year to be assigned to that award year. These proposed provisions are no longer relevant under these revised requirements.

Part 692—Leveraging Educational Assistance Partnership Program Grants for Access and Persistence Program (Subpart C of Part 692 Consisting of §§ 692.90 Through 692.130)

Recruiting Eligible Students (§ 692.101(b)(2))

Comment: One commenter was concerned that early information and intervention, mentoring, or outreach programs (early intervention programs) are integral to the GAP Program, and the commenter believed that it would be difficult to identify students participating in early intervention programs who would be eligible for a LEAP Grant under GAP. The commenter believed that under current privacy laws identifying students who have participated in an eligible early intervention program and matching them with their FAFSA submissions and then with a GAP-participating postsecondary institution would appear to be impossible. The commenter questioned whether these requirements could be redefined to indicate that if the State partners with itself or another organization to provide early intervention programs at a particular high school that anyone who graduates with that high school cohort would be considered a ''participating student.'' The commenter believed this definition would remove the requirement of having to have personally identifiable information for each participant. The commenter also noted that additional guidelines would be needed for home-schooled students or those who participate in an early intervention program through a non-school-based program.

Discussion: To the extent that the privacy provisions of FERPA (34 CFR part 99) apply to the particular circumstances of a State agency and other GAP participants in the State, the Department will provide technical assistance on any issues raised by the applicability of FERPA on a case-by-case basis.

Changes: None.

Executive Order 12866

1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Therefore, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

As discussed in the NPRM, these regulations are needed to implement provisions of the HEA, as amended by the HEOA, related to changes to the Federal grant and work-study programs, campus safety, educational programs for students with intellectual disabilities, peer-to-peer file sharing and copyright infringement, teach-outs, readmission of servicemembers, and non-title IV revenue.

Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion to each regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in this preamble to the final regulations under the *Discussions* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, these final regulations reflect specific HEOA requirements, in many cases using language drawn directly from the statute, and minor revisions in response to public comments. In most cases, these revisions were technical in nature and intended to address drafting issues or to provide additional clarity. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Benefits

As discussed in the NPRM, benefits provided in these regulations include greater transparency about consumer information and campus safety for prospective and current students at institutions participating in the Federal student financial assistance programs, copyright infringement policies, requirements for readmission of servicemembers, explanation of extenuating circumstances under which TEACH Grant service obligations may be excused, requirements for programs serving students with intellectual disabilities, and additional guidelines for Federal grant and work-study programs. It is difficult to quantify benefits related to the new institutional requirements, as there is little specific data available on consumers' use of such information and the effect of the other provisions. In the NPRM, the Department requested comments or data that would support a more rigorous analysis of the impact of these provisions. No comments or additional data were received.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these provisions result in net costs to the government $1,644 million over years 2010–2014.

Costs

As discussed extensively in the *Regulatory Impact Analysis* of the NPRM, many of the statutory provisions implemented though these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. In total, these changes are estimated to increase burden on entities or individuals participating in the Federal student assistance programs by 253,718 hours. Virtually all this increased burden is associated with institutions, with 80 percent related to two provisions: peer-to-peer file sharing and the award of two Pell Grants in a single award year. An extremely small amount—384 hours—is associated with students. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $4.7 million.

Given the limited availability of data underlying these burden estimates, in the NPRM the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations, especially the provisions related to peer-to-peer file sharing and administering two Pell Grants in one year. No comments or additional data were provided.

Net Budget Impacts

HEOA provisions implemented by these regulations are estimated to have a net budget impact of $297.4 million in 2010 and $1.6 billion over FY 2011–2014. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

The budgetary impact of the regulations is entirely driven by statutory changes involving the provision of two Pell Grants in a single award year. The Department estimates almost no budgetary impact for other provisions included in these regulations. There is no data indicating that the extensive new requirements for disclosures for student loan program participants will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data Sources

As noted in the NPRM, because these regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these regulations do not exist. Costs have been quantified for five years. In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. The estimate for the period from 2010 to 2014 uses OMB discounting methodology and discount rates of seven and three percent. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges and teacher loan forgiveness payments).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$281 (7% discount rate). $277 (3% discount rate).
From Whom to Whom?	Federal Government to Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

As discussed in more detail in the *Regulatory Flexibility Act* section of the NPRM, data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 2,660 institutions participating in the Federal student assistance programs meet the definition of ''small entities.'' More than half of these institutions are short-term, for-profit schools focusing on vocational training. Other affected small institutions include small community colleges and tribally controlled schools. The Department estimates that total burden on small institutions from these regulations will be thirty-nine hours or less. Burden on institutions associated with these regulations is largely associated with the requirements to establish systems to limit illegal peer-to-peer file sharing, readmission requirements for servicemembers, and new disclosures related to graduation rates, retention rates, fire safety, and campus safety. In each of these cases, the Department believes the new provisions do not represent a significant burden on a large number of schools. Provisions related to peer-to-peer file sharing, for example, only affect schools that provide students with school-maintained and operated internet services; many small institutions lack the resources or need to provide such services and so will not be affected by the provisions. For those that will be affected, the Department is encouraging the adoption of best practices which should reduce institutional burden.

Data from the National Center for Education Statistics indicate that roughly two percent of students at small institutions receive veteran's benefits; this figure significantly overstates the number of servicemembers likely to be readmitted under the regulations, but even using the two percent figure as a proxy for affected students, the Department believes this limited population will not represent a significant burden for small institutions. For the consumer information requirements, vocational institutions, which make up more than half of the schools meeting the definition of ''small entities,'' are already required to collect and distribute much of the required data. Even for schools that will face new requirements to collect and disseminate information about campus activities, the Department estimates additional burden at most institutions of three hours or less.

In the NPRM, the Secretary invited small institutions to submit data supporting comments related to whether they believe the changes would have a significant economic impact on them. No data was received. In the absence of this data, and based on our internal analyses, the Department believes the new requirements contained in these regulations do not impose significant new costs on a substantial number of small institutions.

Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Final §§ 668.14, 668.18, 668.23, 668.28, 668.41, 668.43, 668.45, 668.46, 668.49, 668.232, 668.233, 686.41, 686.42, 690.63, 690.64, 690.67, 692.21, and 692.100, 692.101, 692.111 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 600.5(a)(5)—Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions

The final change to § 600.5(a)(5) adds to the definition of *proprietary institution of higher education* an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided continuously since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. This change in the definition of a proprietary institution does not impact burden.

While the current regulations point to OMB 1840–0098, we estimate that there is no change in burden associated with this section of the regulations as reported under the redesignated OMB Control Number 1845–0012.

Section 668.14(b)(31)—Institutional Requirements for Teach-Outs/Eligibility and Certification Procedures

The final regulations in § 668.14(b)(31) require an institution to submit a teach-out plan to its accrediting agency whenever (1) the Department or their accrediting agency initiates an LS&T, or an emergency action against the institution, as required by statute; (2) the institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program; (3) the institution intends to close a location that provides 100 percent of at least one program; or (4) the institution otherwise intends to cease operations.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the final changes in § 668.14 will increase burden by 160 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.18—Readmission Requirements for Servicemembers

The final § 668.18 of the regulations include the general requirements that an institution may not deny readmission to a servicemember, but must readmit the

servicemember with the same academic status as when the student was last admitted to the institution. The final regulations clarify that the requirements also apply to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services. The final regulations specify that the institution must promptly readmit a student, and define ''promptly readmit'' as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date. The final regulations require the institution to make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program.

The final regulations require an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of intent to return to the institution. However, such notices do not need to follow any particular format, nor would a student have to indicate if the student intends to return to the institution. Also, any such notice may be provided by an appropriate officer of the U.S. Armed Forces. The notice of intent to return may be provided orally or in writing and would not need to follow any particular format. A period of absence from the institution before or after performing service in the uniformed services do not count against the period of uniformed service which is limited to the five years.

The final regulations list the documentation that supports the institution's determination for readmission that a student must submit with an application for readmission. The final regulations make clear that the types of documentation available or necessary will vary from case to case.

The final regulations list the circumstances that a student's eligibility for readmission to an institution would be terminated.

We estimate that the final changes will increase burden for students by 384 hours and for institutions by 1,129 hours for a total increase in burden of 1,513 hours in OMB Control Number 1845–NEW1.

Non-Title IV Revenue Requirement (90/10)

Section 668.28(a)—Calculating the Revenue Percentage

The final regulations in § 668.28(a) implement the statutory provisions relating to counting revenue from non-title IV eligible programs.

Regarding institutional loans for which a net present value (NPV) would be calculated, the final regulations establish that institutional loans have to be credited in-full to the students' accounts, be evidenced by standalone repayment agreements between students and the institution, and be separate from enrollment contracts signed by students.

To count revenue from loan funds in excess of the loan limits in effect prior to ECASLA in the allowable revenue category, the final regulations allow institutions to count the excess amount on a payment-period basis.

We estimate that the final regulations will increase burden for institutions; however, these final regulations only define non-title IV revenue. The burden increase is found in § 668.28(b) and (c) under OMB 1845–NEW2.

Section 668.28(b)—Net Present Value

The final regulation in § 668.28(b) defines the NPV as the sum of the discounted cash flows. Appendix C illustrates how an institution calculates its 90/10 revenue percentage.

The final regulations allow a simpler alternative to performing the NPV calculation, by allowing an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV. However, as a condition of using the 50 percent alternative calculation, if the institution chooses to use this alternative, it may not sell any of the associated loans until they have been in repayment for at least two years.

We estimate that the final regulations will increase burden for institutions by 3,087 hours in the new OMB Control Number 1845–NEW2.

Section 668.28(c)—Non-Title IV Revenue (90/10)

The final regulations in § 668.28(c) removes all of the 90/10 provisions from 34 CFR 600.5 and relocates the amended provisions to subpart B of part 668. The final regulations amend the program participation agreement to specify that a proprietary institution must derive at least 10 percent of its revenue from sources other than Title IV, HEA program funds. If an institution does not satisfy the 90/10 requirement, the final regulations require the institution to notify the Department no later than 45 days after the end of its fiscal year that it failed to satisfy the 90/10 requirement. In keeping with provisional certification requirements the current regulations are amended by adding final language to provide that a proprietary institution's certification automatically becomes provisional if it fails the 90/10 requirement for any fiscal year.

We estimate that the final regulations in § 668.28(c) will increase burden for institutions by 1 hour in the new OMB Control Number 1845–NEW2.

Section 668.23(d)(4)—Audited Financial Statements

The final regulations in § 668.23(d)(4) require that a proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the Title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The institution must also report in the footnote the non-Federal and Federal revenue by source that was included in the 90/10 calculation.

While the current regulations point to OMB Control Number 1840–0697, we estimate that the final regulations in § 668.23(d)(4) will increase burden for institutions by 165 hours for the redesignated OMB Control Number 1845–0038.

Section 668.43(a)(5)(iv)—Institutional Plans for Improving the Academic Program

The final regulations in § 668.43(a) amend the information about the academic program that the institution must make readily available to enrolled and prospective students about any plans by the institution for improving any academic program at the institution. An institution is allowed to determine what a ''plan'' is, including when a plan becomes a plan.

We estimate that the final regulations will increase burden for institutions by 968 hours in OMB Control Number 1845–0022.

Sections 668.14(b) and 668.43(a)—Peer-to-Peer File Sharing/Copyrighted Material

Section 668.14(b)(30)—Program Participation Agreement (PPA)

The final regulations require an institution, as a condition of participation in a Title IV, HEA program, to agree that it has developed and implemented plans to effectively combat the unauthorized distribution of copyrighted material by users of the

institution's network without unduly interfering with the educational and research use of the network.

An institution's plan must include:

- The use of one or more technology-based deterrents;
- Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material;
- Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and
- Procedures for periodically reviewing the effectiveness of the plans.

The final regulations make clear that no particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance will be, including those that prohibit content monitoring.

The final regulations require an institution, in consultation with the chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, as determined by the institution. The final regulations also require that institutions (1) periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) make the results of the review available to their students through a Web site and/or other means.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the final changes in § 668.14(b)(30) will increase burden by 91,120 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.43(a)(10)—Consumer Information

The final regulations requires information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material be included in the list of institutional information provided upon request to prospective and enrolled students. This information must (1) explicitly inform enrolled and prospective students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) delineate the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

We estimate that the final regulations in § 668.43(a)(10) will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.41—Reporting and Disclosure of Information

The final regulations in § 668.41 add retention rate information, placement rate information, and information on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, to the types of information that an institution must provide to its enrolled and prospective students. When reporting its retention rate, an institution must disclose the institution's retention rate as defined by and reported to the Integrated Postsecondary Education Data System (IPEDS). The institution may use various sources of retention rate information and information on types of graduate and professional education in which graduates of the institution's four-year degree programs enroll (such as State data systems, surveys, or other relevant sources). If an actual placement rate is calculated by the institution, it must be disclosed. The institution would have to identify the source of the information it discloses, as well as the time frames and methodology associated with that information.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has been recently discontinued, therefore, we estimate that the final regulations will increase burden for institutions 8,541 hours in OMB Control Number 1845–0004.

Section 668.45—Information on Completion or Graduation Rates

Under the final regulations in § 668.45, an institution's completion and graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid. The disaggregation by receipt of aid is categorized by:

Recipients of a Federal Pell Grant;

Recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan); and

Recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford loan).

The institution reports its completion and graduation rate information in a disaggregated fashion only if the number of students in each category is sufficient to yield statistically reliable information, and doing so would not reveal personally identifiable information about an individual student.

We estimate that the final regulations will increase burden for institutions 7,488 hours in OMB Control Number 1845–0004.

Campus Safety Provisions

Section 668.46(c)(3)—Hate Crime Reporting

The final regulations add the crimes of ''larceny-theft,'' ''simple assault,'' ''intimidation,'' and ''destruction/damage/vandalism of property'' to the crimes that must be reported in hate crime statistics. Additionally, the final regulations update the definitions of the terms ''Weapons: carrying, possessing, etc.,'' ''Drug abuse violations,'' and ''Liquor law violations'' which are excerpted from the Federal Bureau of Investigation's Uniform Crime Reporting Program, to reflect changes made by the FBI to these definitions in 2004.

We estimate that the final regulations will increase burden for institutions by 5,695 hours in OMB Control Number 1845–0022.

Reporting Emergency Response and Evacuation Procedures

Section 668.46(e)—Timely Warning and Emergency Notification

The final regulations clarify the difference between the existing timely warning requirement and the new requirement for an emergency notification policy. While a timely warning must be issued in response to specific crimes, an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus. The final language clarifies that an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

We estimate that the final regulations will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.46(g)—Emergency Response and Evacuation Procedures

The final regulations outline the elements that an institution must include in its statement of policy

describing its emergency response and evacuating procedures in its annual security report to include the following:

Procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat occurring on the campus.

A description of the process that (1) confirms that there is a significant emergency or dangerous situation, (2) determines the appropriate segment or segments of the campus community to receive a notification, (3) determines the content of the notification, and (4) initiates the notification system.

A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

A list of the titles of the persons or organizations responsible for carrying out the actions required.

Procedures for disseminating emergency information to the larger community.

Procedures for testing its emergency response and evacuation procedures on at least an annual basis with at least one test per calendar year, and be documented, including a description of the exercise, the date, time, and if it was announced or unannounced.

We estimate that the final regulations will increase burden for institutions by 11,390 hours in OMB Control Number 1845–0022.

Missing Student Procedure

Section 668.41(a)—Definition of On-Campus Student Housing Facility

The final regulations in § 668.41(a) would add a definition of the term *on-campus student housing facility* to mean a dormitory or other residential facility for students that is located on an institution's campus.

The final definition is added to clarify what is meant by *on-campus student housing facility* and to link the meaning of ''on-campus'' to the current regulatory definition of *campus* in § 668.46(a), which is used for crime reporting under § 668.46(c). The final change is to a definition and does not impact burden.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. We estimate that there is no change in burden associated with this section of the regulations as reported under OMB Control Number 1845–0004.

Section 668.46(b)—Annual Security Report

The final regulations in § 668.46(b) require an institution to include its missing student notification policy and procedures in its annual security report. This is required beginning with the annual security report distributed by October 1, 2010.

We estimate that the final regulations will increase burden for institutions by 456 hours for an increase in burden in OMB Control Number 1845–0022.

Section 668.46(h)—Missing Student Notification Policy

The final regulations in § 668.46(h) implement the new statutory requirements, specifying that a statement of policy regarding missing student notification for students residing in on-campus student housing facilities must include:

A list of the titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

A requirement that any official missing student report be immediately referred to the institution's police or campus security department or, if not applicable, to the local law enforcement agency with jurisdiction in the area;

The option for each student to identify a contact person to be notified if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency; and

A disclosure that contact information will be registered and maintained confidentially.

The final regulations further require an institution to advise students who are under 18 and not emancipated that if the student is missing, it will notify a custodial parent or guardian in addition to any contact person designated by the student. All students must also be advised that, regardless of whether they name a contact person, the institution must notify the local law enforcement agency that the student is missing, unless the local law enforcement was the entity that determined that the student is missing.

The final regulations reflect the new statutory requirements. These regulations do not preclude the institution from contacting the student's contact person or the parent immediately upon determination that the student has been missing for 24 hours.

We estimate that the final regulations will increase burden for institutions by 2,423 hours for an increase in burden in OMB Control Number 1845–0022.

Fire Safety Standards

Section 668.41(e)—Annual Fire Safety Report

The final regulations provide that institutions that maintain an on-campus student housing facility must distribute an annual fire safety report and to create publication requirements for the annual fire safety report that are similar to the long-standing rules for the annual security report.

The final regulations allow an institution to publish the annual security report and the annual fire safety report together, as long as the title of the document clearly states that it contains both the annual security report and the annual fire safety report. If an institution chooses to publish the reports separately, it would have to include information in each of the two reports about how to directly access the other report.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. The burden associated with the data collection and reporting for the annual fire safety report is reflected in § 668.49 as reported under OMB Control Number 1845–NEW3.

Section 668.49—Annual Fire Safety Report

The final regulations define the following terms relevant to the fire safety reporting requirements: Cause of fire; Fire; Fire drill; Fire-related injury; Fire-related death; Fire-safety system; and Value of property damage.

The final regulations require an institution to report to the public, the statistics that it submits to the Department in its annual fire safety report. The institution must provide data for the three most recent calendar years for which data are available. The first full report to contain the full three years of data would be the report due on October 1, 2012.

The final regulations outline the elements that an institution must disclose in its annual fire safety report, including: Fire statistics; A description of each on-campus student housing facility fire safety system; The number of regular, mandatory, supervised fire drills held during the previous calendar year; Policies or rules on portable electrical appliances, smoking, and open flames in student housing facilities; Procedures for student

housing evacuation in the case of a fire; Policies on fire safety education and training programs provided to students, faculty, and staff; A list of the titles of each person or organization to which students and employees should report that a fire has occurred; and Plans for future improvements in fire safety.

The final regulations specify that an institution that maintains an on-campus student housing facility must maintain a written and easily understood fire log that records, by the date that the fire was reported (as opposed to by the date that the fire occurred), any fire that occurred in an on-campus student housing facility. The log would have to include the nature, date, time, and general location of each fire, and require that the log be available for the public. These final regulations also implement the statutory requirement that an institution make an annual report to the campus community on the fires recorded in the fire log; however, this requirement may be satisfied by the annual fire safety report described in final § 668.49(b).

We estimate that the final regulations will increase burden for institutions by 7,283 hours in OMB Control Number 1845–NEW3.

Financial Assistance for Students With Intellectual Disabilities

Section 600.5—Proprietary Institution of Higher Education

The final regulations in § 600.5(a)(5)(i)(B)(2)(ii) define a proprietary institution of higher education as one that may have a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. This change in the definition of an eligible program does not impact burden.

While the current regulations in § 600.5 point to OMB 1840 -0098, this information collection has been discontinued and redesignated to 1845–0012. We estimate that there is no change in burden associated with this final change in the regulations.

Section 668.8—Eligible Program

The final regulations in § 668.8(n) define a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. The final change in the definition of an eligible program does not impact burden.

While the current regulations in § 668.8 point to OMB 1845–0537, this collection package has been discontinued, we estimate that there is no change in burden associated with this final change in the regulations.

Section 668.232—Program Eligibility

The final regulations require an institution that wishes to provide a comprehensive transition and postsecondary program to apply and receive approval from the Secretary. The final regulations outline the elements that an institution must include in its application, including: A detailed description of the comprehensive transition and postsecondary program; The policy for determining whether a student enrolled in the program is making satisfactory academic progress; A statement of the number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program; A description of the educational credential offered or identified outcome or outcomes established by the institution for all students enrolled in the program; A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program; and Any other information the Department may require.

We estimate that the final regulations will increase burden for institutions by 66 hours in OMB Control Number 1845–NEW4.

Section 668.233—Student Eligibility

The final regulations in § 668.233 provide that a student with intellectual disabilities enrolled in a comprehensive transition and postsecondary program may be eligible for Title IV, HEA program assistance under the Federal Pell grant, FSEOG, and FWS programs if: The student is making satisfactory academic program in accordance with the institution's published standards for students enrolled in the comprehensive transition and postsecondary program; and the institution obtains a record from a LEA that the student is or was eligible for FAPE under the IDEA. If the FAPE record does not indicate that the student has an intellectual disability, the institution must obtain documentation from another source that identifies the intellectual disability.

We estimate that the final regulations will increase burden for institutions by 768 hours in OMB Control Number 1845–NEW4.

Section 668.43(a)(7)—Institutional Information

The final regulations change the phrase ''any special facilities and services'' to ''the services and facilities,'' and replaces the phrase ''disabled students'' with ''students with disabilities.'' The final changes also clarify that a description of services and facilities for students with disabilities must also contain the services and facilities available for students with intellectual disabilities.

We estimate that the final regulations will increase burden for institutions by 44 hours in OMB Control Number 1845–0022.

Federal Work Study Programs

Section 675.16—Conforming FWS Payment Requirements to the Cash Management Regulations

The final regulations in § 675.16(b)(1)(ii) and (b)(2), amend the FWS regulations in three ways regarding the use of current award year FWS funds to pay prior award year charges. First, the amount of prior award year charges that could be paid with current award year FWS funds increases to not more than $200. Second, the FWS provision that allows an institution to pay for prior award year charges of $100 or more is removed. Finally, we clarify that the $200 limit applies to all Title IV, HEA program funds that an institution uses to pay prior-year charges. These changes to conform the FWS payment requirements to the current cash management regulations do not impact burden.

We estimate that there is no change in burden associated with this section of the regulations under OMB Control Number 1845–0019.

TEACH Grant Program

Section 686.41—Period of Suspension

The final regulations in § 686.41 provide that a TEACH Grant recipient who is called or ordered to active military duty (or his or her representative) may request a suspension of the eight-year period in increments not to exceed three years. Once the recipient has exceeded the 3-year suspension period, the recipient (or his or her representative) may request a discharge of all or a portion of his or her teaching service obligation.

We estimate that the final regulations will increase burden for institutions in OMB Control Number 1845–0083. The Department will submit an 83–C incorporating the changes after the final regulations have published.

Section 686.42—Discharge of Agreement To Serve

The final regulations in § 686.42 provide that the recipient may qualify for a proportional discharge of his or her service obligation based on the number of years the recipient has been called or ordered to active military duty.

To obtain the discharge, the recipient (or his or her representative) is required to provide the Department:

A written statement from his or her commanding or personnel officer certifying that the recipient is on active duty status in the U.S. Armed Forces, the date on which that service began, and the date the service is expected to end; and a copy of his or her official military orders and military identification.

The Department would notify a TEACH Grant recipient of the decision reached on his or her request for a partial or full discharge of the teaching service obligation. The grant recipient is responsible for fulfilling any teaching service obligation that is not discharged.

We estimate that the final regulations will increase burden for institutions in OMB Control Number 1845–0083. The Department will submit an 83–C incorporating the changes after the final regulations have published.

Federal Pell Grant Program

Two Federal Pell Grants in an Award Year

Section 690.67(a)—Student Eligibility for a Second Scheduled Award

The final regulations amend § 690.67(a) to provide that a student is eligible for a second Scheduled Award if the student is enrolled for credit or clock hours attributable to the student's second academic year in the award year, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential (such as a postsecondary certificate or diploma), except as provided for students with intellectual disabilities. To the extent that the institution will be reporting these second Scheduled Award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the regulations will increase burden for institutions by 47,432 hours in OMB Control Number 1845–NEW5.

Section 690.67(b)—Transfer Students

The final regulations in § 690.67(b) provide that an institution determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. The credit or clock hours that the student would be considered to have earned would be in the same proportion to credit or clock hours in the current institution's academic year as the disbursements that the student has received at the prior institution in the award year are in proportion to the student's Scheduled Award at the prior institution.

To the extent that the institution will be reviewing the transfer records of these students and subsequently reporting second Scheduled Award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the final regulations will increase burden for institutions by 14,400 hours in OMB Control Number 1845–NEW5.

Section 690.67(c)—Special Circumstances

The final regulations in § 690.67(c) provide that in a payment period where there is insufficient remaining eligibility from the first Scheduled Award to make full payment for the payment period, a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year due to circumstances beyond the student's control. The financial aid administrator is required to make and document the determination on an individual basis.

To the extent that the institution will be documenting these special circumstances and subsequently awarding second Pell grants, the institutions will be reporting the second Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

Section 690.67(d)—Nonapplicable Credit or Clock Hours

The final regulation in § 690.97(d) states that, in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

To the extent that institutions will be making determinations about the applicability of AP, IB, or other non-applicable courses, institutions will subsequently award second Pell grants and thereafter report Pell disbursements via the Common Origination and Delivery (COD) system, thus there will be some additional reporting burden for institutions.

We estimate that the final regulations will increase burden for institutions by 2,032 hours in OMB Control Number 1845–NEW5.

Section 690.64—Payment Period in Two Award Years

The final regulation in § 690.64 states that, if a student is enrolled in a crossover payment period as a half-time or less-than-half-time student, the current requirements generally apply.

If a student is enrolled as a three-quarter-time or full-time student, an institution must consider the payment period to be in the award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution is required to reassign the payment to the award year providing the greater payment within specified time frames.

A student may request that the institution place the payment period in the award year that can be expected to result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

To the extent that the institution will be reviewing enrollment status in each of the two award years and making determinations about which award year must be used and subsequently reporting these second Scheduled Award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the final regulations will increase burden for institutions by 33,881 hours in OMB Control Number 1845–NEW5.

Section 690.63(h)—Payment From Two Scheduled Awards

Under the final regulations in § 690.63(h), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in

the award year up to the total amount of the payment for the payment period.

We estimate that the final regulations will increase burden for institutions by 8,471 hours in OMB Control Number 1845–NEW5.

Part 692 Leveraging Educational Assistance Partnership Program

Section 692.21(k)—Notification to Students of LEAP Grant Funding Sources

The final regulations require that the State program notify eligible students that grants under the LEAP Grant Program are (1) LEAP Grants and (2) funded by the Federal Government, the State, and, where applicable, other contributing partners.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.100—Requirements a State Must Meet To Receive GAP Funds

The final regulations in § 692.100 describe the requirements that a State must meet to receive an allotment under this program including submitting an application on behalf of a partnership and serving as the primary administrative unit of the partnership. Under § 692.100(a)(6), a State must include in its application the steps it plans to take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP would persist to degree completion.

Under § 692.100(a)(8) a State GAP Program is required to notify eligible students that the grants they receive under GAP are LEAP Grants and that the grants are funded by the Federal Government, the State and where applicable, other contributing partners.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.101—Requirements That Must Be Met by a State Partnership

The final regulations in § 692.101(b)(2) provide that a degree-granting institution of higher education that is in a partnership under the GAP Program must recruit, admit, and provide institutional grant aid to participating eligible students as agreed to with the State agency.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.111—Purposes for Which a State May Use Its GAP Grant

The final regulations in § 692.111 provide that each State receiving an allotment shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

The notice shall include information about early information and intervention, mentoring, or outreach programs available to the student. The notice shall provide a nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs. The final notice will also include any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Consistent with this discussion, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork and Reduction Act.

Regulatory section	Information section	Collection
668.14(b)(31)	Providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location (see sections 487(f) and 498 of the HEA).	OMB 1845–0022. There will be an increase in burden of 160 hours.
668.18	Establishing requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution (see section 484C of the HEA).	OMB 1845–NEW1. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 1,513 hours.
668.23(d)(4)	Adds new requirements to include in the audited financial statement footnote the non-Federal and Federal revenue that was included in the 90/10 calculation.	OMB 1845–0038. There will be an increase in burden of 165 hours.
668.28	Establishing new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than Title IV, HEA program funds (see section 487(d) of the HEA).	OMB 1845–NEW2. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 3,088 hours.

Regulatory section	Information section	Collection
668.43(a)(5)(iv)	Expanding the information that an institution must make available to prospective and enrolled students to include a description of any plans the institution has to improve its academic program (see section 485(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 968 hours.
668.14(b)(30), 668.43(a)(10)	Providing that an institution must certify that it has plans to effectively combat unauthorized distribution of copyrighted material and will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property (see sections 485(a)(1) and 487(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 92,544 hours.
668.41	Expanding the information that institutions must make available to prospective and enrolled students to include information on: the employment and placement of students, and the retention rates of first-time, full-time undergraduate students.	OMB 1845–0004. There will be an increase in burden of 8,541 hours.
668.45	Expanding the information that institutions must make available to prospective students to include completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance (see section 485(a) of the HEA).	OMB 1845–0004. There will be an increase in burden of 7,488 hours.
668.46(c)(3), (e), (g)	Expanding the list of crimes that institutions must include in the hate crimes statistics reported to the Department. Requiring institutions to include in the annual security report a statement of emergency response and evacuation procedures (see section 485(f) of the HEA).	OMB 1845–0022. There will be an increase in burden of 18,509 hours.
668.41(a)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the final regulations.
668.46(b), (h)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0022. There will be an increase in burden of 2,879 hours.
668.41(e)	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the final regulations.
668.49	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–NEW3. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 7,283 hours.
668.232	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 66 hours.
668.233	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 768 hours.
688.43(a)(7)	Requires that institutions report a description of services and facilities for student with intellectual disabilities.	OMB 1845–0022. There will be an increase in burden of 44 hours.
686.41, 686.42	Establishing extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation (see section 420N(d)(2) of the HEA).	OMB 1845–0083. Changes will be incorporated into the Agreement to Serve form.
690.67, 690.64, 690.63(h)	Establishing requirements under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year (see section 401(b)(5)(A) of the HEA).	OMB 1845–NEW5. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 109,645 hours.

Regulatory section	Information section	Collection
692.21, 692.100, 692.101, 692.111.	Requiring the State program to notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners (see section 415C(b) of the HEA). Establishing the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program (see sections 415B and 415E of the HEA).	OMB 1845–NEW6. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.033 Federal Work-Study Program; 84.379 TEACH Grant Program; 84.069 LEAP)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 692

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 16, 2009.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 600, 668, 675, 686, 690, and 692 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: : 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:
■ A. Revising paragraph (1)(i) of the definition of *educational program.*
■ B. Adding, in alphabetical order, a definition for *teach-out plan.*
■ C. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.2 Definitions.

* * * * *

Educational program: (1) * * *

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

* * * * *

(Authority: 20 U.S.C. 1071, *et seq.*, 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

■ 3. Section 600.4 is amended by:
■ A. Revising paragraph (a)(4).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.4 Institution of higher education.

(a) * * *

(4)(i) Provides an educational program—

(A) For which it awards an associate, baccalaureate, graduate, or professional degree;

(B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(C) That is at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

(Authority: 20 U.S.C. 1091, 1094, 1099b, 1141(a))

■ 4. Section 600.5 is amended by:
■ A. Revising paragraph (a)(5).
■ B. In paragraph (a)(6), adding the word ''and'' after the punctuation '';''.

■ C. In paragraph (a)(7), removing the word ''; and'' and adding, in its place, the punctuation ''.''.
■ D. Removing paragraph (a)(8).
■ E. Removing paragraphs (d) through (g).
■ F. Redesignating paragraph (h) as paragraph (d).
■ G. Adding a new paragraph (e).
■ H. Revising the OMB control number and authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.5 Proprietary institution of higher education.

(a) * * *

(5)(i)(A) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; or

(B)(*1*) Has provided a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e) of this section, continuously since January 1, 2009; and

(*2*) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(e) For purposes of this section, a ''program leading to a baccalaureate degree in liberal arts'' is a program that the institution's recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

(Approved by the Office of Management and Budget under control number 1845–0012)

(Authority: 20 U.S.C. 1088, 1091)

■ 5. Section 600.6 is amended by:
■ A. Revising paragraph (a)(4).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.6 Postsecondary vocational institution.

(a) * * *

(4)(i) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(Authority: 20 U.S.C. 1088, 1091, 1094(c)(3))

■ 6. Section 600.32 is amended by:
■ A. In paragraph (a), removing the words ''(b) and (c)'' and adding, in their place, the words ''(b), (c), and (d)''.
■ B. Redesignating paragraph (d) as paragraph (e).
■ C. Adding a new paragraph (d).
■ D. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 600.32 Eligibility of additional locations.

* * * * *

(d)(1) An institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations and the Secretary has taken an action to limit, suspend, or terminate the institution's participation under § 600.41 or subpart G of this part, or has taken an emergency action under 34 CFR 668.83; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the two-year in existence requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

(C) Will not have the default rate of the closed institution included in the calculation of its default rate, as would otherwise be required under 34 CFR 668.184 and 34 CFR 668.203, if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b).

(ii) As a condition for approving an additional location under paragraph (d)(1) of this section, the Secretary may require that payments from the institution conducting the teach-out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

* * * * *

(Authority: 20 U.S.C. 1088, 1099c, 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 7. The authority citation for part 668 continues to read as follows:

Authority: : 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 8. Section 668.8 is amended by:
■ A. In paragraph (d)(2)(iv)(B), removing the word ''or'' that appears after the punctuation '';''.
■ B. In paragraph (d)(3)(v), removing the punctuation ''.'' and adding, in its place, the word ''; or''.
■ C. Adding paragraph (d)(4).
■ D. Revising paragraph (n).
■ E. Removing the OMB control number at the end of the section.

The addition and revision read as follows:

§ 668.8 Eligible program.

(d) * * *

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

* * * * *

(n) For Title IV, HEA program purposes, *eligible program* includes a

direct assessment program approved by the Secretary under § 668.10 and a comprehensive transition and postsecondary program approved by the Secretary under § 668.232.

* * * * *

■ 9. Section 668.13(c)(1) is revised to read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) *Provisional certification.* (1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution—

(*1*) That is applying for a certification that the institution meets the standards of this subpart;

(*2*) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 and subpart L of this part or the standards of administrative capability under § 668.16; and

(*3*) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(D) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(ii) A proprietary institution's certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under § 668.14(b)(16).

* * * * *

■ 10. Section 668.14 is amended by:

■ A. Adding paragraph (b)(16).

■ B. In paragraph (b)(25)(ii), removing the word ''and'' that appears after the punctuation '';''.

■ C. Adding paragraph (b)(30).

■ D. Adding paragraph (b)(31).

■ E. Revising the OMB control number at the end of the section.

The additions and revision read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(16) For a proprietary institution, the institution will derive at least 10 percent of its revenues for each fiscal year from sources other than Title IV, HEA program funds, as provided in § 668.28(a) and (b), or be subject to sanctions described in § 668.28(c);

* * * * *

(30) The institution—

(i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network, without unduly interfering with educational and research use of the network, that include—

(A) The use of one or more technology-based deterrents;

(B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material, including that described in § 668.43(a)(10);

(C) Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

(D) Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution's network using relevant assessment criteria. No particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance with paragraph (b)(30) of this section will be, including those that prohibit content monitoring; and

(ii) Will, in consultation with the chief technology officer or other designated officer of the institution—

(A) Periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material;

(B) Make available the results of the review in paragraph (b)(30)(ii)(A) of this section to its students through a Web site or other means; and

(C) To the extent practicable, offer legal alternatives for downloading or otherwise acquiring copyrighted material, as determined by the institution; and

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under § 668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

* * * * *

■ 11. Section 668.18 is added to subpart B of part 668 to read as follows:

§ 668.18 Readmission requirements for servicemembers.

(a) *General.* (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(ii) ''Promptly readmit'' means that the institution must readmit the student into the next class or classes in the student's program beginning after the student provides notice of his or her intent to reenroll, unless the student requests a later date of readmission or unusual circumstances require the institution to admit the student at a later date.

(iii) To readmit a person with the ''same academic status'' means that the institution admits the student—

(A) To the same program to which he or she was last admitted by the

institution or, if that exact program is no longer offered, the program that is most similar to that program, unless the student requests or agrees to admission to a different program;

(B) At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;

(C) With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;

(D) With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had; and

(E)(*1*) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing—

(*i*) The tuition and fee charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(*ii*) Up to the amount of tuition and fee charges that other students in the program are assessed for that academic year, if veterans' education benefits, as defined in section 480(c) of the HEA, or other servicemember education benefits, will pay the amount in excess of the tuition and fee charges assessed for the academic year in which the student left the institution; or

(*2*) If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, assessing no more than the tuition and fee charges that other students in the program are assessed for that academic year.

(iv)(A) If the institution determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the institution must make reasonable efforts at no extra cost to the student to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost to the student and allowing the student to retake a pretest at no extra cost to the student.

(B) The institution is not required to readmit the student on his or her return if—

(*1*) After reasonable efforts by the institution, the institution determines that the student is not prepared to resume the program at the point where he or she left off;

(*2*) After reasonable efforts by the institution, the institution determines that the student is unable to complete the program; or

(*3*) The institution determines that there are no reasonable efforts the institution can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program.

(C)(*1*) ''Reasonable efforts'' means actions that do not place an undue hardship on the institution.

(*2*) ''Undue hardship'' means an action requiring significant difficulty or expense when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

(D) The institution carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

(b) *Service in the uniformed services.* For purposes of this section, service in the uniformed services means service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

(c) *Readmission procedures.* (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if—

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written notice of such service to an office designated by the institution, and provides such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that institution by reason of service in the uniformed services, including only the time the student spends actually performing service in the uniformed services, does not exceed five years; and

(iii) Except as provided in paragraph (f) of this section, the student gives oral or written notice of his or her intent to return to an office designated by the institution—

(A) For a student who completes a period of service in the uniformed services, not later than three years after the completion of the period of service; or

(B) For a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services, not later than two years after the end of the period that is necessary for recovery from such illness or injury.

(2)(i) An institution must designate one or more offices at the institution that a student may contact to provide notification of service required by paragraph (c)(1)(i) of this section and notification of intent to return required by paragraph (c)(1)(iii) of this section.

(ii) An institution may not require that the notice provided by the student under paragraph (c)(1)(i) or (c)(1)(iii) of this section follow any particular format.

(iii) The notice provided by the student under paragraph (c)(1)(i) of this section—

(A) May not be subject to any rule for timeliness; timeliness must be determined by the facts in any particular case; and

(B) Does not need to indicate whether the student intends to return to the institution.

(iv) For purposes of paragraph (c)(1)(i) of this section, an ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) *Exceptions to advance notice.* (1) No notice is required under paragraph (c)(1)(i) of this section if the giving of such notice is precluded by military necessity, such as—

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or oral notice of service to the appropriate official at the institution in accordance with paragraph (c)(1) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

(e) *Cumulative length of absence.* For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) Ordered to or retained on active duty under—

(A) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or

(L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

(f) *Notification of intent to reenroll.* A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

(g) *Documentation.* (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) *Termination of readmission eligibility.* A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

(3) A dropping of a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

(Authority: 20 U.S.C. 1088, *et seq.*)

■ 12. Section 668.23 is amended by revising paragraph (d)(4) to read as follows:

§ 668.23 Compliance audits and audited financial statements.

* * * * *

(d) * * *

(4) *Disclosure of Title IV, HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the Title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in

accordance with § 668.28. The institution must also report in the footnote the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.

* * * * *

■ 13. Section 668.28 is added to subpart B of part 668 to read as follows:

§ 668.28 Non-title IV revenue (90/10).

(a) *General.* (1) *Calculating the revenue percentage.* A proprietary institution meets the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than Title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

(2) *Cash basis accounting.* Except for institutional loans made to students under paragraph (a)(5)(i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

(3) *Revenue generated from programs and activities.* The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under § 668.8 if the program—

(A) Is approved or licensed by the appropriate State agency;

(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

(D) Provides training needed for students to maintain State licensing requirements; or

(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) *Application of funds.* The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

(5) *Revenue generated from institutional aid.* The institution must include the following institutional aid as revenue:

(i) For loans made to students and credited in full to the students' accounts at the institution on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(6) *Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).* For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included and deemed to be revenue from a source other than Title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after other Title IV, HEA program funds are applied.

(7) *Funds excluded from revenues.* For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match Title IV, HEA program funds;

(iv) The amount of Title IV, HEA program funds refunded or returned under § 668.22. If any funds from the loan disbursement used in the return calculation under § 668.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under § 668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(b) *Net present value (NPV).* (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—

(i) Using the formula, NPV = sum of the discounted cash flows $R^t/(1+i)^t$, where—

(A) The variable ''*i*'' is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;

(B) The variable ''*t*'' is time or period of the cash flow, in years, from the time the loan entered repayment; and

(C) The variable ''R^t'' is the net cash flow at time or period *t*; and

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable ''*t*''; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable ''t''; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution's loan collection rate (*e.g.*, the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable ''R'' in each period ''t'', for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.

(c) *Sanctions.* If an institution does not derive at least 10 percent of its revenue from sources other than Title IV, HEA program funds—

(1) For two consecutive fiscal years, it loses its eligibility to participate in the Title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under 34 CFR 600.5(a)(4) and (a)(6), and the financial responsibility requirements under subpart L of this part, for a minimum of two fiscal years after the fiscal year it became ineligible; or

(2) For any fiscal year, it becomes provisionally certified under § 668.13(c)(1)(ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on—

(i) The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section; and

(3) It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.

(Approved by Office of Management and Budget under control number 1845–NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, 1141)

■ 14. Appendix C is added to subpart B of part 668 to read as follows:

BILLING CODE 4000–01–P

APPENDIX C TO SUBPART B OF PART 668 - 90/10 REVENUE CALCULATION

Section 1: Sample Student Account at the Institution / Funds Applied in Priority Order

Item		Debit	Credit	Balance
1	**Tuition and Fees**	$7,000.00		
	Funds Applied First			
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution		$2,200.00	$4,800.00
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals			$4,800.00
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code			$4,800.00
5	Institutional scholarships disbursed to the student		$500.00	$4,300.00
6	**Total Funds Applied First**		$2,700.00	
	Title IV Aid			
7	Subsidized Loan		$1,000.00	$300.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits		$1,500.00	$1,800.00
9	Federal Pell Grant		$1,700.00	$100.00
10	FSEOG (subject to matching reduction)		$500.00	($400.00)
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)		-	($400.00)
12	**Total Title IV Aid**		$4,700.00	
	Cash and Other Non-Title IV Aid			
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits		$250.00	($650.00)
14	Student payments		-	($650.00)
15	Institutional loan disbursed		$300.00	($950.00)
16	**Total Cash and Other Non-Title IV Aid**		$550.00	
	Refund to Student	$950.00		-

Section 2: Revenue by Source

Item		Amount Disbursed	Adjusted Amount
	Adjusted Student Title IV Revenue		
7	Subsidized Loan	$1,000.00	$1,000.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits	$1,500.00	$1,500.00
9	Federal Pell Grant	$1,700.00	$1,700.00
10	FSEOG (subject to matching reduction, see Section 3, Adjustments to Student Title IV Revenue, item 1)	$500.00	$375.00
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)	-	-
17	**Student Title IV Revenue**		$4,575.00
18	**Revenue Adjustment** (see Section 3, Adjustments to Student Title IV Revenue, item 2)		($275.00)
19	**Adjusted Student Title IV Revenue**		$4,300.00
	Student Non-Title IV Revenue		
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution	$2,200.00	
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals	-	
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code	-	
5	Institutional scholarships disbursed to the student	$500.00	
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits	-	
14	Student payments	-	
20	**Student Non-Title IV Revenue**	$2,700.00	
	Revenue From Other Sources (Totals for the Fiscal Year)		
21	Activities conducted by the institution that are necessary for education and training	$25,000.00	
22	Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs	$43,000.00	
23	The Net Present Value (NPV) of institutional loans disbursed to students	$129,818.68	
24	**Revenue from Other Sources**	$197,818.68	

Section 3: Calculating the Revenue Percentage

$$\frac{\sum \text{Adjusted Student Title IV Revenue}}{\sum \text{Adjusted Student Title IV Revenue} + \sum \text{Student Non-Title IV Revenue} + \text{Total Revenue from Other Sources}} = \text{90/10 Revenue Percentage}$$

Adjustments to Student Title IV Revenue

1. The amount of FSEOG funds disbursed to a student (Item 10) and the amount of FWS funds credited to the student's account (Item 11) are reduced by the amount of the institutional matching funds (see Item 10 in Section 2 of the example).

2. If the amount of Funds Applied First (Item 6) + Student Title IV Revenue (Item 17) is more than Tuition and Fees (Item 1), then Student Title IV Revenue (Item 17) is reduced by the amount over Tuition and Fees (Item 1) (see Item 18 in Section 2 of the example).

3. If Title IV funds are returned for a student under 34 CFR 668.22, then Student Title IV Revenue is reduced by the amount returned.

∑ Adjusted Student Title IV Revenue = The sum of the amounts of Item 17, as adjusted, for each student at the institution during the fiscal year to whom the institution disbursed Title IV Aid

Adjustments to Student Non-Title IV Revenue

An Unsubsidized loan over the pre-ECSALA loan limit (Item 13) and any Student Payments (Item 14) count as Student Non-Title IV Revenue only for the amount needed to cover Tuition and Fees (Item 1) that are not paid by Funds Applied First (Item 6) and funds under Student Title IV Revenue (Item 19) (see Items 13 and 14 in Section 2 of the example).

∑ Student Non-Title IV Revenue = The sum of the amounts of Item 20, as adjusted, for each student at the institution during the fiscal year whose Non-Title IV funds were used to pay all or some of those student's Tuition and Fee charges

Total Revenue from Other Sources

Activities conducted by the institution that are necessary for education and training (Item 21) = Total revenue generated by the institution from these activities during the fiscal year

Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs (Item 22) = Total revenue generated by the institution from these programs during the fiscal year

The Net Present Value (NPV) of institutional loans disbursed to students (Item 23)

Total Revenue from Other Sources = The sum of the amounts for Items 21, 22, and 23 for the fiscal year

Section 4: Calculating the Net present Value

$$NPV = \sum R^t / (1+i)^t$$

An institution makes a total of $125,000 in 3-year loans at 8.5% and a total of $75,000 in 4-year loans at 8.5%. The Discount rate is 3%.

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
3-year Loans	1	47340.00	28404.00	$28404 / (1+.03)^1 = 27576.70$
	2	47340.00	28404.00	$28404 / (1+.03)^2 = 26773.49$
	3	47340.00	28404.00	$28404 / (1+.03)^3 = 25993.68$
			NPV or Sum of the discounted cash flows for 3-year loans = 80343.87	

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
4-year Loans	1	22183.44	13310.06	$13310.06 / (1+.03)^1 = 12922.39$
	2	22183.44	13310.06	$13310.06 / (1+.03)^2 = 12546.01$
	3	22183.44	13310.06	$13310.06 / (1+.03)^3 = 12180.59$
	4	22183.44	13310.06	$13310.06 / (1+.03)^4 = 11825.82$
			NPV or Sum of the discounted cash flows for 4-year loans = 49474.81	
				Total NPV for all loans = 129818.68

*** Expected cash flow represents the total amount of payments due on the loans for the fiscal year.**

BILLING CODE 4000–01–C

■ 15. Section 668.32 is amended by:

■ A. Revising the introductory text.

■ B. In paragraph (a)(1)(iii), adding the word ''and'' after the punctuation '';''.

■ C. In paragraph (a)(2), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ D. In paragraph (b), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ E. In paragraph (c)(4)(ii), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ F. In paragraph (d), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ G. In paragraph (e)(4)(ii), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ H. In paragraph (f), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ I. In paragraph (g)(4), removing the punctuation '';'' at the end of the paragraph and adding, in its place, the punctuation ''.''.

■ J. In paragraph (h), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ K. In paragraph (i), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ L. In paragraph (j), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ M. In paragraph (k)(9), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

■ N. In paragraph (l), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

■ O. Adding paragraph (n).

The revision and addition read as follows:

§ 668.32 Student eligibility—general.

A student is eligible to receive Title IV, HEA program assistance if the student either meets all of the requirements in paragraphs (a) through (m) of this section or meets the requirement in paragraph (n) of this section as follows:

* * * * *

(n) Is enrolled in a comprehensive transition and postsecondary program under subpart O of this part and meets the student eligibility criteria in that subpart.

* * * * *

■ 16. Section 668.41 is amended by:

■ A. In paragraph (a), adding, in alphabetical order, the definition of *on-campus student housing facility.*

■ B. Revising paragraph (d).

■ C. Revising paragraph (e).

■ D. In paragraph (g)(1)(i), removing the words ''on request''.

■ E. In the OMB control number parenthetical at the end of the section, removing the words, ''and 1845–0010''.

The addition and revisions read as follows:

§ 668.41 Reporting and disclosure of information.

(a) * * *

On-campus student housing facility: A dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a).

* * * * *

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42).

(2) The institution (pursuant to § 668.43).

(3) The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(4) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(5) The placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) The institution's placement rate for any program, if it calculates such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(iii) The institution must disclose any placement rates it calculates.

(6) The types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(e) *Annual security report and annual fire safety report.* (1) *Enrolled students and current employees—annual security report and annual fire safety report.* By October 1 of each year, an institution must distribute to all enrolled students and current employees its annual security report described in § 668.46(b), and, if the institution maintains an on-campus student housing facility, its annual fire safety report described in § 668.49(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet Web site or an Intranet Web site, subject to paragraph (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to enrolled students by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to current employees by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report and annual fire safety report.* For each of the reports, the institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee. If the institution chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet Web site, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report and annual fire safety report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by §§ 668.46(c) and 668.49(c) to the Secretary.

(6) *Publication of the annual fire safety report.* An institution may publish its annual fire safety report concurrently with its annual security report only if the title of the report clearly states that the report contains both the annual security report and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the annual security report, it must include information in each of the two reports about how to directly access the other report.

* * * * *

■ 17. Section 668.43 is amended by:

■ A. In the introductory text of paragraph (a), removing the words ''upon request''.

■ B. In paragraph (a)(5)(ii), removing the word ''and'' that appears after the punctuation '';''.

■ C. In paragraph (a)(5)(iii), adding the word ''and'' after the punctuation '';''.

■ D. Adding paragraph (a)(5)(iv).

■ E. Revising paragraph (a)(7).

■ F. In paragraph (a)(8), removing the word ''and'' that appears after the punctuation '';''.

■ G. In paragraph (a)(9), removing the punctuation ''.'' and adding, in its place, the punctuation '';''.

■ H. Adding paragraph (a)(10).

■ I. Adding paragraph (a)(11).

■ J. In paragraph (b), removing the words '', upon request,''.

The additions and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

* * * * *

(7) A description of the services and facilities available to students with

disabilities, including students with intellectual disabilities as defined in subpart O of this part;

* * * * *

(10) Institutional policies and sanctions related to copyright infringement, including—

(i) A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) A summary of the penalties for violation of Federal copyright laws; and

(iii) A description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system; and

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and

(ii) A list of institutions with which the institution has established an articulation agreement.

* * * * *

■ 18. Section 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(6)(i) Completion or graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup (as defined in IPEDS), by recipients of a Federal Pell Grant, by recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Loan) if the number of students in such group or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purpose, *i.e.,* is too small to be meaningful, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) With respect to the requirement in paragraph (a)(6)(i) of this section to disaggregate the completion or graduation rate information by the receipt or nonreceipt of Federal student aid, students shall be considered to have received the aid in question only if they received such aid for the period specified in paragraph (a)(3) of this section.

(iii) The requirement in paragraph (a)(6)(i) of this section shall not apply to two-year, degree-granting institutions of higher education until academic year 2011–2012.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150 percent of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may—

(1) Exclude students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;

(iii) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(iv) Are totally and permanently disabled; or

(v) Are deceased.

(2) In cases where the students described in paragraphs (d)(1)(i) through (iii) of this section represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of those students by adding to the 150

percent time-frame they normally have to complete or graduate, as described in paragraph (b) of this section, the time period the students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(e)(1) The Secretary grants a waiver of the requirements of this section dealing with completion and graduation rate data to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate for students described in paragraphs (d)(1)(i) through (iv) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092)

■ 19. Section 668.46 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, a definition of *test.*
■ B. Adding paragraphs (b)(13) and (b)(14).
■ C. Revising paragraph (c)(3).
■ D. Revising the heading for paragraph (e).
■ E. Adding paragraph (e)(3).
■ F. Adding paragraph (g).
■ G. Adding paragraph (h).

The additions and revisions read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) * * *

Test: Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

* * * * *

(b) * * *

(13) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as described in paragraph (g) of this section.

(14) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as described in paragraph (h) of this section.

(c) * * *

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:

(i) Any crime it reports pursuant to paragraph (c)(1)(i) through (vii) of this section.

(ii) The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.

(iii) Any other crime involving bodily injury.

* * * * *

(e) *Timely warning and emergency notification.* * * *

(3) If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

* * * * *

(g) *Emergency response and evacuation procedures.* An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include—

(1) The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;

(2) A description of the process the institution will use to—

(i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system.

(3) A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;

(4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section;

(5) The institution's procedures for disseminating emergency information to the larger community; and

(6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including—

(i) Tests that may be announced or unannounced;

(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and

(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

(h) *Missing student notification policies and procedures.* (1) An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must—

(i) Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

(ii) Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law

enforcement agency that has jurisdiction in the area;

(iii) Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;

(iv) Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

(v) Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and

(vi) Advise students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

(2) The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include—

(i) If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;

(ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

* * * * *

■ 20. Section 668.49 is added to subpart D of part 668 to read as follows:

§ 668.49 Institutional fire safety policies and fire statistics.

(a) *Additional definitions that apply to this section.*

Cause of fire: The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.

Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

Fire drill: A supervised practice of a mandatory evacuation of a building for a fire.

Fire-related injury: Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of the fire. The term ''person'' may include students, employees, visitors, firefighters, or any other individuals.

Fire-related death: Any instance in which a person—

(1) Is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or

(2) Dies within one year of injuries sustained as a result of the fire.

Fire safety system: Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

Value of property damage: The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

(b) *Annual fire safety report.* Beginning by October 1, 2010, an institution that maintains any on-campus student housing facility must prepare an annual fire safety report that contains, at a minimum, the following information:

(1) The fire statistics described in paragraph (c) of this section.

(2) A description of each on-campus student housing facility fire safety system.

(3) The number of fire drills held during the previous calendar year.

(4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.

(5) The institution's procedures for student housing evacuation in the case of a fire.

(6) The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.

(7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

(8) Plans for future improvements in fire safety, if determined necessary by the institution.

(c) *Fire statistics.* (1) An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning—

(i) The number of fires and the cause of each fire;

(ii) The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center;

(iii) The number of deaths related to a fire; and

(iv) The value of property damage caused by a fire.

(2) An institution is required to submit a copy of the fire statistics in paragraph (c)(1) of this section to the Secretary on an annual basis.

(d) *Fire log.* (1) An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

(2) An institution must make an entry or an addition to an entry to the log within two business days, as defined under § 668.46(a), of the receipt of the information.

(3) An institution must make the fire log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(4) An institution must make an annual report to the campus community on the fires recorded in the fire log. This requirement may be satisfied by the annual fire safety report described in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW3)

(Authority: 20 U.S.C. 1092)

■ 21. Appendix A to subpart D of part 668 is amended by:

■ A. Revising the introductory text.

■ B. Under the heading, ''Crime Definitions From the Uniform Crime Reporting Handbook,'' by:

■ i. Removing the definition of *Weapon Law Violations;*

■ ii. Adding a new definition of *Weapons: Carrying, Possessing, Etc.;* and

■ iii. Revising the definitions of *Drug Abuse Violations* and *Liquor Law Violations.*

■ C. Adding a heading at the end of the appendix, ''Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook'' followed by definitions for *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property.*

The revisions and additions read as follows: Appendix A to Subpart D of Part 668—Crime Definitions in Accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder; robbery; aggravated assault; burglary; motor vehicle theft; weapons: carrying, possessing, etc.; law violations; drug abuse violations;* and *liquor law violations* are excerpted from the Uniform Crime Reporting Handbook. The definitions of *forcible rape* and *nonforcible sex offenses* are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property* are excerpted from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

* * * * *

Weapons: Carrying, Possessing, Etc.

The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Drug Abuse Violations

The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of state and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Liquor Law Violations

The violation of state or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

* * * * *

Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook

Larceny-Theft (Except Motor Vehicle Theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

Simple Assault

An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

■ 22. Section 668.161 is amended by revising the section heading and paragraph (a)(4) to read as follows:

§ 668.161 Scope and purpose (cash management rules).

(a) * * *

(4) An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in §§ 668.164(a), (b), and (d) through (g), and 668.165.

* * * * *

§ 668.184 [Amended]

■ 23. Section 668.184(a)(1) is amended by removing the word ''If'' and adding, in its place, the words ''Except as provided under 34 CFR 600.32(d), if''.

■ 24. Subpart O, consisting of §§ 668.230 through 668.233, is added to part 668 to read as follows:

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Sec.

668.230 Scope and purpose.
668.231 Definitions.
668.232 Program eligibility.
668.233 Student eligibility.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

§ 668.230 Scope and purpose.

This subpart establishes regulations that apply to an institution that offers comprehensive transition and postsecondary programs to students with intellectual disabilities. Students enrolled in these programs are eligible for Federal financial assistance under the Federal Pell Grant, FSEOG, and FWS programs. Except for provisions related to needs analysis, the Secretary may waive any Title IV, HEA program requirement related to the Federal Pell Grant, FSEOG, and FWS programs or institutional eligibility, to ensure that students with intellectual disabilities remain eligible for funds under these assistance programs. However, unless provided in this subpart or subsequently waived by the Secretary, students with intellectual disabilities and institutions that offer comprehensive transition and postsecondary programs are subject to the same regulations and procedures that otherwise apply to Title IV, HEA program participants.

(Authority: 20 U.S.C. 1091)

§ 668.231 Definitions.

The following definitions apply to this subpart:

(a) *Comprehensive transition and postsecondary program* means a degree, certificate, nondegree, or noncertificate program that—

(1) Is offered by a participating institution;

(2) Is delivered to students physically attending the institution;

(3) Is designed to support students with intellectual disabilities who are seeking to continue academic, career

and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;

(4) Includes an advising and curriculum structure;

(5) Requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of the following activities:

(i) Taking credit-bearing courses with students without disabilities.

(ii) Auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit.

(iii) Taking non-credit-bearing, nondegree courses with students without disabilities.

(iv) Participating in internships or work-based training in settings with individuals without disabilities; and

(6) Provides students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

(b) *Student with an intellectual disability* means a student—

(1) With mental retardation or a cognitive impairment characterized by significant limitations in—

(i) Intellectual and cognitive functioning; and

(ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(2) Who is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

(Authority: 20 U.S.C. 1091, 1140)

§ 668.232 Program eligibility.

An institution that offers a comprehensive transition and postsecondary program must apply to the Secretary to have the program determined to be an eligible program. The institution applies under the provisions in 34 CFR 600.20 for adding an educational program, and must include in its application—

(a) A detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231;

(b) The institution's policy for determining whether a student enrolled in the program is making satisfactory academic progress;

(c) The number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;

(d) A description of the educational credential offered (*e.g.,* degree or certificate) or identified outcome or outcomes established by the institution for all students enrolled in the program;

(e) A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program. The letter or notice must include a description of the items in paragraphs (a) through (d) of this section; and

(f) Any other information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

(Authority: 20 U.S.C. 1091)

§ 668.233 Student eligibility.

A student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under this subpart if—

(a) The student satisfies the general student eligibility requirements under § 668.32, except for the requirements in paragraphs (a), (e), and (f) of that section. With regard to these exceptions, a student—

(1) Does not have to be enrolled for the purpose of obtaining a degree or certificate;

(2) Is not required to have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and

(3) Is making satisfactory progress according to the institution's published standards for students enrolled in its comprehensive transition and postsecondary programs;

(b) The student is enrolled in a comprehensive transition and postsecondary program approved by the Secretary; and

(c) The institution obtains a record from a local educational agency that the student is or was eligible for special education and related services under the IDEA. If that record does not identify the student as having an intellectual disability, as described in paragraph (1) of the definition of a student with an intellectual disability in § 668.231, the institution must also obtain documentation establishing that the student has an intellectual disability, such as—

(1) A documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or

(2) A record of the disability from a local or State educational agency, or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

(Authority: 20 U.S.C. 1091)

PART 675—FEDERAL WORK-STUDY PROGRAMS

■ 25. The authority citation for part 675 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1094; 42 U.S.C. 2751–2756b; unless otherwise noted.

§ 675.2 [Amended]

■ 26. In § 675.2(b), paragraph (1) of the definition of *community services* is amended by adding the words ''emergency preparedness and response,'' after the words ''public safety,''.

■ 27. Section 675.16 is revised to read as follow:

§ 675.16 Payments to students.

(a) *General.* (1) An institution must follow the disbursement procedures in this section for paying a student his or her wages under the FWS Program instead of the disbursement procedures in 34 CFR 668.164(a), (b), and (d) through (g), and 34 CFR 668.165. The institution must follow 34 CFR 668.164(c) on making direct FWS payments to students and 34 CFR 668.164(h) on handling the return of FWS funds that are not received or negotiated by a student.

(2) An institution must pay a student FWS compensation at least once a month.

(3) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(4) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(5) A student's FWS compensation is earned when the student performs the work.

(6) An institution may pay a student after the student's last day of attendance for FWS compensation earned while he or she was in attendance at the institution.

(7) A correspondence student must submit his or her first completed lesson before receiving a payment.

(8) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(9) An institution makes a disbursement of FWS program funds on the date that the institution credits a student's account at the institution or pays a student directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving FWS program funds.

(b) *Crediting a student's account at the institution.* (1) If the institution obtains the student's authorization described in paragraph (d) of this section, the institution may use the FWS funds to credit a student's account at the institution to satisfy—

(i) Current year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other educationally related charges incurred by the student at the institution; and

(ii) Prior award year charges with the restriction provided in paragraph (b)(2) of this section for a total of not more than $200 for—

(A) Tuition and fees, room, or board; and

(B) Other institutionally related charges incurred by the student at the institution.

(2) If the institution is using FWS funds in combination with other Title IV, HEA program funds to credit a student's account at the institution to satisfy prior award year charges, a single $200 total prior award year charge limit applies to the use of all the Title IV, HEA program funds for that purpose.

(c) *Credit balances.* Whenever an institution disburses FWS funds by crediting a student's account and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible, but no later than 14 days after the credit balance occurred on the account.

(d) *Student authorizations.* (1) Except for the noncash contributions allowed under paragraph (e)(2) and (3) of this section, if an institution obtains written authorization from a student, the institution may—

(i) Use the student's FWS compensation to pay for charges described in paragraph (b) of this section that are included in that authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student any FWS compensation that would otherwise be paid directly to the student under paragraph (c) of this section.

(2) In obtaining the student's authorization to perform an activity described in paragraph (d)(1) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student may authorize an institution to carry out the activities described in paragraph (d)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels an authorization to use his or her FWS compensation to pay for authorized charges under paragraph (b) of this section, the institution may use those funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student cancels an authorization to hold his or her FWS compensation under paragraph (d)(1)(ii) of this section, the institution must pay those funds directly to the student as soon as possible, but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess FWS compensation under paragraph (d)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS compensation the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balances by the end of the institution's final FWS payroll period for an award year.

(e)(1) *Timing of institutional share and noncash contributions.* Except for the noncash contributions allowed under paragraph (e)(2) or (3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

(2) If an institution pays a student its FWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its FWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(Authority: 20 U.S.C. 1091, 1094; 42 U.S.C. 2753)

■ 28. Section 675.18 is amended by:

■ A. Adding paragraph (g)(4).

■ B. Adding paragraph (i).

■ C. Revising the authority citation at the end of the section.

The additions and revisions read as follows:

§ 675.18 Use of funds.

* * * * *

(g) * * *

(4)(i) In meeting the seven percent community service expenditure requirement in paragraph (g)(1) of this section, students may be employed to perform civic education and participation activities in projects that—

(A) Teach civics in schools;

(B) Raise awareness of government functions or resources; or

(C) Increase civic participation.

(ii) To the extent practicable, in providing civic education and participation activities under paragraph (g)(4)(i) of this section, an institution must—

(A) Give priority to the employment of students in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and

(B) Ensure that the students receive appropriate training to carry out the educational services required.

* * * * *

(i) *Flexibility in the event of a major disaster.* (1) An institution located in any area affected by a major disaster may make FWS payments to disaster-affected students for the period of time (not to exceed the award period) in which the students were prevented from fulfilling their FWS obligations. The FWS payments—

(i) May be made to disaster-affected students for an amount equal to or less than the amount of FWS wages the students would have been paid had the students been able to complete the work obligation necessary to receive the funds;

(ii) May not be made to any student who was not eligible for FWS or was not completing the work obligation necessary to receive the funds, or had already separated from their employment prior to the occurrence of the major disaster; and

(iii) Must meet the matching requirements of § 675.26, unless those requirements are waived by the Secretary.

(2) The following definitions apply to this section:

(i) *Disaster-affected student* means a student enrolled at an institution who—

(A) Received an FWS award for the award period during which a major disaster occurred;

(B) Earned FWS wages from an institution for that award period;

(C) Was prevented from fulfilling his or her FWS obligation for all or part of the FWS award period because of the major disaster; and

(D) Was unable to be reassigned to another FWS job.

(ii) *Major disaster* is defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2755, 2756, 2756b)

■ 29. Section 675.26 is amended by:

■ A. In paragraph (d)(2)(iii), removing the word ''or'' that appears after the punctuation ''\;''.

■ B. In paragraph (d)(2)(iv), removing the punctuation ''.'' and adding, in its place, the word ''; or''.

■ C. Adding paragraph (d)(2)(v).

The addition reads as follows:

§ 675.26 FWS Federal share limitations.

* * * * *

(d) * * *

(2) * * *

(v) The student is employed in community service activities and is performing civic education and participation activities in a project as defined in § 675.18(g)(4).

* * * * *

■ 30. Section 675.41 is amended by:

■ A. Revising paragraph (a).

■ B. Revising the paragraph heading and introductory text in paragraph (b).

■ C. In paragraph (b)(2), removing the word '', participation,''.

■ D. In paragraph (b)(5), removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

■ E. In paragraph (b)(6), removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

The revisions read as follows:

§ 675.41 Special definitions.

* * * * *

(a) *Work-college:* An eligible institution that—

(1) Is a public or private nonprofit, four-year, degree-granting institution with a commitment to community service;

(2) Has operated a comprehensive work-learning-service program for at least two years;

(3) Requires resident students, including at least one-half of all students who are enrolled on a full-time basis, to participate in a comprehensive work-learning-service program for at least five hours each week, or at least 80 hours during each period of enrollment, except summer school, unless the student is engaged in an institutionally organized or approved study abroad or externship program; and

(4) Provides students participating in the comprehensive work-learning-service program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning-service program:* A student work-learning-service program that—

* * * * *

§ 675.43 [Amended]

■ 31. Section 675.43 is amended by removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

§ 675.44 [Amended]

■ 32. Section 675.44(b) is amended by removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

§ 675.45 [Amended]

33. Section 675.45 is amended by:

■ A. In paragraph (a)(1), in the introductory text of paragraph (a)(4), and in paragraph (a)(4)(i) removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

■ B. In paragraph (a)(5), removing the words ''work service learning'' and adding, in their place, the words ''work-learning-service''.

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 34. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.,* unless otherwise noted.

§ 686.12 [Amended]

■ 35. Section 686.12(c)(1) is amended by adding the words '', a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2)'' after the words ''teaching service''.

■ 36. Section 686.41 is amended by:

■ A. In the introductory text of paragraph (a)(2), removing the words ''and (ii)'' and adding, in their place, the words '', (ii), and (iii)''.

■ B. Revising paragraphs (a)(2)(ii), (b), and (c).

■ C. Adding an OMB control number at the end of the section.

The revisions and addition read as follows:

§ 686.41 Periods of suspension.

(a) * * *

(2) * * *

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) of this section.

(b) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

■ 37. Section 686.42 is amended by:

■ A. Adding paragraph (c).

■ B. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 686.42 Discharge of agreement to serve.

* * * * *

(c) *Military discharge.* (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under § 686.41(a)(2)(ii), may qualify for a proportional discharge of his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

(2) A grant recipient described in paragraph (c)(1) of this section may receive a—

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

(3) A grant recipient or his or her representative must provide the Secretary with—

(i) A written statement from the grant recipient's commanding or personnel officer certifying—

(A) That the grant recipient is on active duty in the Armed Forces of the United States;

(B) The date on which the grant recipient's service began; and

(C) The date on which the grant recipient's service is expected to end; or

(ii)(A) A copy of the grant recipient's official military orders; and

(B) A copy of the grant recipient's military identification.

(4) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(5) Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with § 686.12.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

■ 38. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

■ 39. Section 690.6 is amended by:

■ A. Revising the section heading.

■ B. Adding paragraph (e).

The revision and addition read as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(e) If a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than nine Scheduled Awards.

* * * * *

■ 40. Section 690.63 is amended by:

■ A. Adding paragraph (h).

■ B. Adding an OMB control number and authority citation at the end of the section.

The additions read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

* * * * *

(h) *Payment from two Scheduled Awards.* (1) In a payment period, a student may receive a payment from the student's first Scheduled Award in the award year and the student's second Scheduled Award in the award year if—

(i) The student is an eligible student who meets the provisions of § 690.67; and

(ii) The student's payment for the payment period is greater than the remaining balance of the first Scheduled Award.

(2) The student's payment for the payment period—

(i) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(ii) Is the remaining amount of the first Scheduled Award plus an amount from the second Scheduled Award for the balance of the payment for the payment period.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

■ 41. Section 690.64 is revised to read as follows:

§ 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b)(1) An institution must assign the payment period to the award year in which the student receives the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated;

(2) The institution must reassign the payment to the award year providing the greater payment if the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year—

(i) Subsequent to the initial calculation of the student's payment for the payment period; and

(ii) Not later than the deadline date for the first award year that the Secretary establishes through publication in the **Federal Register** for each award year; and

(3) The institution may reassign the payment to the award year providing the greater payment if the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year—

(i) Subsequent to the deadline date established in paragraph (b)(2) of this section; and

(ii) Not later than the deadline date for the first award year for administrative relief based on unusual circumstances that the Secretary establishes through publication in the **Federal Register** for each award year;

(c) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year; and

(d) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

■ 42. Section 690.67 is revised to read as follows:

§ 690.67 Receiving up to two Scheduled Awards during a single award year.

(a) *Eligibility.* An institution shall award up to the full amount of a second Scheduled Award to a student in an award year if the student—

(1) Is enrolled for credit or clock hours that are attributable to the student's second academic year in the award year;

(2) Is enrolled in an eligible program leading to a bachelor's or associate degree or other recognized educational credential except as provided in 34 CFR part 668, subpart O for students with intellectual disabilities; and

(3) Is enrolled at least as a half-time student.

(b) *Transfer student.* (1) *Options.* If a student transfers to an institution during an award year, the institution must determine the credit or clock hours earned in the award year at the other institutions in accordance with paragraph (b)(2) or (3) of this section.

(2) *Assumption method.* (i) The institution may assume that a student has completed the credit or clock hours in the first academic year of the award year if the first Scheduled Award was disbursed at other institutions during the award year; or

(ii) If less than the first Scheduled Award has been disbursed at a prior

institution that the student attended during the award year, the institution must determine the credit or clock hours the student is considered to have previously earned in the award year by—

(A) Multiplying the amount of the student's Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the institution's academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution; and

(B) If the student previously attended more than one institution in the award year, adding the results of paragraph (b)(2)(i) of this section for each prior institution.

(3) *Hours-earned method.* (i) If the institution has information concerning the credit or clock hours earned by a student while attending other institutions, the institution may determine the credit or clock hours actually earned at other institutions.

(ii) To make a determination under paragraph (b)(3)(i) of this section, the institution must have information that—

(A) Includes the time periods when the credit or clock hours were earned; and

(B) Does not include nonapplicable credit or clock hours described in paragraph (d) of this section.

(iii) An institution must attribute to the current award year any credit or clock hours earned at other institutions that were earned in a payment period that it determines was scheduled to occur in the prior award year and the current award year.

(4) *Receipt of additional information.* (i) If an institution receives additional information concerning, for paragraph (b)(2) of this section, Federal Pell Grant disbursements or, for paragraph (b)(3) of this section, credit or clock hours earned at other institutions and related information, subsequent to a prior payment period in which the institution disbursed a payment of a second Scheduled Award in the award year based on the application of paragraph (b)(2) or (3) of this section, the institution is not required to apply the information to the prior payment period.

(c) *Special circumstances.* (1) In a payment period in which there is insufficient remaining eligibility from a student's first Scheduled Award to provide a full payment for the payment period, the financial aid administrator at the institution may waive the requirement in paragraph (a)(1) of this section, if the financial aid administrator—

(i) Determines that the student due to circumstances beyond the student's control was unable to complete the credit or clock hours of the first academic year that are necessary to be enrolling for credit or clock hours that are attributable to the second academic year; and

(ii) The determination is made and documented on an individual basis.

(2) For purposes of paragraph (c)(1) of this section, circumstances beyond a student's control—

(i) May include, but are not limited to, the student withdrawing from classes due to illness or being unable to register for classes necessary to complete his or her eligible program because those classes were not offered during that period; and

(ii) Do not include, for example, withdrawing to avoid a particular grade or failing to register for a necessary class that was offered during the period to avoid a particular instructor.

(d) *Nonapplicable credit or clock hours.* To determine the student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

■ 43. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

§ 692.10 [Amended]

■ 44. Section 692.10 is amended by:

■ A. In paragraph (a)(1), adding the words ''for the programs under this part'' after the number ''1979''.

■ B. In paragraph (a)(2), removing the word ''If'' and adding, in its place, the words ''For the programs under this part, if''.

■ C. In paragraph (a)(2), removing the word ''LEAP'' each time it appears.

■ D. In paragraph (b), removing the word ''-appropriated'' after the word ''State'', both times it appears.

■ E. In the authority citation at the end of the section, adding '', 1070c–2'' after the number ''1070c''

■ 45. Section 692.21 is amended by:

■ A. In paragraph (c), removing the figure ''$5,000'' and adding, in its place, the words ''the lesser of $12,500 or the student's cost of attendance under section 472 of the HEA''.

■ B. In paragraph (j), removing the word ''and'' that appears after the punctuation '';''.

■ C. Redesignating paragraph (k) as paragraph (l).

■ D. Adding a new paragraph (k).

■ E. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(k) Notifies eligible students that the grants are—

(1) Leveraging Educational Assistance Partnership Grants; and

(2) Funded by the Federal Government, the State, and, where applicable, other contributing partners; and

* * * * *

(Approved by the Office of Management and Budget under control number 1845–NEW7)

* * * * *

■ 46. Section 692.70 is revised to read as follows:

§ 692.70 How does the Secretary allot funds to the States?

For fiscal year 2010–2011, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10 prior to calculating allotments for States applying for GAP funds under subpart C of this part.

(Authority: 20 U.S.C. 1070c–3a)

■ 47. Subpart C, consisting of §§ 692.90 through 692.130 and Appendix A, is added to part 692 to read as follows:

Subpart C—Grants for Access and Persistence Program

General

Sec.
692.90 What is the Grants for Access and Persistence Program?
692.91 What other regulations apply to the GAP Program?
692.92 What definitions apply to the GAP Program?
692.93 Who is eligible to participate in the GAP Program?
692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

How Does a State Apply to Participate in GAP?

692.100 What requirements must a State meet to receive an allotment under this program?
692.101 What requirements must be met by a State partnership?

What Is the Amount of Assistance and How May It Be Used?

692.110 How does the Secretary allot funds to the States?
692.111 For what purposes may a State use its payment under the GAP Program?
692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?
692.113 What are the matching requirements for the GAP Program?

How Does the Partnership Select Students Under the GAP Program?

692.120 What are the requirements for student eligibility?

How Does the Secretary Approve a Waiver of Program Requirements?

692.130 How does a participating institution request a waiver of program requirements?
Appendix A to Subpart C of Part 692—Grants for Access and Persistence Program (GAP) State Grant Allotment Case Study

Subpart C—Grants for Access and Persistence Program

General

§ 692.90 What is the Grants for Access and Persistence Program?

The Grants for Access and Persistence (GAP) Program assists States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education and to encourage increased participation in early information and intervention, mentoring, or outreach programs.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.91 What other regulations apply to the GAP Program?

The regulations listed in § 692.3 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.92 What definitions apply to the GAP Program?

The definitions listed in § 692.4 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.93 Who is eligible to participate in the GAP Program?

(a) *States.* States that meet the requirements in §§ 692.94 and 692.100 are eligible to receive payments under the GAP Program.

(b) *Degree-granting institutions of higher education.* Degree-granting institutions of higher education that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(c) *Early information and intervention, mentoring, or outreach programs.* Early information and intervention, mentoring, or outreach programs that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(d) *Philanthropic organizations or private corporations.* Philanthropic organizations or private corporations that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(e) *Students.* Students who meet the requirements of § 692.120 are eligible to receive assistance or services from a partnership under the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

To receive GAP Program funds for any fiscal year—

(a) A State must—

(1) Participate in the LEAP Program;

(2) Establish a State partnership with—

(i) At least—

(A) One public degree-granting institution of higher education that is located in the State; and

(B) One private degree-granting institution of higher education, if at least one exists in the State that may be eligible to participate in the State's LEAP Program under subpart A of this part;

(ii) New or existing early information and intervention, mentoring, or outreach programs located in the State; and

(iii) At least one philanthropic organization located in, or that provides funding in, the State, or private corporation located in, or that does business in, the State;

(3) Meet the requirements in § 692.100; and

(4) Have a program under this subpart that satisfies the requirements in § 692.21(a), (e), (f), (g), and (j).

(b) A State may provide an early information and intervention, mentoring, or outreach program under paragraph (a)(2)(ii) of this section.

(Authority: 20 U.S.C. 1070c–3a)

How Does a State Apply to Participate in GAP?

§ 692.100 What requirements must a State meet to receive an allotment under this program?

For a State to receive an allotment under the GAP Program, the State agency that administers the State's LEAP Program under subpart A of this part must—

(a) Submit an application on behalf of a partnership in accordance with the provisions in § 692.20 at such time, in such manner, and containing such information as the Secretary may require including—

(1) A description of—

(i) The State's plan for using the Federal funds allotted under this subpart and the non-Federal matching funds; and

(ii) The methods by which matching funds will be paid;

(2) An assurance that the State will provide matching funds in accordance with § 692.113;

(3) An assurance that the State will use Federal GAP funds to supplement, and not supplant, Federal and State funds available for carrying out the activities under Title IV of the HEA;

(4) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make these programs widely available;

(5) A description of the organizational structure that the State has in place to administer the program, including a description of how the State will compile information on degree completion of students receiving grants under this subpart;

(6) A description of the steps the State will take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP persist to degree completion;

(7) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution under section 479(c) of the HEA, to identify eligible students and award LEAP Grants under GAP to such students;

(8) An assurance that the State will provide notification to eligible students that grants under this subpart are LEAP Grants and are funded by the Federal Government and the State, and, where applicable, other contributing partners.

(b) Serve as the primary administrative unit for the partnership;

(c) Provide or coordinate non-Federal share funds, and coordinate activities among partners;

(d) Encourage each institution of higher education in the State that participates in the State's LEAP Program under subpart A of this part to participate in the partnership;

(e) Make determinations and early notifications of assistance;

(f) Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that a State spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported for the programs under this part;

(g) Provide an assurance that, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(h) Provide for reports to the Secretary that are necessary to carry out the Secretary's functions under the GAP Program.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.101 What requirements must be met by a State partnership?

(a) *State.* A State that is receiving an allotment under this subpart must meet the requirements under §§ 692.94 and 692.100.

(b) *Degree-granting institution of higher education.* A degree-granting institution of higher education that is in a partnership under this subpart—

(1) Must participate in the State's LEAP Program under subpart A of this part;

(2) Must recruit and admit participating eligible students and provide additional institutional grant aid to participating students as agreed to with the State agency;

(3) Must provide support services to students who receive LEAP Grants under GAP and are enrolled at the institution;

(4) Must assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(5) May provide funding or services for early information and intervention, mentoring, or outreach programs.

(c) *Early information and intervention, mentoring, or outreach program.* An early information and intervention, mentoring, or outreach program that is in a partnership under this subpart shall provide direct services, support, and information to participating students.

(d) *Philanthropic organization or private corporation.* A philanthropic organization or private corporation in a partnership under this subpart shall provide non-Federal funds for LEAP Grants under GAP for participating students or provide funds or support for early information and intervention, mentoring, or outreach programs.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

What Is the Amount of Assistance and How May It Be Used?

§ 692.110 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the GAP Program an amount of the funds available for the GAP Program based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a).

(2) If a State meets the requirements of § 692.113(b) for a fiscal year, the number of students under § 692.10(a) for the State is increased to 125 percent in determining the ratio in paragraph (a) of this section for that fiscal year.

(3) Notwithstanding paragraph (a)(1) and (2) of this section—

(i) If the Federal GAP funds available from the appropriation for a fiscal year are sufficient to allot to each State that participated in the prior year the same amount of Federal GAP funds allotted in the prior fiscal year, but are not sufficient both to allot the same amount of Federal GAP funds allotted in the prior fiscal year to these States and also to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a), the Secretary allots—

(A) To each State that participated in the prior year, the amount the State received in the prior year; and

(B) To each State that did not participate in the prior year, an amount of Federal GAP funds available to States based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a); and

(ii) If the Federal GAP funds available from the appropriation for a fiscal year are not sufficient to allot to each State that participated in the prior year at least the amount of Federal GAP funds allotted in the prior fiscal year, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

(4) For fiscal year 2011, the prior fiscal year allotment to a State for purposes of paragraph (a)(3) of this section shall include any fiscal year 2010 allotment made to that State under subpart B of this part.

(b) The Secretary allots funds available for reallotment in a fiscal year in accordance with the provisions of paragraph (a) of this section used to calculate initial allotments for the fiscal year.

(c) Any funds made available for the program under this subpart but not expended may be allotted or reallotted for the program under subpart A of this part.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.111 For what purposes may a State use its payment under the GAP Program?

(a) *Establishment of a partnership.* Each State receiving an allotment under this subpart shall use the funds to establish a partnership to award grants to eligible students in order to increase the amount of financial assistance students receive under this subpart for undergraduate education expenses.

(b) *Amount of LEAP Grants under GAP.* (1) The amount of a LEAP Grant under GAP by a State to an eligible student shall be not less than—

(i) The average undergraduate in-State tuition and mandatory fees for full-time students at the public institutions of higher education in the State where the student resides that are the same type of institution that the student attends (four-year degree-granting, two-year degree-granting, or non-degree-granting); minus

(ii) Other Federal and State aid the student receives.

(2) The Secretary determines the average undergraduate in-State tuition and mandatory fees for full-time students at public institutions in a State weighted by enrollment using the most recent data reported by institutions in the State to the Integrated Postsecondary Education Data System (IPEDS) administered by the National Center for Educational Statistics.

(c) *Institutional participation.* (1) A State receiving an allotment under this subpart may restrict the use of LEAP Grants under GAP only to students attending institutions of higher education that are participating in the partnership.

(2) If a State provides LEAP Grants under subpart A of this part to students attending institutions of higher education located in another State, LEAP Grants under GAP may be used at institutions of higher education located in another State.

(d) *Early notification to potentially eligible students.* (1) Each State receiving an allotment under this subpart shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

(2) The notice shall include—

(i) Information about early information and intervention, mentoring, or outreach programs available to the student;

(ii) Information that a student's eligibility for a LEAP Grant under GAP is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(iii) An explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a LEAP Grant under GAP and other student aid programs;

(iv) A nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(v) An explanation that in order to be eligible for a LEAP Grant under GAP, at a minimum, a student shall—

(A) Meet the eligibility requirements under § 692.120; and

(B) Enroll at a LEAP-participating institution of higher education in the State of the student's residence or an out-of-state institution if the State elects to make LEAP Grants under GAP for attendance at out-of-State institutions in accordance with paragraph (c)(2) of this section;

(vi) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP in accordance with § 692.120(a)(4); and

(vii) An explanation that a student is required to file a Free Application for Federal Student Aid to determine his or her eligibility for Federal and State financial assistance and may include a provision that eligibility for an award is subject to change based on—

(A) A determination of the student's financial eligibility at the time of the student's enrollment at a LEAP-participating institution of higher education or an out-of-State institution in accordance with paragraph (c)(2) of this section;

(B) Annual Federal and State spending for higher education; and

(C) Other aid received by the student at the time of the student's enrollment at the institution of higher education.

(e) *Award notification.* (1) Once a student, including a student who has received early notification under paragraph (d) of this section, applies for admission to an institution that is a partner in the partnership of the State of the student's residence, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State, the State shall—

(i) Issue the student a preliminary award certificate for a LEAP Grant under GAP with estimated award amounts; and

(ii) Inform the student that the payment of the grant is subject to certification of enrollment and eligibility by the institution.

(2) If a student enrolls in an institution that is not a partner in the partnership of the student's State of residence but the State has not restricted eligibility to students enrolling in partner institutions, including, if applicable, out-of-State institutions, the State shall, to the extent practicable, follow the procedures of paragraph (e)(1) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?

(a) A State that receives an allotment under this subpart may reserve not more than two percent of the funds made available annually for State administrative functions required for administering the partnership and other program activities.

(b) A State must use not less than ninety-eight (98) percent of an allotment under this subpart to make LEAP Grants under GAP.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.113 What are the matching requirements for the GAP Program?

(a) The matching funds of a partnership—

(1) Shall be funds used for making LEAP Grants to eligible students under this subpart;

(2) May be—

(i) Cash; or

(ii) A noncash, in-kind contribution that—

(A) Is fairly evaluated;

(B) Has monetary value, such as a tuition waiver or provision of room and board, or transportation;

(C) Helps a student meet the cost of attendance at an institution of higher education; and

(D) Is considered to be estimated financial assistance under 34 CFR 673.5(c); and

(3) May be funds from the State, institutions of higher education, or philanthropic organizations or private corporations that are used to make LEAP Grants under GAP.

(b) The non-Federal match of the Federal allotment shall be—

(1) Forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State; and

(2) Thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State.

(c) Nothing in this part shall be interpreted as limiting a State or other member of a partnership from expending funds to support the activities of a partnership under this subpart that are in addition to the funds matching the Federal allotment.

(Authority: 20 U.S.C. 1070c–3a)

How Does the Partnership Select Students Under the GAP Program?

§ 692.120 What are the requirements for student eligibility?

(a) *Eligibility.* A student is eligible to receive a LEAP Grant under GAP if the student—

(1) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(2) Has graduated from secondary school or, for a home-schooled student, has completed a secondary education;

(3)(i) Has received, or is receiving, a LEAP Grant under GAP for each year the student remains eligible for assistance under this subpart; or

(ii) Meets at least two of the following criteria—

(A) As designated by the State, either has an EFC equal to zero, as determined

under part F of the HEA, or a comparable alternative based on the State's approved criteria for the LEAP Program under subpart A of this part;

(B) Qualifies for the State's maximum undergraduate award for LEAP Grants under subpart A of this part in the award year in which the student is receiving an additional LEAP Grant under GAP; or

(C) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as determined by the State agency administering the programs under this part; and

(4) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

(b) *Priority.* In awarding LEAP Grants under GAP, a State shall give priority to students meeting all the criteria in paragraph (a)(3)(i) of this section.

(c) *Duration of eligibility.* (1) A student may receive a LEAP Grant under GAP if the student continues to demonstrate that he or she is financially eligible by meeting the provisions of paragraph (a)(3)(ii)(A) or (B) of this section.

(2) A State may impose reasonable time limits to degree completion.

(Authority: 20 U.S.C. 1070c–3a)

How Does the Secretary Approve a Waiver of Program Requirements?

§ 692.130 How does a participating institution request a waiver of program requirements?

(a) The Secretary may grant, upon the request of an institution participating in a partnership that meets the requirements of § 692.113(b)(2), a waiver for the institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(b) An institution must submit a request for a waiver through the State agency administering the partnership.

(c) The State agency must forward to the Secretary, in a timely manner, the request made by the institution and may include any additional information or recommendations that it deems appropriate for the Secretary's consideration.

(Authority: 20 U.S.C. 1070c–3a)

BILLING CODE 4000–01–P

Appendix A to Subpart C of part 692 – Grants for Access and Persistence Program (GAP)

State Grant Allotment Case Study

Basic Allotment Formula for LEAP, SLEAP, and GAP

1979 State Enrollment Data

State	Enrollment
Alabama	174,170
Alaska	18,594
Arizona	199,274
Arkansas	74,057
California	1,798,400
Colorado	159,836
Connecticut	152,431
Delaware	31,228
District of Columbia	85,259
Florida	366,344
Georgia	203,269
Hawaii	48,097
Idaho	39,198
Illinois	632,654
Indiana	234,086
Iowa	125,845
Kansas	129,705
Kentucky	142,958
Louisiana	166,660
Maine	41,954
Maryland	213,490
Massachusetts	376,361
Michigan	483,833
Minnesota	226,365
Mississippi	99,078
Missouri	231,327
Montana	32,270
Nebraska	83,922
Nevada	31,926
New Hampshire	40,803
New Jersey	306,983
New Mexico	59,420
New York	989,409
North Carolina	254,199
North Dakota	31,357
Ohio	464,069
Oklahoma	157,622
Oregon	150,353
Pennsylvania	514,421
Rhode Island	61,773
South Carolina	126,628
South Dakota	33,227
Tennessee	189,530
Texas	638,504
Utah	86,966
Vermont	29,398
Virginia	249,297
Washington	265,593
West Virginia	85,012
Wisconsin	244,111
Wyoming	19,633
American Samoa	836
Guam	3,710
Northern Marianas Island	143
Puerto Rico	104,640
Virgin Islands	2,122
Total	**11,712,350**

Basic Allotment Formula

1) Derive a percentage of total enrollment of all states:

$$\frac{\text{State Enrollment Data*}}{\text{Total State Enrollment (for all states/territories)}} = \text{\% of Total Enrollment}$$

2) Determine what portion of the Federal Appropriation a State/territory receives:

$$\text{\% of Total Enrollment} \times \text{Federal Appropriation Amount} = \text{Amount of the Allocation per State}$$

*Use FY 1979 enrollment data unless the appropriation exceeds $76,452,287 (the FY 1979 appropriation); 1976-1977 award year enrollment data used for FY 1979. Use most recent enrollment data if appropriation exceeds $76,452,287.

NOTE: This case study illustrates the requirements for allotting funds under the GAP Program under §692.110 and SLEAP Program funding during fiscal year 2010 (the 2010-2011 award year) under §692.70. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected funding for any State.

First Year of GAP Implementation (2010-11)

Conditions:

Appropriation for FY 2010:	$63,852,000
LEAP funds for FY 2010:	$30,000,000
SLEAP/GAP funds for FY 2010:	$33,852,000

Illustrates:

First, must allot to SLEAP applicants (Table A)

Then, use remaining funds for GAP applicants (Table B)

First Year of GAP Implementation (2010-11): SLEAP Allotment (Table A)

Must calculate SLEAP first

Federal Appropriation Available after LEAP Allotment: $33,852,000

State	State Enrollment	Formula Amount	Formula Amount	State SLEAP Allotment
§ Alabama		$0.00	$0	
‡ Alaska	18,594	$59,494.79	$59,495	**$59,495**
Arizona	199,274	$637,612.43	$637,612	
§ Arkansas		$0.00	$0	
California	1,798,400	$5,754,299.06	$5,754,299	
Colorado	159,836	$511,423.57	$511,424	
Connecticut	152,431	$487,729.96	$487,730	
Delaware	31,228	$99,919.51	$99,920	
District of Columbia	85,259	$272,801.26	$272,801	
Florida	366,344	$1,172,182.46	$1,172,182	
§ Georgia		$0.00	$0	
§ Hawaii		$0.00	$0	
‡ Idaho	39,198	$125,420.94	$125,421	**$125,421**
Illinois	632,654	$2,024,288.43	$2,024,288	
Indiana	234,086	$748,999.58	$749,000	
Iowa	125,845	$402,663.35	$402,663	
Kansas	129,705	$415,014.10	$415,014	
Kentucky	142,958	$457,419.42	$457,419	
Louisiana	166,660	$533,258.16	$533,258	
‡ Maine	41,954	$134,239.25	$134,239	**$134,239**
Maryland	213,490	$683,099.04	$683,099	
§ Massachusetts		$0.00	$0	
‡ Michigan	483,833	$1,548,109.31	$1,548,109	**$1,548,109**
Minnesota	226,365	$724,294.88	$724,295	
§ Mississippi		$0.00	$0	
Missouri	231,327	$740,171.67	$740,172	
‡ Montana	32,270	$103,253.58	$103,254	**$103,254**
Nebraska	83,922	$268,523.29	$268,523	
Nevada	31,926	$102,152.89	$102,153	
New Hampshire	40,803	$130,556.42	$130,556	
New Jersey	306,983	$982,246.44	$982,246	
‡ New Mexico	59,420	$190,124.81	$190,125	**$190,125**
New York	989,409	$3,165,789.19	$3,165,789	
North Carolina	254,199	$813,354.69	$813,355	
North Dakota	31,357	$100,332.27	$100,332	
‡ Ohio	464,069	$1,484,870.89	$1,484,871	**$1,484,871**
Oklahoma	157,622	$504,339.48	$504,339	
Oregon	150,353	$481,081.03	$481,081	
Pennsylvania	514,421	$1,645,981.03	$1,645,981	
Rhode Island	61,773	$197,653.65	$197,654	
South Carolina	126,628	$405,168.70	$405,169	
§ South Dakota		$0.00	$0	
Tennessee	189,530	$606,434.78	$606,435	
Texas	638,504	$2,043,006.54	$2,043,007	
Utah	86,966	$278,263.11	$278,263	
Vermont	29,398	$94,064.10	$94,064	
Virginia	249,297	$797,669.87	$797,670	
Washington	265,593	$849,811.81	$849,812	
‡ West Virginia	85,012	$272,010.94	$272,011	**$272,011**
Wisconsin	244,111	$781,076.34	$781,076	
§ Wyoming		$0.00	$0	
‡ American Samoa	836	$2,674.93	$2,675	**$2,675**
‡ Guam	3,710	$11,870.80	$11,871	**$11,871**
‡ No. Marianas Island	143	$457.55	$458	**$458**
§ Puerto Rico		$0.00	$0	
‡ Virgin Islands	2,122	$6,789.71	$6,790	**$6,790**
Total	10,579,818	$33,852,000.00	$33,852,000	**$3,939,317** **Total SLEAP Allotments**
				$29,912,683 **Remaining balance for GAP allotment**

Key: ‡ Applies for SLEAP
§ Does not apply or qualify

First Year of GAP Implementation (2010-11): GAP Allotment-with Priority (Table B)

Demonstrate GAP actual allotment with required priority

Federal Appropriation Available for GAP Allotment: $29,912,683

State	State Enrollment with Priority Applied	Formula Amount with Priority Applied	State GAP Allotment with Priority Applied
§ Alabama		$0.00	**$0**
‡ Alaska		$0.00	**$0**
Arizona	199,274	$547,813.66	**$547,814**
§ Arkansas		$0.00	**$0**
# California	2,248,000	$6,179,858.41	**$6,179,858**
Colorado	159,836	$439,396.73	**$439,397**
# Connecticut	190,539	$523,800.04	**$523,800**
# Delaware	39,035	$107,309.06	**$107,309**
District of Columbia	85,259	$234,381.03	**$234,381**
# Florida	457,930	$1,258,871.25	**$1,258,871**
§ Georgia		$0.00	**$0**
§ Hawaii		$0.00	**$0**
‡ Idaho		$0.00	**$0**
# Illinois	790,818	$2,173,994.74	**$2,173,995**
Indiana	234,086	$643,513.49	**$643,513**
Iowa	125,845	$345,953.86	**$345,954**
Kansas	129,705	$356,565.18	**$356,565**
Kentucky	142,958	$392,998.31	**$392,998**
Louisiana	166,660	$458,156.23	**$458,156**
‡ Maine		$0.00	**$0**
Maryland	213,490	$586,894.12	**$586,894**
§ Massachusetts		$0.00	**$0**
‡ Michigan		$0.00	**$0**
Minnesota	226,365	$622,288.10	**$622,288**
§ Mississippi		$0.00	**$0**
Missouri	231,327	$635,928.87	**$635,929**
‡ Montana		$0.00	**$0**
Nebraska	83,922	$230,705.55	**$230,706**
Nevada	31,926	$87,766.09	**$87,766**
New Hampshire	40,803	$112,169.38	**$112,169**
# New Jersey	383,729	$1,054,888.50	**$1,054,888**
‡ New Mexico		$0.00	**$0**
New York	989,409	$2,719,932.17	**$2,719,932**
# North Carolina	317,749	$873,506.35	**$873,506**
North Dakota	31,357	$86,201.88	**$86,202**
‡ Ohio		$0.00	**$0**
# Oklahoma	197,028	$541,637.92	**$541,638**
# Oregon	187,941	$516,659.39	**$516,659**
# Pennsylvania	643,026	$1,767,709.60	**$1,767,710**
# Rhode Island	77,216	$212,271.13	**$212,271**
South Carolina	126,628	$348,106.37	**$348,106**
§ South Dakota		$0.00	**$0**
# Tennessee	236,913	$651,283.68	**$651,284**
# Texas	798,130	$2,194,097.15	**$2,194,097**
# Utah	108,708	$298,842.06	**$298,842**
# Vermont	36,748	$101,020.62	**$101,021**
# Virginia	311,621	$856,661.57	**$856,662**
# Washington	331,991	$912,659.66	**$912,660**
‡ West Virginia		$0.00	**$0**
# Wisconsin	305,139	$838,840.87	**$838,841**
§ Wyoming		$0.00	**$0**
‡ American Samoa		$0.00	**$0**
‡ Guam		$0.00	**$0**
‡ No. Marianas Islands		$0.00	**$0**
§ Puerto Rico		$0.00	**$0**
‡ Virgin Islands		$0.00	**$0**
Total	10,881,109	$29,912,683.00	**$29,912,683**

Key: # Priority States, 125% applied
‡ Applies for SLEAP
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12)

Conditions:

Appropriation for FY 2011: $65,852,000
LEAP funds for FY 2011: $30,000,000
GAP funds for FY 2011: $35,852,000
12 States initially apply for GAP funding (WV with priority)
9 initial applicants received SLEAP in FY 2010
AR, MA, and MS initial applicants with no FY 2010 SLEAP
AK, NM, No Marianas with FY 2010 SLEAP; do not apply or qualify for GAP
Priority States in FY 2010 continue as priority States
IN and IA, continuing States, convert to priority States

Illustrates:

Insufficient funds are available to fund all applicants and meet continuing award requirement (Table C)
Continuing awards are based on prior year SLEAP and GAP allotments (Table D)
New applicants receive remaining available fund: $2,250,076 (Table E)

Second Year of GAP Implementation (2011-12): GAP Allotment-Initial Calculation
Perform initial calculation to determine if negative changes from prior year awards (Table C)
Federal Appropriation Available for GAP Allotment: $35,852,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Calculation	Prior Year Allotment	Change from Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$562,777.39	$562,777	$547,814	14,964
Δ Arkansas	74,057	$209,147.23	$209,147	$0	209,147
# California	2,248,000	$6,348,663.51	$6,348,664	$6,179,858	168,805
Colorado	159,836	$451,399.01	$451,399	$439,397	12,002
# Connecticut	190,539	$538,107.83	$538,108	$523,800	14,308
# Delaware	39,035	$110,240.25	$110,240	$107,309	2,931
District of Columbia	85,259	$240,783.23	$240,783	$234,381	6,402
# Florida	457,930	$1,293,257.78	$1,293,258	$1,258,871	34,387
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
□ Idaho	39,198	$110,700.58	$110,701	$125,421	-14,720
# Illinois	790,818	$2,233,378.20	$2,233,378	$2,173,995	59,383
+ Indiana	292,608	$826,364.13	$826,364	$643,513	182,851
+ Iowa	157,306	$444,254.65	$444,255	$345,954	98,301
Kansas	129,705	$366,304.89	$366,305	$356,565	9,740
Kentucky	142,958	$403,733.20	$403,733	$392,998	10,735
Louisiana	166,660	$470,670.93	$470,671	$458,156	12,515
□ Maine	41,954	$118,483.91	$118,484	$134,239	-15,755
Maryland	213,490	$602,925.34	$602,925	$586,894	16,031
Δ Massachusetts	376,361	$1,062,895.62	$1,062,896	$0	1,062,896
□ Michigan	483,833	$1,366,411.44	$1,366,411	$1,548,109	-181,698
Minnesota	226,365	$639,286.13	$639,286	$622,288	16,998
Δ Mississippi	99,078	$279,810.00	$279,810	$0	279,810
Missouri	231,327	$653,299.50	$653,300	$635,929	17,371
□ Montana	32,270	$91,134.95	$91,135	$103,254	-12,119
Nebraska	83,922	$237,007.36	$237,007	$230,706	6,302
Nevada	31,926	$90,163.45	$90,163	$87,766	2,397
New Hampshire	40,803	$115,233.33	$115,233	$112,169	3,064
# New Jersey	383,729	$1,083,703.16	$1,083,703	$1,054,888	28,815
§ New Mexico		$0.00	$0	$0	0
New York	989,409	$2,794,228.12	$2,794,228	$2,719,932	74,296
# North Carolina	317,749	$897,366.50	$897,367	$873,506	23,860
North Dakota	31,357	$88,556.51	$88,557	$86,202	2,355
□ Ohio	464,069	$1,310,595.16	$1,310,595	$1,484,871	-174,276
# Oklahoma	197,028	$556,432.96	$556,433	$541,638	14,795
# Oregon	187,941	$530,772.13	$530,772	$516,659	14,113
# Pennsylvania	643,026	$1,815,995.23	$1,815,995	$1,767,710	48,286
# Rhode Island	77,216	$218,069.39	$218,069	$212,271	5,798
South Carolina	126,628	$357,615.02	$357,615	$348,106	9,509
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$669,073.73	$669,074	$651,284	17,790
# Texas	798,130	$2,254,029.72	$2,254,030	$2,194,097	59,933
# Utah	108,708	$307,005.04	$307,005	$298,842	8,163
# Vermont	36,748	$103,780.03	$103,780	$101,021	2,759
# Virginia	311,621	$880,061.59	$880,062	$856,662	23,400
# Washington	331,991	$937,589.29	$937,589	$912,660	24,930
□ + West Virginia	106,265	$300,107.09	$300,107	$272,011	28,096
# Wisconsin	305,139	$861,754.11	$861,754	$838,841	22,913
§ Wyoming		$0.00	$0	$0	0
□ American Samoa	836	$2,360.98	$2,361	$2,675	-314
□ Guam	3,710	$10,477.55	$10,478	$11,871	-1,393
§ No. Marianas Island		$0.00	$0	$0	0
§ Puerto Rico		$0.00	$0	$0	0
□ Virgin Islands	2,122	$5,992.82	$5,993	$6,790	-797
Total	12,694,845	$35,852,000.00	$35,852,000		

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
Priority States, 125% applied
+ New Priority States, 125% applied
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment-Continuing Awards (Table D)

No calculation: carry over GAP and SLEAP allotment amounts from prior year

Federal Appropriation Available for GAP Allotment: $35,852,000

State	Prior Year Allotment	No Formula Amount	State Allotment Continuing Awards
§ Alabama	$0		$0
§ Alaska			
Arizona	$547,814		$547,814
Δ Arkansas	$0		$0
# California	$6,179,858		$6,179,858
Colorado	$439,397		$439,397
# Connecticut	$523,800		$523,800
# Delaware	$107,309		$107,309
District of Columbia	$234,381		$234,381
# Florida	$1,258,871		$1,258,871
§ Georgia	$0		$0
§ Hawaii	$0		$0
□ Idaho	$125,421		$125,421
# Illinois	$2,173,995		$2,173,995
+ Indiana	$643,513		$643,513
+ Iowa	$345,954		$345,954
Kansas	$356,565		$356,565
Kentucky	$392,998		$392,998
Louisiana	$458,156		$458,156
□ Maine	$134,239		$134,239
Maryland	$586,894		$586,894
Δ Massachusetts	$0		$0
□ Michigan	$1,548,109		$1,548,109
Minnesota	$622,288		$622,288
Δ Mississippi	$0		$0
Missouri	$635,929		$635,929
□ Montana	$103,254		$103,254
Nebraska	$230,706		$230,706
Nevada	$87,766		$87,766
New Hampshire	$112,169		$112,169
# New Jersey	$1,054,888		$1,054,888
§ New Mexico	$0		$0
New York	$2,719,932		$2,719,932
# North Carolina	$873,506		$873,506
North Dakota	$86,202		$86,202
□ Ohio	$1,484,871		$1,484,871
# Oklahoma	$541,638		$541,638
# Oregon	$516,659		$516,659
# Pennsylvania	$1,767,710		$1,767,710
# Rhode Island	$212,271		$212,271
South Carolina	$348,106		$348,106
§ South Dakota	$0		$0
# Tennessee	$651,284		$651,284
# Texas	$2,194,097		$2,194,097
# Utah	$298,842		$298,842
# Vermont	$101,021		$101,021
# Virginia	$856,662		$856,662
# Washington	$912,660		$912,660
□+ West Virginia	$272,011		$272,011
# Wisconsin	$838,841		$838,841
§ Wyoming	$0		$0
□ American Samoa	$2,675		$2,675
□ Guam	$11,871		$11,871
§ No. Marianas Island	$0		$0
§ Puerto Rico	$0		$0
□ Virgin Islands	$6,790		$6,790
Total	$33,601,924		$33,601,924

Key: **> New applicant with FY 2010 SLEAP**
Δ New applicant, no FY 2010 SLEAP
 # Priority States
+ New Priority
Priority not applied
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment - New Applicants (Table E)
Calculate allotments using basic allotment formula for new applicants with no FY 2010 GAP or SLEAP
Federal Appropriation Available for New Applicant Allotment: $2,250,076

State	State Enrollment with Priority Applied	Formula Amount	State Allotment
§ Alabama		$0.00	$0
§ Alaska		$0.00	$0
Arizona		$0.00	$0
Δ Arkansas	74,057	$303,248.57	$303,249
# California		$0.00	$0
Colorado		$0.00	$0
# Connecticut		$0.00	$0
# Delaware		$0.00	$0
District of Columbia		$0.00	$0
# Florida		$0.00	$0
§ Georgia		$0.00	$0
§ Hawaii		$0.00	$0
□ Idaho		$0.00	$0
# Illinois		$0.00	$0
+ Indiana		$0.00	$0
+ Iowa		$0.00	$0
Kansas		$0.00	$0
Kentucky		$0.00	$0
Louisiana		$0.00	$0
□ Maine		$0.00	$0
Maryland		$0.00	$0
Δ Massachusetts	376,361	$1,541,122.87	$1,541,123
⊔ Michigan		$0.00	$0
Minnesota		$0.00	$0
Δ Mississippi	99,078	$405,704.55	$405,705
Missouri		$0.00	$0
⊔ Montana		$0.00	$0
Nebraska		$0.00	$0
Nevada		$0.00	$0
New Hampshire		$0.00	$0
# New Jersey		$0.00	$0
§ New Mexico		$0.00	$0
New York		$0.00	$0
# North Carolina		$0.00	$0
North Dakota		$0.00	$0
□ Ohio		$0.00	$0
# Oklahoma		$0.00	$0
# Oregon		$0.00	$0
# Pennsylvania		$0.00	$0
# Rhode Island		$0.00	$0
South Carolina		$0.00	$0
§ South Dakota		$0.00	$0
# Tennessee		$0.00	$0
# Texas		$0.00	$0
# Utah		$0.00	$0
# Vermont		$0.00	$0
# Virginia		$0.00	$0
# Washington		$0.00	$0
□+ West Virginia		$0.00	$0
# Wisconsin		$0.00	$0
§ Wyoming		$0.00	$0
□ American Samoa		$0.00	$0
□ Guam		$0.00	$0
§ No. Marianas Island		$0.00	$0
§ Puerto Rico		$0.00	$0
□ Virgin Islands		$0.00	$0
Total	549,496	$250,076.00	$250,076

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
Priority States } Priority not applied
+ New priority } Priority not applied
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13)

Conditions:
Appropriation for FY 2012: $61,000,000 (reduction from prior year)
LEAP funds for FY 2012: $30,000,000
GAP funds for FY 2012: $31,000,000
One new applicant, NM, with priority
Priority States in FY 2010 and 2011 continue as priority States

Illustrates:
Funds are insufficient to fund continuing awards (Table F)
Continuing awards are ratably reduced based on prior year allotment (Table G)
IN, IA, and WV are subject to ratable reduction based on prior year allotment; no priority applied (Table G)
New applicant, NM, is also subject to ratable reduction; reduced to zero (Table G)

Third Year of GAP Implementation (2012-13): GAP Allotment-Initial Calculation (Table F)
Perform initial calculation to determine if there are negative changes from prior year awards
Federal Appropriation Available for GAP Allotment: $31,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Initial Calculation	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$483,783.87	$483,784	$547,814	-64,030
Arkansas	74,057	$179,790.55	$179,791	$303,249	-123,458
# California	2,248,000	$5,457,541.53	$5,457,542	$6,179,858	-722,317
Colorado	159,836	$388,038.97	$388,039	$439,397	-51,358
# Connecticut	190,539	$462,577.02	$462,577	$523,800	-61,223
# Delaware	39,035	$94,766.52	$94,767	$107,309	-12,543
District of Columbia	85,259	$206,986.00	$206,986	$234,381	-27,395
# Florida	457,930	$1,111,731.31	$1,111,731	$1,258,871	-147,140
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$95,162.24	$95,162	$125,421	-30,259
# Illinois	790,818	$1,919,892.95	$1,919,893	$2,173,995	-254,102
+ Indiana	292,608	$710,372.59	$710,373	$643,513	66,859
+ Iowa	157,306	$381,897.42	$381,897	$345,954	35,944
Kansas	129,705	$314,888.98	$314,889	$356,565	-41,676
Kentucky	142,958	$347,063.71	$347,064	$392,998	-45,935
Louisiana	166,660	$404,605.81	$404,606	$458,156	-53,550
Maine	41,954	$101,853.07	$101,853	$134,239	-32,386
Maryland	213,490	$518,296.50	$518,297	$586,894	-68,598
Massachusetts	376,361	$913,703.64	$913,704	$1,541,123	-627,419
Michigan	483,833	$1,174,616.86	$1,174,617	$1,548,109	-373,492
Minnesota	226,365	$549,553.55	$549,554	$622,288	-72,735
Mississippi	99,078	$240,534.83	$240,535	$405,705	-165,170
Missouri	231,327	$561,599.96	$561,600	$635,929	-74,329
Montana	32,270	$78,342.91	$78,343	$103,254	-24,911
Nebraska	83,922	$203,740.12	$203,740	$230,706	-26,965
Nevada	31,926	$77,507.77	$77,508	$87,766	-10,258
New Hampshire	40,803	$99,058.75	$99,059	$112,169	-13,111
# New Jersey	383,729	$931,590.57	$931,591	$1,054,888	-123,298
□ + New Mexico	74,275	$180,319.79	$180,320	$0	180,320
New York	989,409	$2,402,019.89	$2,402,020	$2,719,932	-317,912
# North Carolina	317,749	$771,408.81	$771,409	$873,506	-102,098
North Dakota	31,357	$76,126.39	$76,126	$86,202	-10,076
Ohio	464,069	$1,126,635.16	$1,126,635	$1,484,871	-358,236
# Oklahoma	197,028	$478,329.97	$478,330	$541,638	-63,308
# Oregon	187,941	$456,270.99	$456,271	$516,659	-60,388
# Pennsylvania	643,026	$1,561,095.40	$1,561,095	$1,767,710	-206,614
# Rhode Island	77,216	$187,460.36	$187,460	$212,271	-24,811
South Carolina	126,628	$307,418.85	$307,419	$348,106	-40,688
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$575,160.06	$575,160	$651,284	-76,124
# Texas	798,130	$1,937,645.74	$1,937,646	$2,194,097	-256,451
# Utah	108,708	$263,912.68	$263,913	$298,842	-34,929
# Vermont	36,748	$89,213.08	$89,213	$101,021	-11,808
# Virginia	311,621	$756,532.88	$756,533	$856,662	-100,129
# Washington	331,991	$805,985.78	$805,986	$912,660	-106,674
+ West Virginia	106,265	$257,982.94	$257,983	$272,011	-14,028
# Wisconsin	305,139	$740,795.11	$740,795	$838,841	-98,046
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$2,029.58	$2,030	$2,675	-645
Guam	3,710	$9,006.89	$9,007	$11,871	-2,864
§ No. Marianas Island		$0.00	$0.00	$0	$0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$5,151.65	$5,152	$6,790	-1,638
Total	**12,769,120**	**$31,000,000.00**	**$31,000,000**		

Key: # Priority States, 125% applied
+ Priority not previously funded
> + New applicant, 125% priority
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13): Ratable Reduction (Table G)

Calculate ratable reduction based on proportions of prior year allotment

Federal Appropriation Available for GAP Allotment: $31,000,000

State	Prior Year Allotment	Formula Amount	State Allotment	Change from Prior Year Allotment
§ Alabama	$0	$0.00	$0	0
§ Alaska	$0	$0.00	$0	0
Arizona	$547,814	$473,675.75	$473,676	-74,138
Arkansas	$303,249	$262,209.05	$262,209	-41,040
# California	$6,179,858	$5,343,512.35	$5,343,512	-836,346
Colorado	$439,397	$379,931.33	$379,931	-59,465
# Connecticut	$523,800	$452,911.99	$452,912	-70,888
# Delaware	$107,309	$92,786.48	$92,786	-14,523
District of Columbia	$234,381	$202,661.26	$202,661	-31,720
# Florida	$1,258,871	$1,088,502.94	$1,088,503	-170,368
§ Georgia	$0	$0.00	$0	0
§ Hawaii	$0	$0.00	$0	0
Idaho	$125,421	$108,447.25	$108,447	-16,974
# Illinois	$2,173,995	$1,879,778.95	$1,879,779	-294,216
+ Indiana	$643,513	$556,424.12	$556,424	-87,089
+ Iowa	$345,954	$299,134.48	$299,134	-46,819
Kansas	$356,565	$308,309.73	$308,310	-48,255
Kentucky	$392,998	$339,812.21	$339,812	-53,186
Louisiana	$458,156	$396,152.03	$396,152	-62,004
Maine	$134,239	$116,071.88	$116,072	-18,167
Maryland	$586,894	$507,467.28	$507,467	-79,427
Massachusetts	$1,541,123	$1,332,556.38	$1,332,556	-208,567
Michigan	$1,548,109	$1,338,596.94	$1,338,597	-209,512
Minnesota	$622,288	$538,071.25	$538,071	-84,217
Mississippi	$405,705	$350,799.25	$350,799	-54,906
Missouri	$635,929	$549,865.96	$549,866	-86,063
Montana	$103,254	$89,280.20	$89,280	-13,974
Nebraska	$230,706	$199,483.20	$199,483	-31,222
Nevada	$87,766	$75,888.33	$75,888	-11,878
New Hampshire	$112,169	$96,989.03	$96,989	-15,180
# New Jersey	$1,054,888	$912,126.03	$912,126	-142,762
□ + New Mexico	$0	$0.00	$0	0
New York	$2,719,932	$2,351,832.39	$2,351,832	-368,100
# North Carolina	$873,506	$755,291.09	$755,291	-118,215
North Dakota	$86,202	$74,535.92	$74,536	-11,666
Ohio	$1,484,871	$1,283,917.20	$1,283,917	-200,954
# Oklahoma	$541,638	$468,335.80	$468,336	-73,302
# Oregon	$516,659	$446,737.72	$446,738	-69,922
# Pennsylvania	$1,767,710	$1,528,478.07	$1,528,478	-239,232
# Rhode Island	$212,271	$183,543.59	$183,544	-28,728
South Carolina	$348,106	$300,995.68	$300,996	-47,111
§ South Dakota	$0	$0.00	$0	0
# Tennessee	$651,284	$563,142.74	$563,143	-88,141
# Texas	$2,194,097	$1,897,160.81	$1,897,161	-296,936
# Utah	$298,842	$258,398.52	$258,399	-40,444
# Vermont	$101,021	$87,349.07	$87,349	-13,672
# Virginia	$856,662	$740,725.98	$740,726	-115,936
# Washington	$912,660	$789,145.62	$789,146	-123,514
+ West Virginia	$272,011	$235,198.61	$235,199	-36,812
# Wisconsin	$838,841	$725,317.03	$725,317	-113,524
§ Wyoming	$0	$0.00	$0	0
American Samoa	$2,675	$2,312.98	$2,313	-362
Guam	$11,871	$10,264.45	$10,264	-1,607
§ No. Marianas Island	$0	$0.00	$0	0
§ Puerto Rico	$0	$0.00	$0	0
Virgin Islands	$6,790	$5,871.08	$5,871	-919
Total	$35,852,000	$31,000,000.00	**$31,000,000**	

Key: # Ratable reduction; priority previously applied, now superseded

+ Ratable reduction; priority superseded

> + New applicant receives $0

§ Does not apply or qualify

Fourth Year of GAP Implementation (2013-14)

Conditions:
Appropriation for FY 2013: $79,000,000 (increase in funding from prior year)
LEAP funds for FY 2013: $30,000,000
GAP funds for FY 2013: $49,000,000
Priority States in FY 2010, 2011, and 2012 continue as priority States

Illustrates:
Sufficient funds are available, no ratable reduction necessary (Table H)
IN and IA priority is applied (Table H)
NM initially funded with priority (Table H)

Fourth Year of GAP Implementation (2013-14) (Table H)

Calculate using basic formula with all priorities applied

Federal Appropriation Available for GAP Allotment: $49,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$764,690.63	$764,691	$473,676	291,015
Arkansas	74,057	$284,185.06	$284,185	$262,209	21,976
# California	2,248,000	$8,626,436.62	$8,626,437	$5,343,512	3,282,924
Colorado	159,836	$613,351.92	$613,352	$379,931	233,421
# Connecticut	190,539	$731,170.13	$731,170	$452,912	278,258
# Delaware	39,035	$149,792.24	$149,792	$92,786	57,006
District of Columbia	85,259	$327,171.42	$327,171	$202,661	124,510
# Florida	457,930	$1,757,252.72	$1,757,253	$1,088,503	668,750
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$150,417.73	$150,418	$108,447	41,970
# Illinois	790,818	$3,034,669.50	$3,034,670	$1,879,779	1,154,891
+ Indiana	292,608	$1,122,847.00	$1,122,847	$556,424	566,423
+ Iowa	157,306	$603,644.30	$603,644	$299,134	304,510
Kansas	129,705	$497,727.74	$497,728	$308,310	189,418
Kentucky	142,958	$548,584.58	$548,585	$339,812	208,772
Louisiana	166,660	$639,538.22	$639,538	$396,152	243,386
Maine	41,954	$160,993.56	$160,994	$116,072	44,922
Maryland	213,490	$819,242.86	$819,243	$507,467	311,776
Massachusetts	376,361	$1,444,241.24	$1,444,241	$1,332,556	111,685
Michigan	483,833	$1,856,652.45	$1,856,652	$1,338,597	518,056
Minnesota	226,365	$868,649.17	$868,649	$538,071	330,578
Mississippi	99,078	$380,200.22	$380,200	$350,799	29,401
Missouri	231,327	$887,690.26	$887,690	$549,866	337,824
Montana	32,270	$123,832.34	$123,832	$89,280	34,552
Nebraska	83,922	$322,040.84	$322,041	$199,483	122,558
Nevada	31,926	$122,512.28	$122,512	$75,888	46,624
New Hampshire	40,803	$156,576.73	$156,577	$96,989	59,588
# New Jersey	383,729	$1,472,514.12	$1,472,514	$912,126	560,388
> + New Mexico	74,275	$285,021.61	$285,022	$0	285,022
New York	989,409	$3,796,741.11	$3,796,741	$2,351,832	1,444,909
# North Carolina	317,749	$1,219,323.60	$1,219,324	$755,291	464,033
North Dakota	31,357	$120,328.81	$120,329	$74,536	45,793
Ohio	464,069	$1,780,810.42	$1,780,810	$1,283,917	496,893
# Oklahoma	197,028	$756,069.95	$756,070	$468,336	287,734
# Oregon	187,941	$721,202.53	$721,203	$446,738	274,465
# Pennsylvania	643,026	$2,467,537.89	$2,467,538	$1,528,478	939,060
# Rhode Island	77,216	$296,308.31	$296,308	$183,544	112,765
South Carolina	126,628	$485,920.11	$485,920	$300,996	184,924
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$909,123.96	$909,124	$563,143	345,981
# Texas	798,130	$3,062,730.36	$3,062,730	$1,897,161	1,165,570
# Utah	108,708	$417,152.29	$417,152	$258,399	158,754
# Vermont	36,748	$141,014.23	$141,014	$87,349	53,665
# Virginia	311,621	$1,195,810.04	$1,195,810	$740,726	455,084
# Washington	331,991	$1,273,977.52	$1,273,978	$789,146	484,832
+ West Virginia	106,265	$407,779.49	$407,779	$235,199	172,581
# Wisconsin	305,139	$1,170,934.20	$1,170,934	$725,317	445,617
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$3,208.05	$3,208	$2,313	895
Guam	3,710	$14,236.69	$14,237	$10,264	3,972
§ No. Marianas Island		$0.00	$0.00	$0	$0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$8,142.93	$8,143	$5,871	2,272
Total	12,769,120	$49,000,000.00	$49,000,000		

Key: # Priority States, 125% applied
> New applicant
+ Priority initially applied
§ Does not apply or qualify

[FR Doc. E9–25373 Filed 10–28–09; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Thursday,
October 29, 2009

Part III

Department of Education

34 CFR Parts 673, 674, 682, et al.

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 673, 674, 682, and 685

RIN 1840–AC98

[Docket ID ED–2009–OPE–0004]

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA), and other recently enacted legislation.

DATES: *Effective Date:* These regulations are effective July 1, 2010.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA)(20 U.S.C. 1089(c)(2)(A)), that lenders, guaranty agencies, and loan servicers that administer the FFEL and Direct Loan programs may, at their discretion, choose to implement the new provisions in §§ 682.211(f) and 685.205(b) governing administrative forbearances for PLUS loans on or after November 1, 2009. For further information, *see* the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to total and permanent disability loan discharges, Jon Utz or Pamela Moran. Telephone: (202) 377–4040 or (202) 502–7732 or via the Internet at: *jon.utz@ed.gov* or *pamela.moran@ed.gov*. For information related to FFEL and Direct Loan teacher loan forgiveness, Donald Conner or Jon Utz. Telephone: (202) 502–7818 or (202) 377–4040 or via the Internet at: *donald.conner@ed.gov* or *jon.utz@ed.gov*. For information related to all other provisions included in these final regulations, Pamela Moran. Telephone: (202) 502–7732 or via the Internet at: *pamela.moran@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: On July 23, 2009, the Secretary published a notice of proposed rulemaking (NPRM) for the Perkins Loan, FFEL, and Direct Loan Programs in the **Federal Register** (74 FR 36556).

In the preamble to the NPRM, the Secretary discussed on pages 36558 through 36575 the major regulations proposed in that document to implement provisions of the HEOA, including the following:

- Amending §§ 674.51(aa) and 682.200(b) by revising the definition of ''totally and permanently disabled'' for title IV loan discharges to incorporate statutory changes made by the HEOA, including a separate total and permanent disability standard for certain veterans, and adding a definition of ''substantial gainful activity'' in §§ 674.51(x) and 685.200(b) to explain the meaning of that term as used in the revised definition of totally and permanently disabled. The changes to § 674.51(aa) and § 674.51(x) appear in final regulations published in the **Federal Register** on October 28, 2009 (RIN 1840–AC95).
- Amending §§ 674.61(b), 682.402(c)(2) through (7), and 685.213(b) by revising the process for discharging a borrower's title IV loans due to total and permanent disability to reflect the revised definition of totally and permanently disabled, including the establishment of a separate discharge process for certain veterans.
- Amending §§ 674.9(g), 682.201(a), and 685.200(a) by making conforming changes to the borrower eligibility regulations needed to effectively implement the new total and permanent disability loan discharge process in §§ 674.61(b), 682.402(c)(2) through (7), and 685.213(b).
- Amending §§ 682.201(e) and 685.220(d) to provide that a borrower with only FFEL Program loans may consolidate those loans into the Direct Loan Program to use the no accrual of interest benefit for active duty military service members.
- Amending § 682.206(f) to require FFEL Program lenders to inform borrowers that by applying for a Consolidation loan, the borrower is not obligated to agree to take the loan, and to provide borrowers with a 10-day period to cancel the Consolidation loan.
- Amending §§ 682.210 and 685.204 to provide that: (1) A parent PLUS borrower may receive a deferment on a PLUS loan first disbursed on or after July 1, 2008 while the dependent student for whom the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period after the student ceases to be enrolled at least half time; and (2) a graduate or professional student PLUS borrower may receive a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period after the student ceases to be enrolled on at least a half-time basis at an eligible institution.
- Amending § 682.202(b) to provide that a lender may capitalize PLUS loan interest that has accrued from the date of the first disbursement until the date the repayment period begins, and making a corresponding change in § 685.202(b) to provide that the Secretary may capitalize interest on a PLUS loan when the loan enters repayment.
- Amending §§ 682.211(f) and 685.205(b) to provide that a FFEL lender or the Secretary (for a Direct Loan) may grant an administrative forbearance on a borrower's PLUS loans that were first disbursed before July 1, 2008 to align the repayment begin date of those loans with the borrower's PLUS loans first disbursed on or after July 1, 2008 that are eligible for the new PLUS loan deferments in §§ 682.210 and 685.204.
- Amending §§ 682.202 and 685.202 to provide that any FFEL or Direct Loan program loans of a military servicemember that were incurred before the servicemember entered military service are subject to the provision in section 207 of the Servicemembers Civil Relief Act (50 U.S.C. 527) (SCRA) that limits the interest rate on a loan to six percent during periods of active duty service. In addition, § 682.302 was amended to provide that for FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the SCRA interest rate cap, a lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate is six percent.
- Amending §§ 682.210(c)(1) and 685.204(b)(1)(iii)(A) to provide that a FFEL lender or the Secretary (for a Direct Loan) may grant an in-school deferment based on confirmation of the borrower's enrollment status through the National Student Loan Data System (NSLDS), if requested by the borrower's school.
- Amending § 682.210(a)(3) to require a lender to notify a borrower of an unsubsidized loan, at or before the time a deferment is granted, that he or she has the option to pay the interest that accrues on the loan during the

deferment or to cancel the deferment, and to provide the borrower with information on the impact of interest capitalization if accrued interest is not paid. A comparable change was made in § 685.204(b)(1)(ii)(B) to provide for the same information to be given to Direct Loan borrowers.

• Amending §§ 682.215(a) and 685.221(a) by revising the definition of partial financial hardship for the purpose of determining a borrower's eligibility to repay under the income-based repayment (IBR) plan. The revised definition specifies that the annual amount due on a borrower's eligible loans (under a standard repayment plan with a 10-year repayment period) for purposes of determining whether a borrower has a partial financial hardship is calculated based on the greater of: (1) The amount owed on the eligible loans when the borrower initially entered repayment; or (2) the amount owed when the borrower selected the IBR plan.

• Amending §§ 682.215(b)(1) and 685.221(b)(2) to provide that if a borrower who requests the IBR plan and the borrower's spouse both have eligible loans and file a joint Federal tax return, the calculated IBR partial financial hardship payment amount for each borrower would be adjusted based on each borrower's percentage of the couple's total eligible loan debt.

• Amending §§ 682.216 and 685.217 to specify that an otherwise eligible borrower may qualify for teacher loan forgiveness based on teaching service performed as an employee of an eligible educational service agency. The proposed regulations also added HEOA prohibitions on receiving loan forgiveness under the FFEL or Direct Loan teacher loan forgiveness programs and certain other loan forgiveness programs for the same period of teaching service.

• Amending §§ 682.405(a) and 685.211(f) to provide that a borrower may not rehabilitate a defaulted FFEL or Direct Loan program loan more than once. The proposed regulations also amended § 682.405(b)(1)(iii) to clarify that both the guaranty agency and its agents must comply with the requirements in that section when determining what constitutes a ''reasonable and affordable'' payment amount for loan rehabilitation purposes.

• Amending §§ 682.200(b) and 682.401(e) by incorporating new prohibited and permissible activities by lenders and guaranty agencies that were added to the HEA by the HEOA.

• Amending § 682.205 by adding new disclosure requirements for FFEL Program lenders that were added by the HEOA, and by reorganizing the existing disclosure provisions to accommodate the new disclosure requirements and more clearly distinguish the various disclosures that are required at various points during the lifecycle of a loan.

• Amending § 682.208(e) to specify additional information that must be provided to a borrower if the assignment or transfer of ownership interest on a FFEL Program loan results in a change in the identity of the party to whom the borrower must send subsequent payments.

• Amending § 682.211(e) to require a lender, at the time a borrower is granted a forbearance, to provide the borrower with information on the impact of interest capitalization, and to contact the borrower at least once every 180 days during any period of forbearance and provide additional information on the impact of forbearance on the borrower's loan.

• Amending § 682.305(c) to require that a FFEL school lender or an eligible lender trustee (ELT) originating loans on behalf of a school submit an annual compliance audit to the Secretary, regardless of the dollar volume of loans originated. The proposed regulations also specify the requirements that the annual audit must meet.

• Adding a new § 682.401(g) to implement a statutory requirement for a guaranty agency to work with the schools that it serves to develop and make available to students and their families high-quality educational materials that provide training in budgeting and financial management.

• Amending § 682.405 to require a guaranty agency to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

• Amending § 682.405(b) to require the prior holder of a previously defaulted loan that has been rehabilitated, in addition to the guaranty agency, to request that any consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The proposed regulations also provided more detailed reporting deadlines for the guaranty agency and prior loan holder to request that the default be removed from the borrower's credit history, and reduced the period for these actions to be completed.

• Amending § 682.410(b) by expanding the information that a guaranty agency must provide to a borrower who is in default, and by adding a requirement that the guaranty agency provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its collection efforts.

• Amending § 682.200(b) by removing the definition of ''National credit bureau'' and replacing it with a definition of ''Nationwide consumer reporting agency''. The proposed regulations also replaced all references to ''credit bureau'' in § 682.410(b)(5) and (b)(6) with ''consumer reporting agency''.

There are no significant differences between the NPRM and these final regulations resulting from public comments.

In addition to the changes necessary to implement provisions of the HEOA, these final regulations also incorporate certain changes made to the HEA by Public Law 111–39, enacted on July 1, 2009, and by the Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. 110–227) (ECASLA), enacted on May 7, 2008. These changes are:

• Amending the definition of ''estimated financial assistance'' (EFA) in §§ 673.5(c), 682.200(b), and 685.102(b). The HEOA amended section 480(j)(1) of the HEA to exclude Federal veterans' education benefits, as defined in section 480(c) of the HEA, from the definition of EFA for the Title IV student assistance programs. Public Law 111–39 made technical corrections to the HEA that, among other things, updated the list of Federal veterans' education benefits that are excluded from EFA and excluded the new Iraq and Afghanistan Service Grants from the definition of EFA. We have made technical changes to the definition of EFA in §§ 673.5(c), 682.200(b), and 685.102(b) to reflect these recent changes to the HEA. We have also made a few technical changes to clarify and standardize the current EFA definitions.

• Amending the lists of prohibited activities in §§ 682.200 and 682.401 to reflect a change made by Public Law 111–39 that allows FFEL Program lenders and guaranty agencies to provide in-person entrance counseling as well as exit counseling to borrowers.

• Amending §§ 682.216 and 685.217 to reflect a technical correction made by Public Law 111–39 to the provisions that prohibit a borrower from receiving, for the same teaching service, loan forgiveness under the FFEL or Direct Loan teacher loan forgiveness programs and certain other loan forgiveness programs.

• Amending §§ 682.204 and 685.203 to reflect the changes to the annual and aggregate loan limits for unsubsidized Stafford Loans in both the FFEL and Direct Loan programs that were made by ECASLA.

In addition to the changes related to Public Law 111–39 and ECASLA that are discussed above, these final regulations make a number of minor technical corrections and conforming changes. Changes that are statutory or that involve only minor technical corrections are generally not discussed in the Analysis of Comments and Changes section.

Waiver of Proposed Rulemaking and Negotiated Rulemaking Regulations Implementing the HEOA

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish an NPRM and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the APA.

Although the regulations implementing the changes made by Public Law 111–39 and ECASLA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary has determined that it is unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the limited regulatory changes. These changes simply reflect statutory changes made by Public Law 111–39 and ECASLA that are already effective. The Secretary does not have discretion as to whether or how to implement these changes.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the new provisions in §§ 682.211(f) and 685.205(b) governing administrative forbearances for PLUS loans for early implementation at the discretion of each lender, guaranty agency, or servicer, as appropriate.

Analysis of Comments and Changes

Except as noted above in regard to the limited regulations implementing provisions of Public Law 111–39 and ECASLA, the regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 23, 2009, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 24. Eighteen parties submitted comments, many of which were substantially similar. The commenters generally supported the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Total and Permanent Disability Loan Discharges (§§ 674.61(b) and (c), 682.402(c), and 685.213)

Comment: One commenter noted that there are a significant number of United States citizens who live abroad and suggested that the regulations be revised to allow a disabled borrower living overseas to submit an application for a total and permanent disability discharge certified by a physician who is licensed to practice in the foreign country where the borrower resides.

Discussion: The proposed regulations retained the current regulatory requirement that the physician who certifies a total and permanent disability discharge application must be a doctor of medicine or osteopathy who is legally authorized to practice in a State. The term ''State'' is defined in section 103(23) of the HEA to include the States of the United States, the District of Columbia, Puerto Rico, Guam, Samoa, the U.S. Virgin Islands, the Northern Mariana Islands and the Freely Associated States (the Marshall Islands, Micronesia and Palau). The total and permanent disability discharge application requires the certifying physician to identify the State in which he or she is licensed to practice, and to provide his or her professional license number.

In June 1999, the Department of Education's Inspector General (IG) issued a report that identified a number of weaknesses in the procedures for determining eligibility for total and permanent disability loan discharge and concluded that inappropriate discharges were being granted as a result of those weaknesses. In the years since the IG's report, the Department has revised the total and permanent disability discharge regulations and taken other measures to strengthen the procedures for determining a borrower's eligibility for discharge, including verification through State records of a physician's license to practice. This verification is conducted for each total and permanent disability discharge application that the Department reviews. Licensure requirements for physicians in foreign countries may differ significantly from the requirements in the United States, or in some countries may not exist. It would not be possible for the Department to verify a physician's license to practice in a foreign country, even if a country requires its physicians to be licensed. The Department also follows up with physicians who certified an application but did not provide sufficient information concerning the borrower's medical condition. Having to contact and

communicate with physicians in foreign countries would be difficult in many cases.

For these reasons, the Department believes that it is important to retain the requirement that a physician who certifies a total and permanent disability discharge application must be licensed to practice in a State.

Changes: None.

Comment: One commenter believed that the preamble to the NPRM indicated that the Department's standard for determining disability is essentially the same as the standard used in the Social Security Disability Insurance (SSDI) program, and suggested that the process of determining a borrower's eligibility for total and permanent disability discharge could be made more efficient if the Department provided an electronic means for a borrower to report that he or she is receiving SSDI benefits.

Discussion: The commenter's understanding of the preamble discussion in the NPRM is incorrect. In the preamble to the NPRM, the Department explained that the proposed definition of substantial gainful activity—not the definition of totally and permanently disabled—is based, in part, on the definition of substantial gainful activity that is used by the Social Security Administration (SSA) to determine whether an individual is eligible for Social Security disability benefits. The NPRM included the definition of totally and permanently disabled that was added to the HEA by the HEOA. This new statutory standard does not correspond to any of the disability standards used by the SSA for determining an individual's eligibility for Social Security disability benefits. An individual who receives SSA disability benefits may not qualify as totally and permanently disabled under the definition of that term in the HEA.

Changes: None.

Comment: Two commenters recommended that the Department revise the total and permanent disability discharge regulations to use the poverty guideline amount for a borrower's actual family size to determine whether the borrower's annual employment earnings during the post-discharge monitoring period demonstrated that the borrower was not totally and permanently disabled. One of the commenters stated that borrowers with larger families should be allowed to earn more income during the post-discharge monitoring period. This commenter suggested that any concerns about potential borrower confusion over the use of a variable standard based on actual family size could be resolved by annually posting an updated poverty guideline chart on a Department Web site.

Discussion: During the negotiated rulemaking sessions, the Department initially proposed an annual earnings standard based on the poverty guideline amount for the borrower's actual family size because we believed that it would be more equitable for borrowers with a family size greater than two. The Department's original proposal would have been a change from the employment earnings standard under the current total and permanent disability discharge regulations, which provide that a conditionally discharged loan will be removed from conditional discharge status if a borrower has annual employment earnings during the conditional discharge period that exceed the poverty guideline amount for a family of two, regardless of the borrower's actual family size. However, during the negotiated rulemaking sessions, some of the non-Federal negotiators, including the student and legal aid representatives, felt strongly that it would be better to continue to use the poverty guideline amount for a family of two. These negotiators noted that a borrower's family size could change during the three-year post-discharge monitoring period, and in such cases the borrower would have to monitor changes in the employment earnings limit. They believed that a changing standard would be confusing and could result in a borrower inadvertently exceeding the employment earnings limit. These negotiators urged the Department to retain the current fixed standard based on a family size of two. The Department agreed that retaining a fixed employment earnings limit based on the poverty guideline amount for a family of two during the entire post-discharge monitoring period would be less confusing for borrowers and simpler to administer.

Changes: None.

Comment: Several commenters noted that under the proposed regulations in § 682.402(c)(8) governing total and permanent disability discharges for certain veterans, if the Department determines that a veteran is eligible for a loan discharge, the guaranty agency is responsible for notifying the veteran that the veteran has no obligation to make further payments on the loan. These commenters recommended that the regulations be revised to provide that the lender, rather than the guaranty agency, would notify the veteran of his or her eligibility for discharge. The commenters believed that it would be simpler to require the lender to make this notification, since the proposed regulations already require the lender to refund any payments received on the loan after the date of the Department of Veterans Affairs disability determination, and the lender would therefore already be communicating with the borrower for this purpose. The commenters further noted that this approach would be more consistent with the proposed regulations governing the general process for total and permanent disability discharges for other borrowers. Under those regulations, the lender notifies a borrower that his or her loan has been assigned to the Department for a determination of discharge eligibility, and that no further payments are required.

Discussion: The Department agrees with the commenters.

Changes: Section 682.402(c)(8)(ii)(F) has been revised to specify that upon receipt of the claim payment from the guaranty agency (after the Department has notified the guaranty agency that a veteran is eligible for a discharge), the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged.

Comment: Several commenters recommended that the changes to the total and permanent disability discharge definition and process should be made effective for discharge applications received on or after July 1, 2010. The commenters believed that using the application receipt date as the effective date for the changes would benefit borrowers who may not qualify for discharge based on the current definition of totally and permanently disabled, and would provide a clearly defined transition point for processing discharge applications under the new regulations.

Discussion: Under these final regulations, the new definition of totally and permanently disabled and the new discharge process are effective for discharge applications received on or after July 1, 2010. Disability discharge applications from borrowers other than qualified veterans that are received prior to July 1, 2010 will be processed under the current regulations and borrower eligibility will be determined based on the current definition of totally and permanently disabled. Veterans who provide documentation that they have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability will have their discharge applications processed under the separate procedures that the Department has already implemented for these

borrowers in accordance with the requirements of the HEOA.

Changes: None.

Comment: One commenter expressed concerns that many disabled military borrowers are unaware that they may qualify for total and permanent disability discharge of their loans because of widespread problems with a lack of information about this benefit from both FFEL Program lenders and the Department. The commenter recommended a number of operational measures that lenders, the Department, the Department of Defense, and the Department of Veterans Affairs should take to help ensure that disabled military borrowers are made aware of the total and permanent disability loan discharge provision. The commenter also recommended that loan amounts discharged due to total and permanent disability should not be treated as taxable income, since this presents a financial hardship for disabled borrowers with low incomes.

Discussion: The Department provides information about total and permanent disability discharges on the master promissory notes that are signed by all borrowers in all three title IV loan programs. Further, information about total and permanent disability discharges is also available on Department Web sites, such as Student Aid on the Web (*http://www.studentaid.ed.gov*) and the Direct Loan Program Web site (*http://www.ed.gov/DirectLoan*), as well as Web sites maintained by many FFEL Program lenders. Moreover, customer service representatives for the Department have been given information about the disability discharge process and can provide this information to borrowers. These efforts do not have to be addressed in the Department's regulations. The commenter's proposal regarding the tax treatment of discharged loan amounts would require a statutory change in the Internal Revenue Code and cannot be addressed through these regulations.

Changes: None.

Comment: One commenter requested clarification of the provisions in §§ 674.9(g), 682.201(a), and 685.200(a) that require a borrower who requests a new title IV loan after receiving a total and permanent disability discharge on a prior loan to: (1) Provide a physician's certification that he or she is able to engage in substantial gainful activity; and (2) acknowledge that the new loan may not be discharged in the future based on any medical condition present at the time the new loan is made, unless that condition substantially deteriorates. Specifically, the commenter asked if these requirements apply to all borrowers who received a prior total and permanent disability discharge, regardless of whether the discharge was granted under the general discharge procedures or the special procedures for certain veterans.

Discussion: The requirements for receiving a new loan after having a loan discharged due to total and permanent disability apply to all borrowers, regardless of whether the discharge was granted under the general discharge process or the special discharge process for certain veterans. These requirements are intended to assure that the borrower is likely to repay the loan in accordance with the promissory note that the borrower signs for the new loan.

Changes: None.

Comment: One commenter recommended that current § 682.201(a)(6), which specifies the additional eligibility requirements that must be met by a borrower who requests a new loan following a final discharge of a prior title IV loan due to a total and permanent disability, also be applied to a borrower who is requesting a new loan after receiving a final discharge of a TEACH Grant service obligation due to a total and permanent disability. The commenter believed that an individual who wants to receive a new loan after previously receiving a final total and permanent disability discharge should have to meet the same eligibility requirements, regardless of whether the prior disability discharge involved a title IV loan or a TEACH Grant service obligation.

The commenter also asked if the Department's National Student Loan Data System (NSLDS) will indicate that a TEACH Grant service obligation has been discharged due to a total and permanent disability, just as it currently identifies title IV loans that have been discharged due to a total and permanent disability.

Discussion: The Department agrees that a borrower who requests a new title IV loan after previously receiving a final total and permanent disability discharge of a TEACH Grant service obligation should be subject to the same eligibility requirements as a borrower who previously received a final total and permanent disability discharge of a title IV loan. NSLDS does identify TEACH Grant service obligations that have been discharged based on the grant recipient's total and permanent disability.

Changes: Section 682.201(a)(6) has been revised by adding a reference to TEACH Grant service obligations. Corresponding changes have also been made in §§ 674.9(g) and 685.200(a)(1)(iv).

Comment: One commenter raised concerns about the requirement in current § 682.402(h)(1)(i)(B) as it relates to the proposed regulations in § 682.402(c)(8) that govern the total and permanent disability discharge process for certain veterans. Under current § 682.402(h)(1)(i)(B), a guaranty agency must promptly review a disability discharge claim filed by a lender and pay an approved claim within 90 days after the claim was filed. The commenter believed that this deadline is reasonable in the case of a disability claim processed under the standard discharge process in proposed § 682.402(c)(1) through (7), since all of the actions that are required to pay a lender's claim are entirely under the guaranty agency's control. However, the commenter noted that under the separate discharge process for certain veterans in proposed § 682.402(c)(8), a guaranty agency cannot pay a lender's disability claim until the Department has reviewed the veteran's discharge request and notified the guaranty agency that the veteran is eligible for discharge. Therefore, a delay in the Department's review of a veteran's discharge request could prevent a guaranty agency from meeting the 90-day time limit in current § 682.402(h)(1)(i)(B). The commenter recommended that the Department amend current § 682.402(h)(1)(i)(B) to provide one deadline for a guaranty agency to review a disability claim involving a veteran's discharge request and either refer the discharge application and any supporting documentation to the Department or return it to the lender, and a separate deadline for the guaranty agency to either pay or return the claim, as applicable, after being notified by the Department that the veteran is or is not eligible for discharge.

Discussion: The Department agrees with the commenter.

Changes: Section 682.402(h)(1) has been revised to provide that a guaranty agency must review a disability claim based on a veteran's discharge request under § 682.402(c)(8) and either submit the request to the Department or return the claim to the lender within 45 days after the claim was filed, and must pay the claim or return the claim to the lender within 45 days after being notified by the Department of the veteran's eligibility or ineligibility for discharge.

Consolidation Loans (§ 682.201(e))

Comment: One commenter asked that the regulations clarify which FFEL Program loans are eligible for the Direct

Loan Program's no accrual of interest benefit for active duty military service members after a FFEL borrower consolidates the loans into the Direct Loan Program. The commenter believed the language in the proposed regulations did not adequately address this issue and suggested that the regulations be amended to include the clarifying language contained in the Department's Stafford Loan Master Promissory Note (MPN).

Discussion: The Department agrees with the commenter that the regulatory language defining which loans are eligible for the no accrual of interest benefit should be clarified and that it is appropriate to use the Stafford Loan MPN language as a model. The Stafford Loan MPN informs borrowers that a FFEL Program loan that was first disbursed on or after October 1, 2008, including a Federal Consolidation Loan that repaid FFEL or Direct Loan program loans first disbursed on or after October 1, 2008, may be consolidated into the Direct Loan Program to take advantage of the no accrual of interest benefit for active duty military service members, and explains that no interest will be charged on the portion of the new Direct Consolidation Loan that repaid FFEL or Direct Loan program loans first disbursed on or after October 1, 2008 during periods of qualifying active duty military service (for up to 60 months). A Federal Consolidation Loan that repaid some loans that were first disbursed on or after October 1, 2008 and other loans that were first disbursed before that date may be consolidated into the Direct Loan Program to take advantage of the no accrual of interest benefit, but the benefit will apply only to the portion of the Direct Consolidation Loan that is attributable to the loans repaid by the Federal Consolidation Loan that were first disbursed on or after October 1, 2008.

Changes: Section 682.201(e)(5) has been revised to include language specifying that FFEL Program loans first disbursed on or after October 1, 2008 (including Consolidation loans that repaid FFEL or Direct loans first disbursed on or after October 1, 2008) are eligible for the no accrual of interest benefit when included in a Federal Direct Consolidation Loan.

In-School Deferments for PLUS Loans (§ 682.210)

Comment: One commenter raised an issue concerning proposed § 682.210(v)(1)(ii), which provides that if a lender grants an in-school deferment on a student PLUS loan first disbursed on or after July 1, 2008 based on enrollment information that confirms the borrower's eligibility for the deferment, the deferment period includes the additional 6-month post-enrollment deferment period that begins when the student ceases to be enrolled on at least a half-time basis. The commenter believed that the regulations should not specify the operational method by which a lender processes a deferment, and recommended that the regulatory language be revised to provide that a lender may process the 6-month post-enrollment deferment as either an extension of the in-school deferment period, or a separate deferment period that begins when the student ceases to be enrolled at least half time.

Discussion: The regulatory language stating that the deferment period ''includes'' the 6-month post-enrollment deferment is intended to clarify that if a lender grants an in-school deferment on a student PLUS loan first disbursed on or after July 1, 2008 based on enrollment status information, the 6-month post enrollment deferment may be granted without a separate request from the borrower. The regulatory language does not dictate the operational details of how a lender processes the post-enrollment deferment.

Changes: None.

Deferment (§§ 682.210 and 682.204)

Comment: One commenter raised an issue concerning the discussion of proposed § 682.210(a)(3)(ii) in the preamble to the NPRM. This provision requires a FFEL Program lender, at or before the time a deferment is granted to a borrower who is responsible for paying the interest on a loan during the deferment, to notify the borrower of certain information, including the borrower's option to pay the interest that accrues during the deferment or to cancel the deferment and continue paying on the loan. The Department stated in the preamble that a comparable change would be made to § 685.204(b)(1)(iii)(B)(*2*) to provide that Direct Loan borrowers will be notified of their right to cancel a deferment and continue paying on the loan. The commenter noted, however, that the corresponding Direct Loan provision does not specifically say that borrowers will be notified of the option to pay the accruing interest during a deferment period, and recommended that this be added to ensure that Direct Loan borrowers receive the same information as FFEL borrowers.

Discussion: Regulations are issued to govern the activities of third parties; in general, the Secretary does not issue regulations to control the Department's activities. Direct Loan Program borrowers are notified of their option to pay the interest that accrues during a deferment on the Direct Loan Program deferment request forms and in the correspondence borrowers receive when a deferment is granted.

Changes: None.

Comment: Several commenters raised a concern about language in the preamble to the NPRM that describes the requirement for a lender to inform a borrower, at or before the time a deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue to pay on the loan. The commenters noted that, during the negotiated rulemaking process, the Department agreed that it would be helpful for a borrower to receive this information at the time of application for the deferment, and that including the required information in the Department-approved, standardized deferment forms would satisfy the notification requirement. The commenters were concerned that the discussion in the preamble could be misinterpreted to suggest that a lender must provide the information both at the time the borrower requests the deferment and at the time the lender grants the deferment.

Discussion: The Department did not intend to imply a change in the meaning of the language in the regulations through the preamble discussion. As stated in § 682.210(a)(3)(ii), the lender may provide the required information ''at or prior to the time the deferment is granted.'' Providing the required information to the borrower as part of the standardized deferment application at the time the borrower requests the deferment satisfies the regulatory notification requirement. The lender may, but is not required to, also provide the information at the time the deferment is granted.

Changes: None.

Income-Based Repayment (IBR) Plan

Comment: Some commenters praised the Department for proposing changes to the IBR regulations to address the calculation of partial financial hardship for borrowers whose outstanding loan balances increase rather than decrease while they repay their loans under another repayment plan prior to requesting IBR, and for married borrowers who file joint tax returns with the IRS and who both have eligible education loans. One commenter noted, however, that the Department had amended the Direct Loan regulations to allow a borrower who wants to repay a defaulted FFELP loan with a Direct

Consolidation Loan to agree to pay the Direct Consolidation Loan under the IBR Plan, but did not make a comparable change in § 682.201(d)(1)(i)(A). The commenter requested that a technical correction be made to insert a reference to IBR in the corresponding FFEL provision so that comparable terms and conditions apply to borrowers in both programs.

Discussion: The commenter is correct that this change should be reflected in the FFEL Program regulations. The Department agrees that comparable terms and conditions should apply for this purpose for borrowers in both the FFEL and Direct Loan programs.

Changes: Section 682.201(d)(1)(i)(A) has been revised to provide that a borrower may consolidate a defaulted loan if he or she agrees to repay the FFEL Consolidation loan under either the income-sensitive repayment plan or the income-based repayment plan.

FFEL and Direct Loan Program Teacher Loan Forgiveness (§§ 682.216 and 685.217)

Comment: One commenter noted that under the proposed regulations, an educational service agency is considered an eligible educational service agency for teacher loan forgiveness purposes only if the agency meets the same eligibility requirements as elementary and secondary schools under current regulations, including the requirement to be listed in the Department's Annual Directory of Designated Low-Income Schools (Low-Income School Directory). The commenter asked for clarification as to whether an otherwise eligible teacher who is employed by an educational service agency that is not listed in the Low-Income School Directory would qualify for teacher loan forgiveness if the teacher taught for five complete, consecutive academic years at an elementary or secondary school that is included in the Low-Income School Directory.

Discussion: The proposed regulations allow a teacher to qualify for loan forgiveness if he or she is employed as a full-time teacher for five consecutive complete academic years at an eligible elementary or secondary school or by an eligible educational service agency, and meets the other eligibility requirements of the teacher loan forgiveness program. An otherwise eligible teacher who is employed by an educational service agency, but who teaches at a low-income elementary or secondary school that is not operated by the educational service agency, may qualify for loan forgiveness if either the educational service agency or the school where the individual performs qualifying teaching service is listed in the Low-Income School Directory.

Changes: None.

Comment: One commenter asked for clarification as to who the appropriate certifying official would be for purposes of certifying the loan forgiveness application of a ''traveling'' teacher who, as discussed in the preamble to the NPRM, does not have a fixed location of employment, but instead performs qualifying teaching service at multiple eligible schools or eligible educational service agencies, and who may not actually be employed by the schools or educational service agencies where he or she teaches. The commenter believed that the reference in the NPRM to not having a fixed location of employment would imply that a traveling teacher is an independent contractor who is not actually employed by any school or educational service agency.

Discussion: In the preamble to the NPRM, the Department indicated that ''traveling'' teachers who do not have a fixed location of employment, but who perform qualifying teaching service at multiple eligible elementary or secondary schools, or at multiple eligible educational service agencies, may (if otherwise eligible) qualify for teacher loan forgiveness even though they are not employees of the schools or educational service agencies where they teach. The reference to not having a fixed location of employment was not intended to suggest that a traveling teacher would be an independent contractor. A traveling teacher may be an employee of a particular school, school district, or educational service agency and provide teaching services at various schools or locations operated by educational service agencies. For purposes of certifying such a teacher's loan forgiveness application, the certifying official must be someone who has access to employment records that establish the teacher's eligibility for loan forgiveness, and who is authorized to verify the teacher's qualifying employment. The appropriate certifying official may vary depending on individual employment circumstances. The certifying official could be someone at the borrower's actual employer, or someone at the location where the borrower performed the qualifying teaching service.

Changes: None.

Comment: Several commenters stated that there appears to be a conflict between the preamble of the NPRM and the proposed regulatory language with regard to the conditions under which qualifying teaching service performed at an eligible educational service agency prior to the date of enactment of the HEOA may be counted toward the required five complete consecutive years of teaching service. The preamble states that the required five complete consecutive years may include any combination of teaching at eligible elementary or secondary schools or eligible educational service agencies, but that teaching at an educational service agency may be counted toward the five years only if the consecutive five years includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year. The proposed regulatory language in §§ 682.216(a)(2) and 685.217(a)(2) states that for teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.

The commenters noted that the regulatory requirement for ''at least one'' of the complete academic years to have been after the 2007–2008 academic year could be interpreted to mean that for any years of teaching at an eligible educational service agency prior to the enactment of the HEOA to count toward the required five consecutive years, a borrower must have completed a full year of teaching at an eligible educational service agency after the 2007–2008 academic year. They believed this approach would be contrary to the agreement reached during the negotiated rulemaking process and the preamble to the NPRM. The commenters interpreted the preamble language to mean that qualifying teaching service performed by an employee of an educational service agency prior to the enactment of the HEOA would count toward the required five consecutive years as long as the five-year period includes any period of qualifying teaching at an eligible educational service agency after the 2007–2008 academic year, even if the qualifying service at an educational service agency after the 2007–2008 academic year is less than a full academic year. For example, the preamble language would allow a borrower who performed qualifying teaching service at an eligible educational service agency for four complete consecutive academic years from 2004–2005 through 2007–2008 to count those years toward the required five consecutive years if, during the 2008–2009 academic year, the borrower taught for half of the year at an eligible educational service agency and the other half of the year at an eligible elementary or secondary school. The

commenters recommended that proposed § 682.216(a)(2) be revised to reflect the language in the preamble.

Discussion: Proposed § 682.216(a)(2) was intended to be consistent with the preamble to the NPRM regarding the eligibility of teaching service performed by an employee of an educational service agency prior to the date of enactment of the HEOA. However, the Department agrees with the commenters that the regulatory language could be misinterpreted.

Changes: Sections 682.216(a)(2) and 685.217(a)(2) have been revised to reflect the language in the preamble to the NPRM. Conforming changes have also been made in §§ 682.216(c)(3)(iii) and (c)(4)(iii), and 685.217(c)(3)(iii) and (c)(4)(iii).

Eligibility for Rehabilitation of Defaulted FFEL and Direct Loans (§§ 682.405(a) and (b)(1)(iii) and 685.211(f))

Comment: One commenter agreed with the Department's interpretation that the limit on rehabilitation of defaulted loans to one opportunity applies to each loan, but requested further clarification on the application of the limit. The commenter asked whether a borrower who successfully rehabilitates a defaulted loan, consolidates that loan, and then subsequently defaults on the consolidation loan would be eligible to rehabilitate the consolidation loan. The commenter believed the borrower should be eligible to rehabilitate the consolidation loan because the previously rehabilitated loan was in good standing when it was consolidated.

Discussion: A consolidation loan is a new loan. In the commenter's example, the borrower's previously rehabilitated loan was paid in full through the consolidation process and has no bearing on the borrower's eligibility for rehabilitation of the consolidation loan. The Department agrees that the borrower is eligible to rehabilitate the defaulted consolidation loan, but does not believe it is necessary to separately address the treatment of consolidation loans in the regulations.

Changes: None.

Definition of Lender (§ 682.200(b))

Comment: One commenter asked whether the term ''other group'' in paragraph (5)(i)(A)(6) of the prohibited inducement provisions of the proposed definition of ''lender'' includes a lender's board of directors. The commenter asked the Department to clarify that a lender's board of directors would be covered by the prohibition even if the Department decided not to define the term.

Discussion: The term ''other group'' is not defined in the HEA. The Department agrees, however, that service on a lender's board of directors is one of the groups established by a lender that would be covered under the provision. The Department declines to define the term ''other group'' and does not believe it is possible to provide an all-inclusive listing of the possible types of groups a lender may establish that would be covered by the prohibition.

Changes: None.

Lender Disclosures (§ 682.205)

Comment: One commenter raised concerns about the number of new and revised borrower disclosures that lenders must provide under proposed § 682.205. The commenter indicated that his organization would need substantial time to prepare the disclosures, train its staff, and make necessary data processing changes to implement the regulations. The commenter requested that the Department extend the effective date of the lender disclosure provisions to one year after the final regulations are issued.

Discussion: The Department notes that the new and revised borrower disclosures included in the proposed regulations are required as a result of the enactment of the HEOA and became effective in most cases on August 14, 2008. Lenders are expected to comply with the requirements to the extent possible until these implementing regulations become effective on July 1, 2010. The Department believes that providing information to borrowers, particularly those who are having difficulty making payments or who are past due on their payments, is critical, and therefore declines to delay the July 1, 2010, effective date of these implementing regulations.

Changes: None.

Comment: Several commenters requested a change to § 682.205(c)(4) of the proposed regulations, which describes the information that must be provided to borrowers who contact their lenders indicating that they are having difficulty making their payments. The commenters were concerned that sending the required information repeatedly to a borrower if the borrower contacts the lender more than once over a short period of time would be ineffective and could confuse the borrower. The commenters requested that the Department require the lender to send the disclosure only if the lender had not sent one to the borrower within the previous 120 days. The commenters believed that this change would be comparable to a change agreed to during the negotiations related to the frequency of the required disclosure for borrowers who fall 60 days behind in making payments. The Department agreed that, in that situation, it was not beneficial to send multiple disclosures to a borrower who was rolling in and out of a 60-day delinquency status and, as a result, the proposed regulations do not require a lender to continue to send the 60-day delinquency disclosure if one was sent to the borrower within the previous 120 days.

Discussion: The Department does not agree that the disclosure required under § 682.205(c)(4) when a borrower contacts the lender indicating he or she is having difficulty making payments is comparable to the disclosure of information in the 60-day delinquency situation. The 60-day delinquency disclosure is automatically triggered by the borrower's delinquency status and is in addition to other lender due diligence contacts with the borrower required under § 682.411 of the FFEL regulations. In the case of a borrower having difficulty making payments, the borrower triggers the disclosure by contacting the lender and requesting assistance. Under these circumstances, we believe a lender has a responsibility and an obligation to assist the borrower by providing information as frequently as necessary to assist that borrower. The Department disagrees that the situations are comparable and declines to make the change requested by the commenters.

Changes: None.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

As discussed in the NPRM, these regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to changes related to loan discharge, deferment, consolidation, rehabilitation, and repayment plan provisions, and the addition of a new Part E to title I of the HEA, which establishes extensive new disclosure requirements for lenders and institutions participating in Federal and private student loan programs.

Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, these final regulations reflect statutory amendments included in the HEOA and minor revisions in response to public comments. In most cases, these revisions were technical in nature and intended to address drafting issues or provide additional clarity. Other changes, such as the requirement that lenders rather than guaranty agencies notify veterans whose loans have been discharged that their obligation to make any further payments has been discharged, were made to simplify and standardize program operations. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Benefits

As discussed in the NPRM, benefits provided in these proposed regulations include greater transparency for borrowers participating in the Federal and private student loan programs; clearer guidelines on acceptable behavior by and relationships among institutions participating in the student loan programs; improvements to the IBR plan, particularly for married borrowers; a simpler process for obtaining loan discharges due to total and permanent disability; and expanded eligibility for Teacher Loan forgiveness benefits. It is difficult to quantify benefits related to the new institutional and lender requirements, as there is little specific data available on either the extent of improper or questionable relationships between institutions and lenders prior to the HEOA or of the harm such relationships actually caused for either borrowers, institutions, or the Federal taxpayer. In the NPRM, the Department requested comments or data that would support a more rigorous analysis of the impact of these provisions. No comments or additional data were received.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these proposed provisions result in net costs to the government of $192.7 million over 2009–2013.

Costs

As discussed extensively in the *Regulatory Impact Analysis* in the NPRM, many of the statutory provisions implemented though these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other regulations generally would require discrete changes in specific parameters associated with existing guidance—such as changes to the process for loan discharges, IBR, and various deferment and forbearance benefits—rather than wholly new requirements. In total, these changes are estimated to increase burden on entities participating in the FFEL program by 1,313,964 hours. Of this increased burden, 1,184,115 hours are associated with lenders, 110,360 hours with guaranty agencies, and 7,200 hours with institutions. An additional 12,289 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information.

For lenders, over half of the additional burden—798,000 hours—is related to the requirement to provide additional disclosures to borrowers who are over 60 days delinquent or are otherwise having trouble making repayments. Another 216,000 hours are associated with new requirements related to the provision of administrative forbearances. Roughly 90,000 hours in new burden are related to changes in the methodology for calculating income-based repayments. The balance of additional burden is spread across a number of minor changes made by these regulations.

For guaranty agencies, virtually the entire additional burden relates to new requirements to provide information to borrowers who are in default or have rehabilitated their loans after being in default. Other minor additional burden for guaranty agencies results from new requirements to provide consumer information.

The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $24,334,225, of which $21.95 million is associated with lenders, $2.05 million with guaranty agencies, $0.2 million with borrowers, and $0.13 million with schools. Given the large number of entities affected by these provisions, actual burden on individual entities is not substantial.

Because data underlying many of these burden estimates was limited, in the NPRM, the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations. No comments or additional data were received.

Net Budget Impacts

As discussed more fully in the *Regulatory Impact Analysis* of the NPRM, HEOA provisions implemented by these regulations are estimated to have a net budget impact of $34.7 million in 2009 and $192.7 million over FY 2009–2013. (The estimated impact for 2009 does not include $144.2 million in costs related to loans originated in prior fiscal years.) Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of

all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

The budgetary impact of these regulations is largely driven by statutory changes involving teacher loan forgiveness, loan discharges, and IBR. The Department estimates no budgetary impact for other provisions included in these regulations; there is no data indicating that the new requirements related to improper inducements and additional loan disclosures will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data Sources

As noted in the NPRM, because these regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including data from the NSLDS; operational and financial data from Department systems; and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the Census Bureau, were also used.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. *See* the heading *Paperwork Reduction Act of 1995*.

Accounting Statement

In Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges, teacher loan forgiveness payments).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$57.
From Whom To Whom?	Federal Government to Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. These regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

As discussed in more detail in the *Regulatory Flexibility Act* section of the NPRM, data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 1,200 institutions participating in the FFEL program meet the definition of ''small entities.'' Institutional burden stemming from these regulations is associated with audit requirements for schools serving as lenders. Institutions meeting the definition of small entities are extremely unlikely to act as lenders in the FFEL program. Accordingly, new requirements imposed under these regulations are not expected to impose significant new costs on these institutions.

The Department believes few if any lenders participating in the FFEL program have revenues of less than $5 million. Lenders of this size are extremely unlikely to engage in the type of activities—inducements, *etc.*—governed by these regulations. Accordingly, the Department has determined that the regulations did not represent a significant burden on small lenders.

Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

In the NPRM, the Secretary invited comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them. No comments were received.

Paperwork Reduction Act of 1995

Sections 674.61, 682.202, 682.205, 682.206, 682.208, 682.210, 682.211, 682.216, 682.302, 682.305, 682.401, 682.402, 682.410, 682.601, 685.202, 685.204, 685.205, 685.213, and 685.217 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Sections 674.61, 682.402, and 685.213—Total and Permanent Disability Loan Discharges

The final regulations revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on a total and permanent disability. The changes to the loan discharge process affect borrowers, loan holders (and their servicers), and guaranty agencies.

The burden hour estimate associated with the current total and permanent disability loan discharge provisions is reported under OMB Control Number 1845–0065 (Discharge Application: Total and Permanent Disability). The Department does not expect these changes to increase the burden for this collection. However, the Department will need to revise the Discharge Application: Total and Permanent Disability currently approved under 1845–0065 to reflect these final regulations. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.

In response to public comments, the Department revised § 682.402(c)(8)(ii)(F) to specify that upon receipt of a claim payment from the guaranty agency (after the Department has notified the guaranty agency that a borrower is eligible for a discharge under the separate discharge process for certain veterans), the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged. Under the proposed regulations, the guaranty agency would have been responsible for notifying the veteran of the discharge. This change from the proposed regulations has no effect on burden for lenders or guaranty agencies, as it simply makes the borrower notification process under the special discharge procedures for veterans consistent with the general discharge procedures for other borrowers and the notification requirements under existing regulations.

Section 682.206—Consolidation Loans

The final regulations revise § 682.206(f) to incorporate a new requirement that is needed to fully implement proposed § 682.205(i)(7), which requires lenders to inform borrowers that, by applying for the Consolidation loan, the borrower is not obligated to take the loan. Specifically, § 682.206(f) is revised to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan. The final regulations require the lender to send the notice of the option to cancel the loan to the borrower before making any payments to pay off a loan with the proceeds of a Consolidation loan.

We estimate that these changes will increase burden for borrowers by 10,032 hours and for loan holders (and their servicers) by 54,552 hours for a total increase in burden of 64,584 hours in OMB Control Number 1845–0020.

Sections 682.210, 682.211, 685.204 and 685.205—In-School Deferments and Administrative Forbearance for PLUS Loans

The final regulations revise §§ 682.210 and 685.204 to reflect statutory deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008. Upon the request of the borrower, a parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008, during the period when the student on whose behalf the loan was obtained is enrolled on at least a half-time basis at an eligible institution, and during the 6-month period that begins on the later of the day after the student ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent ceases to be enrolled on at least a half-time basis.

For graduate and professional student PLUS borrowers, the final regulations provide that a borrower may be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If a lender or the Secretary grants an in-school deferment on a student PLUS loan based on information from the borrower's school about the borrower's eligibility for a new loan, student status information from the school or information from NSLDS confirming the borrower's half-time enrollment status, the in-school deferment period for a student PLUS loan first disbursed on or after July 1, 2008 would include the 6-month period that begins on the day after the student PLUS borrower ceases to be enrolled on at least a half-time basis.

The final regulations also add a new administrative forbearance provision to § 682.211(f) allowing a lender to grant a forbearance, upon notice to the borrower, on a borrower's PLUS loans first disbursed before July 1, 2008 to align repayment of the loans with a borrower's PLUS loans first disbursed on or after July 1, 2008, or with a borrower's Stafford loans that are subject to a grace period. The lender is required to notify the borrower that he or she has the option to cancel the forbearance and to continue paying on the loan. A corresponding administrative forbearance provision will be added to § 685.205(b) in the Direct Loan Program regulations.

The changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The new deferment provisions for certain PLUS borrowers are expected to increase the number of borrowers who apply for deferments. Because these statutory provisions could be implemented without regulations, the FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL Program Deferment Request Forms) and 1845–0011 (Direct Loan Program Deferment Request Forms). The increased burden associated with the final regulatory changes is reflected in the burden estimates reported under those control numbers.

We estimate that the final regulations in § 682.211(e) related to administrative forbearances will increase burden for loan holders by 14,440 hours in OMB Control Number 1845–0020.

Sections 682.215 and 685.221—Income-Based Repayment (IBR) Plan

The final regulations revise the definition of partial financial hardship in § 682.215(a)(4) and 685.221(a)(4) to specify that the annual amount due on a borrower's eligible loans for purposes of determining whether the borrower has a partial financial hardship is the greater of the amount due on the eligible loans when the borrower initially entered repayment on those loans, or the amount due on those loans when the borrower elects the IBR plan. The final regulations also provide that when a married borrower and his or her spouse file a joint Federal tax return with the IRS and both the borrower and the spouse have eligible loans, the joint AGI and the total amount of the borrower's and spouse's eligible loans will be used in determining whether each borrower has a partial financial hardship.

The final regulations revise §§ 682.215(b)(1) and 685.221(b)(2) to provide that if a borrower and a borrower's spouse both have eligible loans and filed a joint Federal tax return, each borrower's percentage of the couple's total eligible loan debt would be determined, and the calculated partial financial hardship payment amount for each borrower would be adjusted by multiplying the payment by the applicable borrower's percentage. As with all other borrowers, each borrower's adjusted payment amount would be further adjusted if the borrower's loans are held by multiple holders.

We estimate that the final regulations will increase burden for loan holders by 90,286 hours in OMB Control Number 1845–0020.

Sections 682.202, 682.302, and 685.202—Applicability of the Servicemembers Civil Relief Act (SCRA) to FFEL and Direct Loan Program Loans

The final regulations revise §§ 682.202 and 685.202 to provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate (as defined in 50 U.S.C. 527, App, section 207(d)) that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status. The final regulations

would also revise § 682.302 of the FFEL regulations by adding a new paragraph (h) that specifies that, for FFEL loans first disbursed on or after July 1, 2008, that are subject to the SCRA interest rate cap, the FFEL lender's special allowance payment is calculated as it otherwise would be under program requirements, except that the applicable interest rate used is six percent.

We estimate that the final regulations will increase burden for borrowers by 1,694 hours and for loan holders by 542 hours in new OMB Control Number 1845–XXX1. We estimate that the final regulations will increase burden for borrowers by 563 hours in new OMB Control Number 1845–XXX2.

Sections 682.210 and 685.204—In-School Deferment

The final regulations revise § 682.210(a)(3) of the FFEL regulations to provide that if a borrower is responsible for the interest on a loan during a deferment period, the lender, at or before the time the deferment is granted, must notify the borrower that he or she has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender is also required to provide information, including an example, on the impact on a borrower's loan debt of capitalization of accrued unpaid interest and on the total amount of interest to be paid over the life of the loan. A similar notification provision that applied only to the granting of in-school deferments is removed from § 682.210(c)(2) of the FFEL regulations. A comparable change is made in § 685.204(b)(1)(iii)(B) of the Direct Loan regulations to provide that borrowers will be notified of their option to cancel a deferment and continue paying on the loan and will be provided with information on the impact of capitalization, including an example.

The changes to §§ 682.210 and 685.204 affect borrowers and loan holders (and their servicers). The FFEL and Direct Loan deferment request forms currently approved under OMB Control Numbers 1845–0005 and 1845–0011 already include the information that a loan holder must provide to a borrower at or before the time a deferment is granted, as described above. Therefore, there is no increase in burden associated with the final regulations.

Sections 682.216 and 685.217—FFEL and Direct Loan Program Teacher Loan Forgiveness

The final regulations allow a borrower who otherwise meets the eligibility requirements for teacher loan forgiveness to receive forgiveness based on teaching service performed at one or more eligible elementary or secondary schools that serve low-income families, or one or more eligible educational service agencies that serve low-income families. A borrower can also qualify based on teaching service performed at a combination of eligible elementary or secondary schools and eligible educational service agencies. To be considered eligible for teacher loan forgiveness purposes, an educational service agency has to meet the same eligibility requirements that apply to elementary and secondary schools.

These changes will increase the number of borrowers who are eligible for teacher loan forgiveness, and will require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application that is currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.

Section 682.205—Disclosure Requirements for Lenders

The final regulations reorganize and expand § 682.205 to reflect new disclosure requirements added by the HEOA. The HEOA added additional disclosures by lenders before disbursement and requires new disclosures at differing points in the borrower's repayment cycle. The HEOA also added a separate set of disclosures specifically for Consolidation loan borrowers.

We estimate that the final regulations will increase burden for loan holders (and their servicers) by 797,661 hours in OMB Control Number 1845–0020.

Section 682.208—Information to Borrowers Upon Transfer, Sale or Assignment of a FFEL Program Loan

The final regulations incorporate three additional information items specified in the HEA that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent. The three additional data items are: (1) The effective date of the assignment or transfer of the loan; (2) the date on which the current loan servicer will cease accepting payments; and (3) the date on which the new loan servicer will begin accepting payments. The date on which the current servicer will stop accepting payments is required only if that is applicable.

Loan holders are already required, under current regulations, to provide certain information to a borrower if the assignment of a FFEL Program loan results in a change in the identity of the party to whom the borrower must send payments. The final regulations merely add three additional items to the notice that a loan holder is already required to provide. Therefore, the Department believes that the final regulations will not significantly increase burden for loan holders (and their servicers) in OMB Control Number 1845–0020.

Section 682.211—Forbearance

Section 682.211(e) of the final regulations requires the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total amount to be repaid over the life of the loan. The final regulations also require the lender to contact the borrower at least once every 180 days during any period of forbearance and to give the borrower or endorser more specific information, in conjunction with that required under existing regulations, as to the impact of forbearance on the loan. This information includes the amount of interest that will be capitalized and when that capitalization will take place and the option of the borrower or endorser to pay the interest that has accrued before it is capitalized.

We estimate that the final regulations will increase burden for loan holders (and their servicers) by 215,734 hours in OMB Control Number 1845–0020.

Sections 682.305 and 682.601—Audit Requirements for a FFEL School Lender or an Eligible Lender Trustee (ELT)

The final regulations revise § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated. The final regulations also require that the audit be conducted by a qualified, independent organization or person. Section 682.305(c)(2)(vii) governs the compliance audit of a school or school-affiliated organization lender trustee. The final regulations require that the trustee's audit include a determination that the school for whom the lender serves as trustee used all the proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for

need-based grants, and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to the school to make need-based grants to its students. The final regulations also require that the audit determine that no more than a reasonable portion of the payments and proceeds from the loans were used for direct administrative expenses in accordance with § 682.601(b) of the current regulations. These same requirements with regard to annual compliance audit determinations were also added to the FFEL school lender audit requirements in § 682.601(a)(7) of the regulations.

We estimate that the final regulations will increase burden for institutions by 7,200 hours and for loan holders (and their servicers) by 10,900 hours for a total increase in burden of 18,100 hours in OMB Control Number 1845–0020.

Section 682.401—Consumer Education Information Provided by Guaranty Agencies

The final regulations require a guaranty agency to work with the schools that it serves to develop and make available high-quality educational materials and programs that provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

We estimate that the final regulations will increase burden for institutions and guaranty agencies by 8,748 hours in OMB Control Number 1845–0020.

Section 682.405—Financial and Economic Literacy for Rehabilitated Borrowers

The final regulations revise § 682.405, regarding loan rehabilitation agreements, by adding a provision requiring guaranty agencies to make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan.

We estimate that the final regulations will increase burden for guaranty agencies by 24,427 hours in OMB Control Number 1845–0020.

Section 682.405—Consumer Credit Reporting Following Loan Rehabilitation

If a borrower successfully rehabilitates a previously defaulted loan, the final regulations require the prior holder of the loan, in addition to the guaranty agency, to request that a consumer reporting agency to which the default was reported remove the default from the borrower's credit history. The final regulations also provide more detailed reporting deadlines for the guaranty agency and prior loan holder to request removal of the report of the default from the borrower's credit history, and reduce the overall period for this activity from 90 to 75 days.

We estimate that the final regulations will increase burden for guaranty agencies by 18,392 hours in OMB Control Number 1845–0020.

Section 682.410—Notifications to Borrowers in Default

The final regulations expand the information that must be provided in the notice required under § 682.410(b)(5)(ii) to include information on the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option. The final regulations also require a guaranty agency to provide this same information to a defaulted borrower in a second notice that the guaranty agency must send as part of its required collection efforts on a defaulted loan under § 682.410(b)(6). The second notice has to be sent within a reasonable time after the end of the period during which the borrower may request an administrative review as specified in § 682.410(b)(5)(iv)(B) or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

We estimate that the final regulations will increase burden for guaranty agencies by 58,793 hours in OMB Control Number 1845–0020.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department submitted to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act.

Regulatory section	Information collection	Collection
674.61, 682.402, and 685.213.	The final regulations revise the loan discharge process for borrowers seeking to have their title IV loans discharged based on total and permanent disability. Borrowers who apply for a total and permanent disability discharge must complete a discharge application that collects the information needed to determine their eligibility for discharge.	OMB 1845–0065. The Discharge Application: Total and Permanent Disability that is currently approved under 1845–0065 will be revised to reflect the final regulations that will be published by November 1, 2009. The Department will submit a revised form for clearance after the final regulations have been published. The revised form will not be needed until July 1, 2010, the effective date of the final regulations.
682.206	§ 682.206(f) is amended to include a requirement that the lender provide a Consolidation loan borrower a period of not less than 10 days, from the date the borrower is notified by the lender that it is ready to make the Consolidation loan, to cancel the loan.	OMB 1845–0020. There will be an increase in burden of 64,584 hours.
682.210, 682.211, 685.204 and 685.205.	The final regulations implement the new deferment provisions for FFEL and Direct PLUS loan borrowers with loans first disbursed on or after July 1, 2008 that were added to the HEA by the HEOA. A loan holder must collect the information needed to determine that a borrower is eligible for a deferment.	OMB 1845–0005, 1845–0011 and 1845–0020. The FFEL and Direct Loan deferment request forms were previously revised to include the new deferments for PLUS borrowers and have been approved under OMB Control Numbers 1845–0005 (FFEL) and 1845–0011 (Direct Loan). There will be an increase in burden of 14,440 hours in OMB 1845–0020.

Regulatory section	Information collection	Collection
682.202, 682.302, and 685.202.	The final regulations provide that, effective August 14, 2008, upon a loan holder's receipt of a written request from a borrower and a copy of the borrower's military orders, the maximum interest rate that may be charged on FFEL or Direct Loan program loans made prior to the borrower entering active duty status is six percent while the borrower is on active duty status.	OMB 1845–XXX1 and 1845–XXX2. These are new collections. A separate 60-day **Federal Register** Notice has been published to solicit comments. In OMB 1845–XXX1 there will be an increase in burden of 2,236 hours. In OMB 1845–XXX there will be an increase in burden of 563 hours.
682.210 and 685.204	The final regulations require a loan holder to provide information about interest capitalization to a borrower prior to or at the time of granting a deferment on an unsubsidized loan.	OMB 1845–0005 and 1845–0011. These collections (FFEL and Direct Loan Program deferment request forms) were previously revised to include the required information about interest capitalization and have been approved by OMB.
682.215 and 685.221	The final regulations revise the definition of partial financial hardship for purposes of determining a borrower's eligibility for the income-based repayment plan and would also revise the provisions governing a loan holder's calculation of a borrower's income-based payment amount.	OMB 1845–0020. There will be an increase in burden of 90,286 hours.
682.216 and 685.217	The final regulations expand eligibility for teacher loan forgiveness to allow a borrower who otherwise meets the loan forgiveness eligibility requirements to receive forgiveness based on teaching service performed at one or more eligible educational service agencies that serve low-income families.	OMB 1845–0059. The final regulations require a revision of the FFEL and Direct Loan Program Teacher Loan Forgiveness Application currently approved under OMB Control Number 1845–0059. The Department will submit a change request for 1845–0059 (including an adjustment to the burden hours associated with this collection) after the final regulations have been published.
682.205	The final regulations implement new statutory requirements for lenders to disclose certain information to borrowers at various points during the lifecycle of a borrower's loan. The proposed regulations also add new lender disclosure requirements for consolidation loan borrowers.	OMB 1845–0020. There will be an increase in burden of 797,661 hours.
682.208	The final regulations incorporate three additional information items that must be provided to a borrower if the assignment or transfer of an ownership interest in a FFEL program loan results in a change in the identity of the party to whom subsequent payments must be sent.	OMB 1845–0020. There will be no change in burden hours.
682.211	The final regulations require the lender, at the time the borrower is granted a forbearance, to give the borrower information about the impact of capitalization of interest on the loan and the total to be repaid over the life of the loan.	OMB 1845–0020. There will be an increase in burden of 215,734 hours.
682.305 and 682.601	The final regulations amend § 682.305(c) to require that a FFEL school lender, or a lender serving as a trustee on behalf of a school or school-affiliated organization for the purpose of originating loans, submit an annual compliance audit to the Department regardless of the dollar volume of loans originated.	OMB 1845–0020. There will be an increase in burden of 181,100 hours.
682.401	The final regulations require guaranty agencies to work with the schools that it serves to develop and make available high-quality educational materials and programs to provide training for students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.	OMB 1845–0020. There will be an increase in burden of 8,748 hours.
682.405	The final regulations require guaranty agencies to provide certain information to borrowers who have rehabilitated defaulted loans.	OMB 1845–0020. There will be an increase in burden of 24,427 hours.
682.405	The final regulations require the prior holder of a previously defaulted loan, in addition to the guaranty agency, to request that consumer reporting agencies remove the record of the default from the borrower's credit history after the borrower has successfully rehabilitated the loan.	OMB 1845–0020. There will be an increase in burden of 18,392 hours.
682.410	The final regulations require guaranty agencies to provide certain additional notifications to borrowers who are in default.	OMB 1845–0020. There will be an increase in burden of 58,793 hours.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 673, 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, and Vocational education.

Dated: October 15, 2009.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 673, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 1. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, 1070g, 1087aa–1087ii, 42 U.S.C. 2751–2756b, unless otherwise noted.

■ 2. Section 673.5(c) is amended by:

■ A. Revising paragraph (c)(1)(v).

■ B. In paragraph (c)(1)(vi), removing the words ''and ROTC scholarships''.

■ C. Revising paragraph (c)(1)(ix).

■ D. In paragraph (c)(2)(iii), removing the word ''and'' immediately after the semicolon at the end of the paragraph.

■ E. In paragraph (c)(2)(iv), removing the words ''this part'' and adding, in their place, the words ''a title IV, HEA program,'' and removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

■ F. Adding a new paragraph (c)(2)(v).

■ G. Adding a new paragraph (c)(2)(vi).

■ H. In paragraph (c)(3), removing the words ''veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill-Active Duty) and''.

The revisions and additions read as follows:

§ 673.5 Overaward.

(c) * * *

(1) * * *

(v) Grants, including FSEOGs, State grants, Academic Competitiveness Grants, and National SMART Grants;

* * * * *

(ix) Except as provided in paragraph (c)(2)(v) of this section, veterans' education benefits;

* * * * *

(2) * * *

(v) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(vi) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 3. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

■ 4. Section 674.9 is amended by:

■ A. Revising paragraph (g).

■ B. In the introductory text of paragraph (h), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

■ C. In paragraph (h)(1), removing the words ''paragraphs (h)(1) and (h)(2)'' and adding, in their place, the words ''paragraphs (g)(1) and (g)(2)''.

■ D. In paragraph (h)(2)(ii), removing the words '', as described in § 674.61(b)(9)'' immediately after the word ''period''.

■ E. In the second sentence of paragraph (i), removing the words ''described in §§ 674.61(b), 682.402(c), or 685.213(a)'' immediately after the word ''period''.

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(g) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that any new Federal Perkins Loan the borrower receives cannot be discharged

in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

(3) If the borrower receives a new Federal Perkins Loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 674.61(b)(3)(i), 34 CFR 682.402(c), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 674.61(b)(5), 34 CFR 682.402(c)(5), or 34 CFR 685.213(b)(4), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

■ 5–6. Section 674.61 is amended by:

■ A. Revising paragraph (b).

■ B. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

■ C. Adding a new paragraph (c).

The revision and addition read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) *Total and permanent disability as defined in § 674.51(aa)(1)*—

(1) *General.* A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(1), a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1).

(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that—

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is totally and permanently disabled; and

(C) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled, as defined in § 674.51(aa)(1), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

(*1*) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(*2*) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(3) *Secretary's eligibility determination.* (i) If the Secretary determines that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(5) of this section.

(ii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iii) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(i) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior

to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(5)(i) of this section, the borrower or, if applicable, the borrower's representative—

(i) Must promptly notify the Secretary of any changes in address or phone number;

(ii) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(5)(i)(A) of this section; and

(iii) Must provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan prior to the Secretary's determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a determination to discharge the loan, the Secretary returns any payments received on the loan after the date the physician certified the borrower's loan discharge application to the person who made the payments on the loan.

(c) *Total and permanent disability discharges for veterans*—(1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in § 674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in § 674.51(aa)(2), a veteran must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) With the application, the veteran must submit documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(iii) Upon receiving the veteran's completed application and the required documentation from the Department of Veterans Affairs, the institution must suspend collection activity on the loan and inform the veteran that—

(A) The institution will review the application and submit the application and supporting documentation to the Secretary for an eligibility determination if the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2);

(B) The institution will resume collection on the loan if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2); and

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but the documentation indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1), the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in § 674.61(b).

(iv) If the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must submit a copy of the veteran's application and the documentation from the Department of Veterans Affairs to the Secretary. At the time the application and documentation are submitted to the Secretary, the institution must notify the veteran that the veteran's discharge request has been referred to the Secretary for determination of discharge eligibility and that no payments are due on the loan.

(v) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the institution must resume collection on the loan.

(3) *Secretary's determination of eligibility*. (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must—

(A) Discharge the veteran's obligation to make further payments on the loan; and

(B) Return to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the institution of this determination, and the institution must resume collection on the loan.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 7. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2 unless otherwise noted.

■ 8. Section 682.200(b) is amended by:

■ A. In the definition of ''Estimated financial assistance,'' revising paragraphs (1)(i) and (ii).

■ B. In the definition of ''Estimated financial assistance,'' removing

paragraphs (1)(iii) and (iv), and redesignating paragraphs (1)(v), (vi), (vii), and (viii) as paragraphs (1)(iii), (iv), (v), and (vi), respectively.

■ C. In paragraph (2)(i) of the definition of ''Estimated financial assistance,'' removing the word ''is'' in the second sentence and adding, in its place, the words ''must be''.

■ D. In paragraph (2)(iii) of the definition of ''Estimated financial assistance,'' removing the words ''veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill—Active Duty) and''.

■ E. In paragraph (2)(v) of the definition of ''Estimated financial assistance,'' removing the word ''and'' after the semicolon at the end of the paragraph.

■ F. In paragraph (2)(vi) of the definition of ''Estimated financial assistance,'' removing the words ''this title'' in the first sentence and adding, in their place, the words ''a title IV, HEA program'', and removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

■ G. In the definition of ''Estimated financial assistance,'' adding new paragraphs (2)(vii) and (viii).

■ H. Revising paragraph (5) of the definition of ''Lender.''

■ I. Removing the definition of ''National credit bureau.''

■ J. Adding a definition of ''Nationwide consumer reporting agency.''

■ K. Adding a definition of ''Substantial gainful activity.''

■ L. Revising the definition of ''Totally and permanently disabled.''

The revisions and additions read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Estimated financial assistance. (1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps);

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

* * * * *

(2) * * *

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

* * * * *

Lender. * * *

(5)(i) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has, directly or through an agent or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments (including payments for referrals, finder fees or processing fees), or other inducements to any school, any employee of a school, or any individual or entity in order to secure applications for FFEL loans or FFEL loan volume. This includes but is not limited to—

(*1*) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower or to a school or school employee in exchange for applying for or accepting a FFEL loan from the lender;

(*2*) Payments or other benefits, including payments of stock or other securities, tuition payments or reimbursements, to a school, a school employee, any school-affiliated organization, or to any other individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(*3*) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers, unless the student is also employed by the lender for other purposes and discloses that employment to school administrators and to prospective borrowers;

(*4*) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;

(*5*) Payment to another lender or any other party, including a school, a school employee, or a school-affiliated organization or its employees, of referral fees, finder fees or processing fees, except those processing fees necessary to comply with Federal or State law;

(*6*) Compensation to an employee of a school's financial aid office or other employee who has responsibilities with respect to student loans or other financial aid provided by the school or compensation to a school-affiliated organization or its employees, to serve on a lender's advisory board, commission or other group established by the lender, except that the lender may reimburse the employee for reasonable expenses incurred in providing the service;

(*7*) Payment of conference or training registration, travel, and lodging costs for an employee of a school or school-affiliated organization;

(*8*) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;

(*9*) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or

a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders;

(*10*) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling as provided in § 682.604(f) and exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

(*11*) Any type of consulting arrangement or other contract with an employee of a financial aid office at a school, or an employee of a school who otherwise has responsibilities with respect to student loans or other financial aid provided by the school under which the employee would provide services to the lender.

(B) Conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions or to family members of such students, except to a student or borrower who previously has received a FFEL loan from the lender;

(C) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Technical assistance to a school that is comparable to the kinds of technical assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the **Federal Register**;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, including in-person entrance and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

(C) Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(D) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(E) A reduced origination fee in accordance with § 682.202(c);

(F) A reduced interest rate as provided under the Act;

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the **Federal Register**.

(iii) For the purposes of this paragraph (5)—

(A) The term ''school-affiliated organization'' is defined in § 682.200.

(B) The term ''applications'' includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL Consolidation loan application and promissory notes.

(C) The term ''other benefits'' includes, but is not limited to, preferential rates for or access to the lender's other financial products, information technology equipment, or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

* * * * *

Nationwide consumer reporting agency. A consumer reporting agency as defined in 15 U.S.C. 1681a.

* * * * *

Substantial gainful activity. A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

* * * * *

Totally and permanently disabled. The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

* * * * *

■ 9. Section 682.201 is amended by:

■ A. In paragraph (a)(4)(i), removing the words ''legal costs, and late charges'' and adding, in their place, the words ''court costs, attorney fees, and late charges''.

■ B. In paragraph (a)(5), removing the words ''under § 682.402(c)''.

■ C. In the introductory text of paragraph (a)(6), adding the words ''or whose TEACH Grant service obligation'' immediately after the word ''Act''.

■ D. Revising paragraph (a)(6)(iii).

■ E. In the introductory text of paragraph (a)(7), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

■ F. In paragraph (a)(7)(ii)(B), removing the words '', as described in paragraph 682.402(c)(16)''.

■ G. In paragraph (d)(1)(i)(A)(3), adding the words ''or the income-based repayment plan described in § 682.215'' immediately after the reference ''§ 682.209(a)(6)(iii)''.

■ H. In paragraph (e)(4), adding the words ''is in default or'' immediately after the first appearance of the words ''consolidation loan'' and adding the words ''or an income-based repayment plan'' immediately after the words ''income contingent repayment plan''.

■ I. Revising paragraph (e)(5).

The revisions read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(6) * * *

(iii) If a borrower receives a new FFEL loan, other than a Federal Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 682.402(c)(3)(ii), 34 CFR 674.61(b)(3)(i), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resume repayment on the previously discharged loan in

accordance with § 682.402(c)(5), 34 CFR 674.61(b)(5), or 34 CFR 685.213(b)(4), or acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

(e) * * *

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using—

(i) The Public Service Loan Forgiveness Program; or

(ii) For FFEL Program loans first disbursed on or after October 1, 2008 (including Federal Consolidation Loans that repaid FFEL or Direct Loan program Loans first disbursed on or after October 1, 2008), the no accrual of interest benefit for active duty service members.

■ 10. Section 682.202 is amended by:

■ A. In the introductory text of paragraph (a), adding the words ''and (a)(8)'' after the reference ''(a)(4)''.

■ B. Adding a new paragraph (a)(8).

■ C. In paragraph (b)(2)(i), adding the words ''or, for a PLUS loan, for the period from the date the first disbursement was made to the date the repayment period begins'' immediately before the semicolon.

The addition reads as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

■ 11. Section 682.204 is amended by:

■ A. Revising paragraph (c)(1).

■ B. Revising paragraph (d) introductory text.

■ C. In paragraph (d)(1)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ D. In paragraph (d)(1)(ii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ E. In paragraph (d)(1)(iii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ F. In paragraph (d)(2)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ G. In paragraph (d)(2)(ii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$,4000''.

■ H. In paragraph (d)(3)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $7,000,'' immediately after ''$5,000''.

■ I. In paragraph (d)(3)(ii), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $7,000,'' immediately after ''$5,000''.

■ J. In paragraph (d)(6)(i), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.

■ K. Adding a new paragraph (d)(9).

■ L. Redesignating paragraphs (e)(1) and (e)(2) as paragraphs (e)(2) and (e)(3), respectively.

■ M. Adding a new paragraph (e)(1).

■ N. Revising newly redesignated paragraph (e)(2).

The revisions and additions read as follows:

§ 682.204 Maximum loan amounts.

* * * * *

(c) *Unsubsidized Stafford Loan Program.* (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program.

(ii) Except for a dependent undergraduate who qualifies for additional Unsubsidized Stafford Loan funds under paragraph (d) of this section in accordance with the conditions specified in § 682.201(a)(3), for a loan first disbursed on or after July 1, 2008, the total amount the student may borrow for any period of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Federal Direct Stafford/Ford Loan Program, plus—

(A) $2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is at one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks in program}}{\text{Number of weeks in academic year.}}$$

* * * * *

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students under the conditions specified in § 682.201(a)(3) may borrow additional amounts under the Unsubsidized Stafford Loan Program in addition to any amount borrowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section. The additional amount that such a student may borrow for any academic year of study under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (a) and (c) of this section, except as provided in paragraph (d)(9) of this section for certain dependent undergraduate students—

* * * * *

(9) A dependent undergraduate student who qualifies for the additional Unsubsidized Stafford Loan amounts under this section in accordance with the conditions specified in § 682.201(a)(3) is not eligible to receive the additional Unsubsidized Stafford Loan amounts under paragraph (c)(1)(ii) of this section.

(e) * * *

(1) $23,000, or, effective July 1, 2008, $31,000, for a dependent undergraduate student.

(2) $46,000, or, effective July 1, 2008, $57,500, for an independent undergraduate student or a dependent undergraduate student under the conditions specified in § 682.201(a)(3).

* * * * *

■ 12. Section 682.205 is amended by:

■ A. In paragraph (a)(2)(vi), removing the words ''insurance premium'' and adding, in their place, the words ''Federal default fee'', and adding, immediately before the semicolon, the words ''or paid by the lender''.

■ B. In paragraph (a)(2)(ix), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ C. In paragraph (a)(2)(x), adding, immediately before the semicolon, the words '', and a description of the types of repayment plans available''.

■ D. In paragraph (a)(2)(xvi), removing the words ''a national credit bureau'' and adding, in their place, the words ''each nationwide consumer reporting agency''.

■ E. In paragraph (a)(2)(xviii), removing the words ''in the making or'' and adding, in their place, the words ''during repayment or in the''; adding the words ''including any fees the borrower may be charged'' immediately after the words ''the loan''; and removing the words ''; and'' at the end of the paragraph and adding, in their place, the punctuation '';''.

■ F. In paragraph (a)(2)(xx), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.

■ G. Adding new paragraphs (a)(2)(xxi), (a)(2)(xxii), (a)(2)(xxiii), and (a)(2)(xxiv).

■ H. In paragraph (b), in the second sentence, adding the words '', and that the default will be reported to each nationwide consumer reporting agency'' immediately after the word ''loan''.

■ I. In paragraph (c), in the heading, removing the words ''Disclosure of repayment'' and adding, in their place, the word ''Repayment''.

■ J. In paragraph (c)(1), adding the heading ''Disclosures at or prior to repayment.'' immediately after the paragraph designation ''(1)''; removing the words ''Federal SLS'' and adding, in their place, the words ''Federal PLUS''; and removing the words ''240 days'' and adding, in their place, the words ''150 days''.

■ K. In paragraph (c)(2)(ii), adding the words '', or a deferment under § 682.210(v), if applicable, is to end'' immediately after the word ''begin'' at the end of the sentence.

■ L. In paragraph (c)(2)(iii), adding the words ''a deferment under § 682.210(v), if applicable, is to end,'' immediately after the words ''begin''.

■ M. In paragraph (c)(2)(vi), adding the words ''based on the repayment schedule selected by the borrower'' immediately after the word ''payments''.

■ N. In paragraph (c)(2)(viii), removing the words ''; and'' and adding, in their place, the words '', and if interest has been paid, the amount of interest paid;''.

■ O. In paragraph (c)(2)(ix), removing the punctuation ''.'' at the end of the sentence and adding, in its place, the punctuation '';''.

■ P. Adding new paragraphs (c)(2)(x), (c)(2)(xi), (c)(2)(xii), (c)(2)(xiii) and (c)(2)(xiv).

■ Q. Adding new paragraphs (c)(3), (c)(4) and (c)(5).

■ R. In paragraph (d), adding the words ''Federal Unsubsidized Stafford loan or a'' immediately after the words ''In the case of a'' at the beginning of the first sentence; removing the words ''the student'' in the first sentence and adding, in their place, the words ''the borrower or student on whose behalf the loan is made''; and removing the words ''PLUS promissory note'' in the last sentence and adding, in their place, the words ''Stafford and PLUS promissory notes''.

■ S. Adding new paragraph (i).

■ T. Adding new paragraph (j).

The additions read as follows:

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(2) * * *

(xxi) For unsubsidized Stafford or student PLUS borrowers, an explanation that the borrower may pay the interest while in school and, if the interest is not paid by the borrower while in school, when and how often the interest will be capitalized;

(xxii) For parent PLUS borrowers, an explanation that the parent may defer payment on the loan while the student on whose behalf the parent borrowed is enrolled at least half-time and, if the parent does not pay interest while the student is in school, when and how often interest will be capitalized, and that the parent may be eligible for a deferment on the loan if the parent is enrolled at least half-time;

(xxiii) A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan; and

(xxiv) A description of the options available for forgiveness of the loan and the requirements to obtain that forgiveness.

* * * * *

(c) * * *

(2) * * *

(x) Information on any special loan repayment benefits offered on the loan, including benefits that are contingent on repayment behavior, and any other special loan repayment benefits for which the borrower may be eligible that would reduce the amount or length of repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower's total payoff amount and time for repayment;

(xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how the borrower may regain eligibility for the repayment benefit;

(xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period at least annually;

(xiii) A description of the options available to the borrower to avoid or be

removed from default, as well as any fees associated with those options; and

(xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(3) *Required disclosures during repayment*. In addition to the disclosures required in paragraph (c)(1) of this section, the lender must provide the borrower of a FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms—

(i) The original principal amount of the borrower's loan;

(ii) The borrower's current balance, as of the time of the bill or statement;

(iii) The interest rate on the loan;

(iv) The total amount of interest for the preceding installment paid by the borrower;

(v) The aggregate amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal;

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period;

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and the fees;

(viii) The lender's or servicer's address and toll-free telephone number for repayment options, payments and billing error purposes; and

(ix) A reminder that the borrower may change repayment plans, a list of all of the repayment plans that are available to the borrower, a link to the Department of Education's Web site for repayment plan information, and directions on how the borrower may request a change in repayment plans from the lender.

(4) *Required disclosures for borrowers having difficulty making payments*. The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(i) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(ii) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(iii) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(5) *Required disclosures for borrowers who are 60-days delinquent in making payments on a loan*. (i) The lender shall provide to a borrower who is 60 days delinquent in making required payments a notice of—

(A) The date on which the loan will default if no payment is made;

(B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

(C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

(D) Any options for discharging the loan that may be available to the borrower; and

(E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five days of the date the borrower becomes 60 days delinquent, unless the lender has sent such a notice within the previous 120 days.

* * * * *

(i) *Separate disclosure for Consolidation loans*. At the time the lender provides a Consolidation loan application to a prospective borrower, it must disclose to the prospective borrower, in simple and understandable terms—

(1) Whether consolidation will result in a loss of loan benefits, including, but not limited to, loan forgiveness, cancellation, deferment, or a reduced interest rate on FFEL or Direct Loans repaid through consolidation;

(2) If a borrower is repaying a Federal Perkins Loan with the Consolidation loan, that the borrower will lose—

(i) The interest-free periods available on the Perkins Loan while the borrower is enrolled in-school at least half-time, in the grace period, or in a deferment period; and

(ii) The cancellation benefits on the Perkins Loan. The lender must provide to the borrower a list of the Perkins Loan cancellation benefits that would not be available on the Consolidation loan.

(3) The repayment plans available to the borrower;

(4) The borrower's options to prepay the Consolidation loan, to pay the loan on a shorter repayment schedule, and to change repayment plans;

(5) That the borrower benefit programs for a Consolidation loan vary among lenders;

(6) The consequences of default on the Consolidation loan; and

(7) That applying for the Consolidation loan does not obligate the borrower to agree to take the Consolidation loan, and the process and deadline by which the borrower may cancel the Consolidation loan.

(j) *Disclosure procedures when a borrower's address is not available*. If a lender receives information indicating it does not know the borrower's current address, the lender is excused from providing disclosure information under this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.

■ 13. Section 682.206 is amended by revising paragraph (f) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(f) *Additional requirements for Consolidation loans*. (1) Prior to making any payments to pay off a loan with the proceeds of a Consolidation loan, the lender shall—

(i) Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(A) The loan is a legal, valid, and binding obligation of the borrower;

(B) The loan was made and serviced in compliance with applicable laws and regulations; and

(C) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect; and

(ii) Consistent with the requirements of § 682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the Consolidation loan, of the borrower's option to cancel the Consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel the loan. The lender must allow the borrower no less than 10 days from the date of the notice to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) of this section by the holder of a loan to be consolidated.

■ 14. Section 682.208 is amended by:

■ A. In paragraph (e)(1) introductory text, adding the words ''or transfer of ownership interest'' immediately after the word ''assignment''.
■ B. In paragraph (e)(1)(iii), removing the word ''and'' after the semicolon.
■ C. In paragraph (e)(1)(iv), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.
■ D. Adding new paragraphs (e)(1)(v), (vi), and (vii).

The additions read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e) * * *

(1) * * *

(v) The effective date of the assignment or transfer of the loan;

(vi) The date, if applicable, on which the current loan servicer will stop accepting payments; and

(vii) The date on which the new loan servicer will begin accepting payments.

* * * * *

§ 682.209 [Amended]

■ 15. Section 682.209 is amended in paragraph (a)(2)(v) by removing the reference ''(a)(2)(ii)'' and adding, in its place, the reference ''(a)(2)(i)''.
■ 16. Section 682.210 is amended by:
■ A. In paragraph (a)(1)(i), adding the words ''and paragraphs (s) through (v)'' after the words ''paragraph (b)''.
■ B. Revising paragraph (a)(3).
■ C. In paragraph (a)(4), removing the words ''paragraphs (c)(1)(ii) and (iii)'' and adding, in their place, the words ''paragraphs (c)(1)(ii), (iii), and (iv)''.
■ D. In paragraph (c)(1)(ii), removing the word ''or'' at the end of the paragraph.
■ E. In paragraph (c)(1)(iii), removing the punctuation ''.'' and adding, in its place, ''; or'' at the end of the paragraph.
■ F. Adding a new paragraph (c)(1)(iv).
■ G. Revising paragraph (c)(2).
■ H. In paragraph (c)(3), removing the word ''SSCR'' and adding, in its place, the words ''Student Status Confirmation Report''.
■ I. Adding a new paragraph (v).

The revisions and additions read as follows:

§ 682.210 Deferment.

(a) * * *

(3)(i) Interest accrues and is paid by—

(A) The Secretary during the deferment period for a subsidized Stafford loan and for all or a portion of a Consolidation loan that qualifies for interest benefits under § 682.301; or

(B) The borrower during the deferment period and, as applicable, the post-deferment grace period, on all other loans.

(ii) A borrower who is responsible for payment of interest during a deferment period must be notified by the lender, at or before the time the deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender must also provide information, including an example, on the impact of capitalization of accrued, unpaid interest on loan principal, and on the total amount of interest to be paid over the life of the loan.

* * * * *

(c) * * *

(1) * * *

(iv) The lender confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(2) The lender must notify the borrower that a deferment has been granted based on paragraphs (c)(1)(ii), (iii), or (iv) of this section and that the borrower has the option to cancel the deferment and continue paying on the loan.

* * * * *

(v) *In-school deferments for PLUS loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student PLUS borrower is entitled to a deferment on a PLUS loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If a lender grants an in-school deferment to a student PLUS borrower based on § 682.210(c)(1)(ii), (iii), or (iv), the deferment period for a PLUS loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (v)(1)(i) of this section. The notice required by § 682.210(c)(2) must inform the borrower that the in-school deferment on a PLUS loan first disbursed on or after July 1, 2008 will end six months after the day the borrower ceases to be enrolled on at least a half-time basis.

(2) Upon the request of the borrower, an eligible parent PLUS borrower must be granted a deferment on a PLUS loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

■ 17. Section 682.211 is amended by:
■ A. Revising paragraph (e).
■ B. In paragraph (f)(11), removing the word ''or'' at the end of the paragraph.
■ C. In paragraph (f)(12), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.
■ D. In paragraph (f)(13), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.
■ E. In paragraph (f)(14), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.
■ F. Adding new paragraph (f)(15).

The revisions and additions read as follows:

§ 682.211 Forbearance.

* * * * *

(e)(1) At the time of granting a borrower or endorser a forbearance, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan; and

(2) At least once every 180 days during the period of forbearance, the lender must contact the borrower or endorser to inform the borrower or endorser of—

(i) The outstanding obligation to repay;

(ii) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan since the last notice provided to the borrower or endorser under this paragraph;

(iii) The fact that interest will accrue on the loan for the full term of the forbearance;

(iv) The amount of interest that will be capitalized, as of the date of the notice, and the date capitalization will occur;

(v) The option of the borrower or endorser to pay the interest that has accrued before the interest is capitalized; and

(vi) The borrower's or endorser's option to discontinue the forbearance at any time.

(f) * * *

(15) For PLUS loans first disbursed before July 1, 2008, to align repayment with a borrower's PLUS loans that were first disbursed on or after July 1, 2008, or with Stafford Loans that are subject to a grace period under § 682.209(a)(3). The notice specified in paragraph (f) introductory text of this section must

inform the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

■ 18. Section 682.215 is amended by:

■ A. Revising paragraph (a)(4).

■ B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

■ C. In paragraph (b)(1)(i), removing the word ''The'' at the beginning of the paragraph and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(1)(ii) of this section, the''.

■ D. Redesignating paragraphs (b)(1)(ii) and (b)(1)(iii) as paragraphs (b)(1)(iii) and (b)(1)(iv), respectively.

■ E. Adding a new paragraph (b)(1)(ii).

■ F. In newly redesignated paragraph (b)(1)(iii), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.

■ G. In newly redesignated paragraph (b)(1)(iv), removing the words ''or (b)(1)(i)'' and adding, in their place, the words '', (b)(1)(i), or (b)(1)(ii)''.

■ H. In paragraph (b)(2), removing the words ''(b)(1)(ii) and (iii)'' in the second sentence and adding, in their place, the words ''(b)(1)(iii) and (iv)''.

The revision and addition reads as follows:

§ 682.215 Income-based repayment plan.

(a) * * *

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

* * * * *

(b) * * *

(1) * * *

(ii) Both the borrower and the borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the loan holder determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(1)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment by multiplying the payment determined in paragraph (b)(1)(ii)(B) of this section by the percentage of the total outstanding principal amount of eligible loans that are held by the loan holder;

* * * * *

■ 19. Section 682.216 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (b), adding, in alphabetical order, a definition of *Educational service agency.*

■ C. Revising the introductory text of paragraph (c)(1).

■ D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

■ E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

■ F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school'' immediately after the words ''teaching and''.

■ G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

■ H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

■ I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.

■ J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

■ K. Adding a new paragraph (c)(3)(iii).

■ L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

■ M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.

■ N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.

■ O. Adding a new paragraph (c)(4)(iii).

■ P. Revising paragraph (c)(9).

■ Q. Revising paragraph (c)(11).

The revisions and additions read as follows:

§ 682.216 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching at an educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or at an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * * * *

(3) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(4) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428K of the Act.

* * * * *

■ 20. Section 682.302 is amended by adding a new paragraph (h) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(h) *Calculation of special allowance payments for loans subject to the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* For FFEL Program loans first disbursed on or after July 1, 2008 that are subject to the interest rate limit under the Servicemembers Civil Relief Act, special allowance is calculated in accordance with paragraphs (c) and (f) of this section, except the applicable interest rate for this purpose shall be 6 percent.

■ 21. Section 682.305 is amended by:

■ A. Revising paragraph (c)(1).

■ B. In paragraph (c)(2)(v), removing the word ''and'' immediately after the semicolon.

■ C. In paragraph (c)(2)(vi), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

■ D. Redesignating paragraph (c)(2)(vii) as paragraph (c)(3).

■ E. Adding a new paragraph (c)(2)(vii).

The revision and addition read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

* * * * *

(c) *Independent audits.* (1)(i) A lender originating or holding more than $5 million in FFEL loans during its fiscal year must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(ii) Notwithstanding the dollar volume of loans originated or held, a school lender under § 682.601 or a lender serving as trustee on behalf of a school or a school-affiliated organization for the purpose of originating loans must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person.

(iii) The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

(2) * * *

(vii) With regard to a lender serving as a trustee for the purpose of originating loans for a school or school-affiliated organization, the audit must include a determination that—

(A) Except as provided in paragraph (c)(2)(vii)(B) of this section, the school used all proceeds from special allowance payments, interest subsidies received from the Department, and any proceeds from the sale or other disposition of the loans originated through the lender for need-based grant programs and that those funds supplemented, but did not supplant, other Federal or non-Federal funds otherwise available to be used to make need-based grants to its students; and

(B) The lender used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses in accordance with § 682.601(b), with all references to eligible school lender understood to mean a lender in its capacity as trustee on behalf of a school or school-affiliated organization for the purpose of originating loans.

* * * * *

■ 22. Section 682.401 is amended by:

■ A. In paragraph (e)(1)(i), adding the words ''stock or other securities, tuition payment or reimbursement'' immediately after the word ''payment'', and by adding the words '', or any individual or entity,'' immediately after the words ''school-affiliated organization'' the second time they appear.

■ B. In paragraph (e)(1)(i)(D), adding the words ''travel or'' immediately after the words ''Payment of''.
■ C. Revising paragraph (e)(1)(i)(F).
■ D. In paragraph (e)(1)(iii)(C), removing the word ''and'' immediately after the semicolon.
■ E. In paragraph (e)(1)(iii)(D), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation '';''.
■ F. Adding new paragraphs (e)(1)(iii)(E), (F), and (G).
■ G. In paragraph (e)(1)(v), adding the words '', terms or conditions'' immediately after the word ''availability''.
■ H. In paragraph (e)(2)(i), removing the word ''Assistance'' at the beginning of the paragraph and adding, in its place, the words ''Technical assistance'', and removing the words ''that provided'' and adding, in their place, the words ''the technical assistance provided''.
■ I. In paragraph (e)(2)(ii), adding the words ''and 433A'' immediately after the reference to ''422(h)(4)(B)''.
■ J. In paragraph (e)(2)(iii), removing the word ''excluding'' and adding, in its place, the word ''including'', and removing the word ''initial'' and adding, in its place, the word ''entrance''.
■ K. Revising paragraph (e)(2)(vi).
■ L. In paragraph (e)(3)(iii), removing the words ''The terms'' and adding, in their place, the words ''The term'', and removing the words ''computer hardware'' and adding, in their place, the words ''information technology equipment''.
■ M. Removing paragraph (e)(3)(v).
■ N. Adding a new paragraph (g).

The revision and additions read as follows:

§ 682.401 Basic program agreement.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(F) Performance of, or payment to a third party to perform, any school function required under title IV, except that the guaranty agency may provide entrance counseling as provided in § 682.604(f) and exit counseling as provided in § 682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer.

* * * * *

(iii) * * *

(E) Providing or reimbursing travel or entertainment expenses;

(F) Providing or reimbursing tuition payments or expenses; and

(G) Offering prizes, or providing payments of stocks or other securities.

* * * * *

(2) * * *

(vi) Reimbursement of reasonable expenses incurred by school employees to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

* * * * *

(g)(1) A guaranty agency must work with schools that participate in its program to develop and make available high-quality educational materials and programs that provide training to students and their families in budgeting and financial management, including debt management and other aspects of financial literacy, such as the cost of using high-interest loans to pay for postsecondary education, and how budgeting and financial management relate to the title IV student loan programs.

(2) The materials and programs described in paragraph (g)(1) of this section must be in formats that are simple and understandable to students and their families, and must be made available to students and their families by the guaranty agency before, during, and after a student's enrollment at an institution of higher education.

(3) A guaranty agency may provide similar programs and materials to an institution that participates only in the William D. Ford Federal Direct Loan Program.

(4) A lender or loan servicer may also provide an institution with outreach and financial literacy information consistent with the requirements of paragraphs (g)(1) and (2) of this section.

■ 23. Section 682.402 is amended by:
■ A. Revising paragraph (c).
■ B. In paragraph (h)(1)(i), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except as provided in paragraph (h)(1)(v) of this section, the''.
■ C. Adding a new paragraph (h)(1)(v).

The revision and addition read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c)(1) *Total and permanent disability*. (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (7) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(8) of this section.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim under the procedures described in paragraph (c)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower that the loan has been discharged. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(5)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If a borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(5)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(6) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (c)(5)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(5)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(7) *Lender and guaranty agency actions.* (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b). Except as provided in paragraph (c)(7)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(7)(i) of this section, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—

(*1*) Receives annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(*2*) Receives a new TEACH Grant or a new title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(*3*) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

(8) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b)—(i) General.* After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(ii) *Lender and guaranty agency actions.* (A) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8)(i) of this section. Except as provided in paragraph (c)(8)(ii)(C) of this section, the lender will not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

(B) If the veteran submits a completed loan discharge application and the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender must submit a disability claim to the guaranty agency.

(C) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the lender—

(*1*) Must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(*2*) Must inform the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in § 682.402(c)(2) through (c)(7), if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(D) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.

(E) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(F) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim. Upon receipt of the claim payment from the guaranty agency, the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(G) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (c)(8)(ii)(E) of this section.

(H) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

* * * * *

(h) * * *

(1) * * *

(v) In the case of a disability claim based on a veteran's discharge request processed in accordance with § 682.402(c)(8), the guaranty agency shall—

(A) Review the claim promptly and not later than 45 days after the claim was filed by the lender submit the veteran's discharge application and supporting documentation to the Secretary or return the claim to the lender in accordance with § 682.402(c)(8)(ii)(D) or (E), as applicable; and

(B) Not later than 45 days after receiving notification from the Secretary of the veteran's eligibility or ineligibility for discharge, pay the claim or return the claim to the lender in accordance with § 682.402(c)(8)(ii)(F) or (G), as applicable.

* * * * *

■ 24. Section 682.405 is amended by:

■ A. In paragraph (a)(3), adding a new sentence at the end of the paragraph.

■ B. In paragraph (b)(1)(iii), adding the words ''by the guaranty agency or its agents'' immediately after the word ''affordable''.

■ C. Revising paragraph (b)(3).

■ D. Adding a new paragraph (c).

The revision and additions read as follows:

§ 682.405 Loan rehabilitation agreement.

(a) * * *

(3) * * * Effective for any loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

(b) * * *

(3) Upon the sale of a rehabilitated loan to an eligible lender—

(i) The guaranty agency must, within 45 days of the sale—

(A) Provide notice to the prior holder of such sale, and

(B) Request that any consumer reporting agency to which the default was reported remove the record of default from the borrower's credit history.

(ii) The prior holder of the loan must, within 30 days of receiving the notification from the guaranty agency, request that any consumer reporting agency to which the default claim payment or other equivalent record was reported remove such record from the borrower's credit history.

* * * * *

(c) A guaranty agency must make available financial and economic education materials, including debt management information, to any borrower who has rehabilitated a defaulted loan in accordance with paragraph (a)(2) of this section.

■ 25. Section 682.410 is amended by:

■ A. In paragraph (b)(5), removing the heading ''*Credit bureau reports*'' and adding, in its place, the heading ''*Reports to consumer reporting agencies*''.

■ B. In paragraph (b)(5)(i) introductory text, removing the words ''national credit bureaus'' at the end of the paragraph and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ C. In paragraph (b)(5)(ii) introductory text, removing the words ''credit bureau'' and adding, in their place, the words ''consumer reporting agency'', and removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)''.

■ D. In paragraph (b)(5)(iv)(A), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

■ E. In paragraph (b)(5)(vi)(F), removing the words ''national credit bureaus'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ F. In paragraph (b)(5)(vi)(G), removing the words ''credit bureaus'' and adding, in their place, the words ''consumer reporting agencies''.

■ G. In paragraph (b)(5)(vi)(K), removing the word ''and'' at the end of the paragraph.

■ H. In paragraph (b)(5)(vi)(L), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

■ I. Adding a new paragraph (b)(5)(vi)(M).

■ J. Redesignating paragraphs (b)(6)(ii), (iii), (iv), (v), and (vi) as paragraphs (b)(6)(v), (vi), (vii), (ii), and (iii) respectively.

■ K. In newly redesignated paragraph (b)(6)(iii), removing the reference ''(b)(6)(v)'' and adding, in its place, the reference ''(b)(6)(ii)'', and removing the words ''national credit bureaus (if that is the case)'' and adding, in their place, the words ''nationwide consumer reporting agencies''.

■ L. Adding a new paragraph (b)(6)(iv).

■ M. In newly redesignated paragraph (b)(6)(vi), removing the reference ''(b)(6)(iv)'' and adding, in its place, the reference ''(b)(6)(vii)''.

The additions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vi) * * *

(M) Inform the borrower of the options that are available to the borrower to remove the loan from default, including an explanation of the fees and conditions associated with each option.

* * * * *

(6) * * *

(iv) The agency must send a notice informing the borrower of the options that are available to remove the loan from default, including an explanation of the fees and conditions associated with each option. This notice must be sent within a reasonable time after the end of the period for requesting an administrative review as specified in paragraph (b)(5)(iv)(B) of this section or, if the borrower has requested an administrative review, within a reasonable time following the conclusion of the administrative review.

* * * * *

■ 26. Section 682.601 is amended by adding a new paragraph (a)(7)(iii) to read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(7) * * *

(iii) With regard to any school, the audit must include a determination that—

(A) Except as provided in paragraphs (a)(8) and (b) of this section, the school used all payments and proceeds from the loans for need-based grant programs;

(B) The school met the requirements of paragraph (c) of this section in making the need-based grants; and

(C) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 27. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.,* unless otherwise noted.

■ 28. In § 685.102(b), the definition of ''Estimated financial assistance'' is amended by:

■ A. Removing paragraphs (1)(ii), (iii), (iv), and (ix), and redesignating paragraphs (1)(i), (v), (vi), (vii), and (viii) as paragraphs (1)(ii), (iii), (iv), (v), and (vi), respectively.

■ B. Adding a new paragraph (1)(i) and revising newly redesignated paragraph (1)(ii).

■ C. Adding the word ''and'' after the semicolon at the end of newly redesignated paragraph (1)(v).

■ D. Removing the words ''; and'' at the end of newly redesignated paragraph (1)(vi) and adding, in their place, the punctuation ''.''.
■ E. Removing paragraph (2)(iii), and redesignating paragraphs (2)(iv) and (v) as paragraphs (2)(iii) and (iv), respectively.
■ F. In newly redesignated paragraph (2)(iii), removing the words ''veterans' educational benefits paid under chapter 30 of title 38 of the United States Code (Montgomery GI Bill-Active Duty) and''.
■ G. In newly redesignated paragraph (2)(iv), removing the word ''and'' at the end of the paragraph.
■ H. Adding a new paragraph (2)(v).
■ I. In paragraph (2)(vi), removing the words ''this part'' in the first sentence and adding, in their place, the words ''a title IV, HEA program,'' and by removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the punctuation ''; ''.
■ J. Adding new paragraphs (2)(vii) and (viii).

The revisions and additions read as follows:

§ 685.102 Definitions.

Estimated financial assistance.

(1) * * *

(i) Except as provided in paragraph (2)(iii) of this definition, national service education awards or post-service benefits under title I of the National and Community Service Act of 1990 (AmeriCorps).

(ii) Except as provided in paragraph (2)(vii) of this definition, veterans' education benefits;

* * * * *

(2) * * *

(v) Non-need-based employment earnings;

* * * * *

(vii) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(viii) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

* * * * *

■ 29. Section 685.200 is amended by:
■ A. In the introductory text to paragraph (a)(1)(iv), adding the words ''or TEACH Grant service obligation'' immediately after the word ''loan''.
■ B. In the introductory text to paragraph (a)(1)(iv)(A), adding the words ''or TEACH Grant service obligation'' immediately after the word ''Act''.
■ C. In paragraph (a)(1)(iv)(A)(*1*), removing the word ''and'' at the end of the paragraph.
■ D. In paragraph (a)(1)(iv)(A)(*2*), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.
■ E. Adding a new paragraph (a)(1)(iv)(A)(*3*).
■ F. Removing paragraph (a)(1)(iv)(B).
■ G. Redesignating paragraph (a)(1)(iv)(C) as paragraph (a)(1)(iv)(B).
■ H. In the introductory text to newly redesignated paragraph (a)(1)(iv)(B), removing the words ''based on'' and adding, in their place, the word ''after'', and adding the words ''based on a discharge request received prior to July 1, 2010'' immediately after the word ''disabled''.

The addition reads as follows:

§ 685.200 Borrower eligibility.

(a) * * *

(1) * * *

(iv) * * *

(A) * * *

(*3*) If the borrower receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4), 34 CFR 674.61(b)(3)(i), 34 CFR 682.402(c), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with § 685.213(b)(3)(ii)(A), 34 CFR 674.61(b)(5), or 34 CFR 682.402(c)(5), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

* * * * *

■ 30. Section 685.202 is amended by:
■ A. Adding a new paragraph (a)(4).
■ B. In paragraph (b)(2), removing the words ''the Secretary capitalizes'' and adding, in their place, the words ''or for a Direct PLUS Loan, the Secretary may capitalize''.

The addition reads as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *

(4) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

* * * * *

■ 31. Section 685.203 is amended by:
■ A. In paragraph (a)(1)(iii), adding the punctuation ''," immediately after ''$3,500''.
■ B. Revising paragraph (b).
■ C. In paragraph (c)(1)(i), adding the words '', except as provided in paragraph (c)(3) for certain dependent undergraduate students'' immediately after the words ''this section''.
■ D. In paragraph (c)(2)(i)(A), adding the words '', or, for a loan first disbursed on or after July 1, 2008, $6,000,'' immediately after ''$4,000''.
■ E. Removing paragraph (c)(2)(i)(B).
■ F. Redesignating paragraph (c)(2)(i)(C) as paragraph (c)(2)(i)(B).

■ G. In newly redesignated paragraph (c)(2)(i)(B), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after $4,000’’.

■ H. Redesignating paragraph (c)(2)(i)(D) as paragraph (c)(2)(i)(C).

■ I. In newly redesignated paragraph (c)(2)(i)(C), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ J. In paragraph (c)(2)(ii)(A), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ K. In paragraph (c)(2)(ii)(B), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ L. In paragraph (c)(2)(iii)(A), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $7,000,’’ immediately after ‘‘$5,000’’.

■ M. In paragraph (c)(2)(iii)(B), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $7,000,’’ immediately after ‘‘$5,000’’.

■ N. In paragraph (c)(2)(vi)(A), adding the words ‘‘, or, for a loan first disbursed on or after July 1, 2008, $6,000,’’ immediately after ‘‘$4,000’’.

■ O. Adding a new paragraph (c)(3).

■ P. In paragraph (e)(1), adding the words ‘‘, or, effective July 1, 2008, $31,000,’’ immediately after ‘‘$23,000’’.

■ Q. In paragraph (e)(2), adding the words ‘‘, or, effective July 1, 2008, $57,500,’’ immediately after ‘‘$46,000’’.

■ R. Adding a new paragraph (k).

The revisions and additions read as follows:

§ 685.203 Loan limits.

(a) * * *

(b) *Direct Unsubsidized Loans.* (1) In the case of a dependent undergraduate student—

(i) For a loan first disbursed before July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Loan Program and the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program.

(ii) Except as provided in paragraph (c)(3) of this section, for a loan first disbursed on or after July 1, 2008, the total amount a student may borrow for any period of study under the Federal Direct Unsubsidized Stafford/Ford Loan Program in combination with the Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, plus—

(A) $2,000, for a program of study of at least a full academic year in length.

(B) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to $2,000 as the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled.}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

(C) For a program of study that is less than a full academic year in length, the amount that is the same ratio to $2,000 as the lesser of the—

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled.}}{\text{Number of semester, trimester, quarter, or clock hours in academic year.}}$$

or

$$\frac{\text{Number of weeks in program.}}{\text{Number of weeks in academic year.}}$$

(2) In the case of an independent undergraduate student, a graduate or professional student, or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Federal Direct Unsubsidized Stafford/Ford Loan and Federal Unsubsidized Stafford Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program, in combination with the amounts determined under paragraph (c) of this section.

(c) * * *

(3) A dependent undergraduate student who qualifies for additional Direct Unsubsidized Loan amounts under this section in accordance with paragraph (c)(1)(ii) is not eligible to receive the additional Direct Unsubsidized Loan amounts provided under paragraph (b)(1)(ii) of this section.

* * * * *

(k) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.

■ 32. Section 685.204 is amended by:

■ A. In paragraph (b)(1)(iii)(A)(*2*), removing the word ‘‘or’’ at the end of the paragraph.

■ B. In paragraph (b)(1)(iii)(A)(*3*), removing the punctuation ‘‘.’’ and adding, in its place, ‘‘; or’’ at the end of the paragraph.

■ C. Adding a new paragraph (b)(1)(iii)(A)(*4*).

■ D. Revising paragraph (b)(1)(iii)(B).

■ E. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively.

■ F. In newly redesignated paragraph (i)(3), removing the words ‘‘paragraph (h)(2)’’ each time they appear and adding, in their place, the words ‘‘paragraph (i)(2)’’.

■ G. In newly redesignated paragraph (i)(4), removing the words ‘‘paragraph (h)(2)’’ and adding, in their place, the words ‘‘paragraph (i)(2)’’.

■ H. Adding a new paragraph (g).

The revisions and additions read as follows:

§ 685.204 Deferment.

* * * * *

(b) * * *

(1) * * *

(iii)(A) * * *

(*4*) The Secretary confirms a borrower’s half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(B)(*1*) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(*2*), (*3*), or (*4*) of this section, the borrower has the option to cancel the deferment and continue paying on the loan.

(*2*) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest. The Secretary will provide information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

* * * * *

(g) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is entitled to a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the 6-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower based on § 682.204(b)(1)(iii)(A)(2), (3), or (4), the deferment period for a Direct PLUS Loan first disbursed on or after July 1, 2008 includes the 6-month post-enrollment period described in paragraph (g)(1)(i) of this section.

(2) Upon the request of the borrower, an eligible parent Direct PLUS Loan borrower will receive a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) During the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) During the 6-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

* * * * *

■ 33. Section 685.205 is amended by:

■ A. In paragraph (b)(8), removing the word ''or'' at the end of the paragraph.

■ B. In paragraph (b)(9), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

■ C. Adding a new paragraph (b)(10) to read as follows:

§ 685.205 Forbearance.

* * * * *

(b) * * *

(10) For Direct PLUS Loans first disbursed before July 1, 2008, to align repayment with a borrower's Direct PLUS Loans that were first disbursed on or after July 1, 2008, or with Direct Subsidized Loans or Direct Unsubsidized Loans that have a grace period in accordance with § 685.207(b) or (c). The Secretary notifies the borrower that the borrower has the option to cancel the forbearance and continue paying on the loan.

* * * * *

■ 34. Section 685.211 is amended by:

■ A. In paragraph (f)(1), removing the words ''credit bureau'' in the third sentence and adding, in their place, the words ''consumer reporting agency''.

■ B. Adding a new paragraph (f)(4). The addition reads as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) * * *

(4) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

■ 35. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b).* (1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge.

(2) *Determination of eligibility.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) Upon making a determination that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section.

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the

Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(3) *Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.* If a borrower received a title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(4) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(2)(ii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(4)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(5) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(4)(i) of this section, the borrower or, if applicable, the borrower's representative must—

(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(4)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b).*

(1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), a veteran must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge.

(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(ii)(A) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(B) The Secretary notifies the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR 682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

■ 36. Section 685.217 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (b), adding a definition of *Educational service agency* in alphabetical order.

■ C. Revising the introductory text of paragraph (c)(1).

■ D. In paragraph (c)(1)(ii), adding the words ''or educational service agency's'' immediately after the words ''the school's''.

■ E. In paragraph (c)(1)(iii), removing the words ''Bureau of Indian Affairs (BIA)'' and adding, in their place, the words ''Bureau of Indian Education (BIE)'', and removing the words ''the BIA'' and adding, in their place, the words ''the BIE''.

■ F. In paragraph (c)(2), adding the words ''or educational service agency'' immediately after the words ''If the school'' at the beginning of the paragraph, and removing the words ''the school failed'' and adding, in their place, the word ''fails''.

■ G. In paragraph (c)(3)(i)(A), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.

■ H. In paragraph (c)(3)(i)(B), removing the words ''in which'' and adding, in their place, the words ''or educational service agency where''.
■ I. In paragraph (c)(3)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science to secondary school students on a full-time basis at an eligible educational service agency,'' immediately after the words ''secondary school''.
■ J. In paragraph (c)(3)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ K. Adding a new paragraph (c)(3)(iii).
■ L. In paragraph (c)(4)(i), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ M. In paragraph (c)(4)(ii)(A), removing the word ''in'' and adding, in its place, the word ''at'', and adding the words '', or taught mathematics or science on a full-time basis to secondary school students at an eligible educational service agency,'' immediately after the words ''secondary school''.
■ N. In paragraph (c)(4)(ii)(B), removing the word ''in'' the first time it appears and adding, in its place, the word ''at'', and by adding the words ''or educational service agency'' immediately after the words ''secondary school'' the first time they appear.
■ O. Adding a new paragraph (c)(4)(iii).
■ P. Revising paragraph (c)(9).
■ Q. Revising paragraph (c)(11).
■ R. In paragraph (d)(2), removing the reference ''34 CFR 682.215'' and adding, in its place, the reference ''34 CFR 682.216''.

The revisions and additions read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) *General.* (1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph (a) on the borrower's subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized Loans, Direct Unsubsidized Loans, and in certain cases, Federal Consolidation Loans or Direct Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the FFEL Program or the Direct Loan Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

(2)(i) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible educational service agency.

(ii) Teaching at an eligible elementary or secondary school may be counted toward the required five consecutive complete academic years only if at least one year of teaching was after the 1997–1998 academic year.

(iii) Teaching at an eligible educational service agency may be counted toward the required five consecutive complete academic years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(3) All borrowers eligible for teacher loan forgiveness may receive loan forgiveness of up to a combined total of $5,000 on the borrower's eligible FFEL and Direct Loan Program loans.

(4) A borrower may receive loan forgiveness of up to a combined total of $17,500 on the borrower's eligible FFEL and Direct Loan Program loans if the borrower was employed for five consecutive years—

(i) At an eligible secondary school as a highly qualified mathematics or science teacher, or at an eligible educational service agency as a highly qualified teacher of mathematics or science to secondary school students; or

(ii) At an eligible elementary or secondary school or educational service agency as a highly qualified special education teacher.

(5) The loan for which the borrower is seeking forgiveness must have been made prior to the end of the borrower's fifth year of qualifying teaching service.

(b) * * *

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies, as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(c) * * *

(1) A borrower who has been employed at an elementary or secondary school or an educational service agency as a full-time teacher for five consecutive complete academic years may obtain loan forgiveness under this program if the elementary or secondary school or educational service agency—

* * * * *

(3) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

(4) * * *

(iii) Teaching service performed at an eligible educational service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007–2008 academic year.

* * * * *

(9) A borrower who was employed as a teacher at more than one qualifying school, at more than one qualifying educational service agency, or at a combination of both during an academic year and demonstrates that the combined teaching was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

(i) Subtitle D of title I of the National and Community Service Act of 1990;

(ii) 34 CFR 685.219; or

(iii) Section 428K of the Act.

* * * * *

§ 685.219 [Amended]

■ 37. Section 685.219 is amended in paragraph (b) by removing the words ''licensed or regulated health care'' in paragraph (5)(i) of the definition of ''Public service organization'' and adding, in their place, the words ''licensed or regulated child care''.

§ 685.220 [Amended]

■ 38. Section 685.220 is amended by:
■ A. In paragraph (d)(1)(i)(B)(*3*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the word ''Program''.
■ B. In paragraph (d)(1)(i)(B)(*4*), adding the words ''or an income-based repayment plan'' immediately after the

words ''income contingent repayment plan''.

■ C. In paragraph (d)(1)(i)(B)(*5*), adding the words ''or the no accrual of interest benefit for active duty service'' immediately after the words ''Forgiveness Program''.

■ D. In paragraph (d)(1)(ii)(D), adding the words ''or the income-based repayment plan described in § 685.208(m),'' immediately after the reference ''§ 685.208(k)''.

■ 39. Section 685.221 is amended by:

■ A. Revising paragraph (a)(4).

■ B. In paragraph (b)(1), removing the words ''Except as provided under paragraph (b)(2) of this section, the'' in the second sentence and adding, in their place, the word ''The''.

■ C. In paragraph (b)(2)(i), removing the word ''The'' at the beginning of the sentence and adding, in its place, the words ''Except for borrowers provided for in paragraph (b)(2)(ii) of this section, the''.

■ D. Redesignating paragraphs (b)(2)(ii) and (b)(2)(iii) as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

■ E. Adding a new paragraph (b)(2)(ii).

■ F. In newly redesignated paragraph (b)(2)(iii), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

■ G. In newly redesignated paragraph (b)(2)(iv), removing the words ''or (b)(2)(i)'' and adding, in their place, the words '', (b)(2)(i), or (b)(2)(ii)''.

The revision and addition read as follows:

§ 685.221 Income-based repayment plan.

(a) * * *

(4) *Partial financial hardship* means a circumstance in which—

(i) For an unmarried borrower or a married borrower who files an individual Federal tax return, the annual amount due on all of the borrower's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the borrower initially entered repayment or at the time the borrower elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's AGI and 150 percent of the poverty guideline for the borrower's family size; or

(ii) For a married borrower who files a joint Federal tax return with his or her spouse, the annual amount due on all of the borrower's eligible loans and, if applicable, the spouse's eligible loans, as calculated under a standard repayment plan based on a 10-year repayment period, using the greater of the amount due at the time the loans initially entered repayment or at the time the borrower or spouse elects the income-based repayment plan, exceeds 15 percent of the difference between the borrower's and spouse's AGI, and 150 percent of the poverty guideline for the borrower's family size.

* * * * *

(b) * * *

(2) * * *

(ii) Both the borrower and borrower's spouse have eligible loans and filed a joint Federal tax return, in which case the Secretary determines—

(A) Each borrower's percentage of the couple's total eligible loan debt;

(B) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (b)(2)(ii)(A) of this section; and

(C) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (b)(2)(ii)(B) of this section by the percentage of the outstanding principal amount of eligible loans that are Direct Loans;

* * * * *

[FR Doc. E9–25190 Filed 10–28–09; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,
October 29, 2009

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–8972–6]

RIN 2060–AM19

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for the control of hazardous air pollutants for nine area source categories in the chemical manufacturing sector: Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production, and Synthetic Rubber Manufacturing. The standards and associated requirements for the nine area source categories are combined in one subpart. This final rule establishes emission standards in the form of management practices for each chemical manufacturing process unit as well as emission limits for certain subcategories of process vents and storage tanks. The rule also establishes management practices and other emission reduction requirements for subcategories of wastewater systems and heat exchange systems.

DATES: This final rule is effective on October 29, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0334. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Coatings and Chemicals Group (E143–01), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5402; fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Outline.* The information in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document?
- C. Judicial Review

II. Background Information for this Final Rule

III. Summary of Major Changes Since Proposal
- A. Applicability
- B. Emission Standards
- C. Initial Compliance
- D. Monitoring, Recordkeeping, and Reporting
- E. Startup, Shutdown, and Malfunction (SSM)
- F. Title V

IV. Summary of Final Rule
- A. Applicability
- B. Compliance Dates
- C. Standards
- D. Initial Compliance Requirements
- E. Continuous Compliance Requirements
- F. Notifications, Recordkeeping, and Reporting Requirements

V. Summary of Comments and Responses
- A. Applicability
- B. Compliance Dates
- C. Standards
- D. Initial Compliance Demonstrations
- E. Monitoring Requirements
- F. Recordkeeping and Reporting
- G. Requirements During Periods of Startup, Shutdown, and Malfunction (SSM)
- H. Title V Permitting

VI. Impacts of Final Area Source Standards
- A. What are the air impacts?
- B. What are the cost impacts?
- C. What are the economic impacts?
- D. What are the non-air health, environmental, and energy impacts?

VII. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this action are shown in the table below. This final rule applies to each chemical manufacturing process unit (CMPU) that uses as feedstocks,[1] generates as byproducts, or produces as products any of the following 15 hazardous air pollutants (HAP): 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline (*i.e.,* ''chemical manufacturing organic urban HAP'' or ''Table 1[2] organic HAP''); or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel (*i.e.,* ''chemical manufacturing metal urban HAP'' or ''Table 1 metal HAP''). Consistent with the proposed rule, the standards do not apply to hydrogen halide and halogen HAP (*i.e.,* hydrogen chloride, chlorine, and hydrogen fluoride) at affected sources, except when these HAP are generated in combustion-based emission control devices that are used to meet the proposed standards for organic HAP on Table 1.[3] The affected source for this rule is the facility-wide collection of CMPUs that use, generate, or produce one or more of the Table 1 HAP and the wastewater systems and heat exchange systems associated with the CMPUs that use Table 1 HAP. A CMPU includes all process equipment and activities involved in the production of a material described by North American Industry Classification System (NAICS) Code 325.[4] If a CMPU uses, generates, or

[1] Feedstocks are reactants, solvents, or any other additives to the process.

[2] ''Table 1'' refers to Table 1 in the final rule.

[3] Collectively, the Table 1 organic and metal HAP are referred to as the ''chemical manufacturing urban HAP'' or ''Table 1 HAP.''

[4] The CMPU is defined by a facility's production of materials described by NAICS code 325. A facility producing such a material (or family of materials) may use more than one train or series of equipment to make it. All equipment (*i.e.,* unit operation) used to produce a specific product (as well as all the vents and activities associated with making this product) are considered to be part of a single CMPU for purposes of this rule. For example, facility X makes a pharmaceutical product that requires the use of methylene chloride as a solvent. The product is produced in any of three different size reactors, depending on the quantity needed or equipment availability. All of the reactors; other process equipment (*e.g.,* for

produces one of the chemical manufacturing organic urban HAP listed above, then the standards apply to all listed Clean Air Act (CAA) section 112(b) organic HAP emitted from that CMPU. Similarly, if a CMPU uses, generates, or produces one of the chemical manufacturing metal urban HAP listed above, then the standards apply to all listed CAA section 112(b) metal HAP emitted from that CMPU.

The regulated categories and entities potentially affected by this action include:

Industry category	NAICS code[1]	Examples of regulated entities
Chemical Manufacturing	325	Chemical manufacturing area sources that use as feedstock, generate as byproduct, or produce as product, any of the HAP subject to this subpart except for: (1) Processes classified in NAICS Code 325222, 325314, or 325413; (2) processes subject to standards for other listed area source categories[2] in NAICS 325; (3) certain fabricating operations; (4) manufacture of photographic film, paper, and plate where material is coated or contains chemicals (but the manufacture of the photographic chemicals is regulated); and (5) manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium, and uranium.

[1] North American Industry Classification System.

[2] The source categories in NAICS 325 for which other area source standards apply are: Acrylic Fibers/Modacrylic Fibers Production, Chemical Preparation, Carbon Black, Chemical Manufacturing: Chromium Compounds, Polyvinyl Chloride and Copolymers Production, Paint and Allied Coatings, and Mercury Cell Chlor-Alkali Manufacturing.

Area sources in NAICS 325 not specifically identified in the chart above may also be affected by this action. To determine whether your chemical manufacturing area source is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11494 of subpart VVVVVV (National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources). For additional information about applicability provisions, see sections III.A, IV.A, and V.A of this preamble. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 28, 2009. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the CAA requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source is any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999) (Strategy). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) of the CAA requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We selected the nine chemical manufacturing area source categories based on these requirements. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), EPA may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

separation, drying, *etc.*); connecting piping and related pumps, valves, *etc.;* storage tanks; transfer operations; surge control vessels; bottoms receivers; and other activities (*e.g.,* routine cleaning) are part of a single CMPU.

* * * methods, practices, and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that have many small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as we have already noted, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are issuing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for nine source categories listed pursuant to CAA section 112(c)(3) and (k)(3)(B) by October 16, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006).

III. Summary of Major Changes Since Proposal

A. Applicability

In the proposed rule, we proposed that the affected source include the entire facility if the facility emitted any of the chemical manufacturing urban HAP. Specifically, under the proposal, all process vents, storage tanks, transfer operations, wastewater systems, and cooling towers at the facility would be subject to the standards if any emissions source at the facility emitted one of the chemical manufacturing urban HAP. In response to comments, we narrowed the scope of applicability of this final rule, and we made several changes to clarify the applicability provisions. The most significant change is that only CMPU that emit one or more of the 15 chemical manufacturing urban HAP and the wastewater systems and heat exchange systems associated with those CMPUs are subject to the rule. A CMPU includes all process equipment and activities involved in the production of a material (or family of materials) described by NAICS code 325. Additionally, a CMPU includes each surge control vessel, bottoms receiver, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, storage tank, transfer rack, and instrumentation system associated with the production of a subject NAICS 325 material. The final rule provides that a CMPU consists of one or more processing steps used in the production of the subject NAICS 325 material.

The final rule further specifies that each CMPU within an affected source that emits one of the chemical manufacturing urban HAP is subject only to requirements that apply to the same type of HAP that triggered applicability, not requirements for all types of HAP. For example, a CMPU that uses only chemical manufacturing organic urban HAP is required to control all CAA section 112(b) organic HAP. Similarly, a CMPU that uses only chemical manufacturing metal urban HAP is required to control all CAA section 112(b) metal HAP. For the purposes of this provision, hydrazine is considered to be an organic HAP.

In response to comments, we are clarifying that the rule does not extend to structural items (*e.g.,* piping) and items that exist as ''articles'' as defined in 40 CFR 372.3, and are used under normal conditions, because these items do not emit any HAP, including the chemical manufacturing urban HAP.[5]

B. Emission Standards

1. Management Practices

EPA proposed management practices for a number of emission points, including for process vents (batch, continuous, and metal HAP); storage tanks; transfer operations; and equipment leaks. The proposed management practices for process vents included covering all process tanks and mixing vessels during operation; maintaining covers in the closed position on all openings and access points in other process vessels; conducting quarterly inspections to check for leaks from the process vessels and determining the integrity of the process vessels and ensuring covers are being used; and repairing leaks within 15 days. EPA proposed these management practice requirements for all affected sources. For storage tanks, EPA proposed GACT as management practices consisting of quarterly inspections for leaks, minimizing and promptly cleaning up spills, and ensuring all openings and access points are closed for all storage tanks. For transfer operations, EPA proposed to minimize emissions using management practices, such as minimizing spills, cleaning up spills promptly, covering open containers when not in use, and minimizing discharges to open waste collection systems.

In the final rule, the separate proposed management practices for process vents, storage tanks, transfer operations, and equipment leaks were consolidated and simplified into one comprehensive set of management practices that are applicable to each CMPU. The comprehensive management practices in the final rule include requirements to equip each process vessel with a cover or lid that must be in place at all times when the vessel contains HAP, except for material addition and sampling. The management practices also include sensory-based inspections of process vessels and equipment in each CMPU. Changes to management practices specific to small heat exchange systems are described in section III.B.2.f of this preamble.

2. Emission Limits and Emission Control Requirements

a. Continuous Process Vents and Batch Process Vents

For continuous process vents with a total resource effectiveness (TRE) index of 1 or less, EPA proposed management practices and 95 percent emission reduction of organic HAP emissions. After consideration of the public comments, we are finalizing management practices and the 95 percent emission reduction requirement for organic HAP emissions from continuous process vents. Based on public comments, the final rule includes a definition of continuous process vent that is based on the process vent definition in 40 CFR part 63, subpart F of the Hazardous Organics NESHAP (HON). In addition, the final rule includes a mass emission threshold of 0.1 pound per hour (lb/hr) or less, below which the TRE index calculation is not required.

For facilities with batch process vents, EPA proposed management practices and a 90 percent organic HAP emission

[5] ''Article'' means a manufactured item: ''(1) Which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design during end use; and (3) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishment.'' 40 CFR 372.3.

reduction if the collective uncontrolled total organic HAP emissions from the sum of all batch process vents within the affected facility was 19,000 pounds per year (lbs/yr) or greater. The final rule requires management practices and 85 percent control (90 percent for new sources) if the total organic uncontrolled HAP emissions from batch process vents within a CMPU are 10,000 lbs/yr or greater. We established the control efficiency of 85 percent as GACT for existing area sources based on additional information provided by commenters. Under the final rule, emissions from any batch process vents may be estimated based on process knowledge, engineering assessment, and/or test data. The proposed requirement to use the calculation methodology in 40 CFR 63.1257(d)(2)(i) for certain types of emission episodes is not required, but it is authorized under the final rule. The final rule also includes an expanded definition of batch process vent that includes examples of batch process vents and lists types of equipment and gas streams that are not batch process vents.

b. Metal HAP Process Vents

EPA proposed management practices and 95 percent metal HAP emission reduction if the collective uncontrolled total metal HAP emissions from the sum of all metal HAP process vents was greater than 400 lbs/yr on a facility-wide basis. In addition to the 400 lbs/yr level, EPA co-proposed a metal HAP threshold level of 100 lbs/yr on a facility-wide basis, and asked for public comment on the appropriate threshold to use for purposes of subcategorizing metal HAP process vents based on the factors discussed in the proposed rule. For metal HAP process vents with total uncontrolled metal HAP emissions less than the threshold, management practices would be required to reduce HAP emissions. After considering public comments, the final rule requires management practices and 95 percent reduction in metal HAP emissions from each CMPU with uncontrolled metal HAP process vent emissions of 400 lbs/yr or greater.

c. Storage Tanks

The proposed rule cross-referenced the thresholds for control, as well as the standards and compliance procedures in 40 CFR part 60, subpart Kb. The final rule replaces the references to subpart Kb with references to the standards and compliance procedures in 40 CFR part 63, subparts SS and WW and by directly specifying the applicable thresholds for control in Table 5 to the final rule. The capacity and maximum true vapor pressure thresholds for control in the final rule are the same as at proposal, but the final rule specifies that the maximum true vapor pressure (MTVP) threshold is to be based on the organic HAP content of the stored liquid, not the volatile organic liquid (VOL) content as specified in subpart Kb. As in other NESHAP, we intended to require MTVP determinations based on the organic HAP content in the stored liquid, but we inadvertently neglected to override the reference to VOL in the MTVP definition in subpart Kb. The standards and compliance procedures are essentially the same as at proposal, but the final rule references standards and compliance procedures in 40 CFR part 63 (Subparts SS and WW, and the General Provisions, Subpart A). The final rule also includes a vapor balancing compliance alternative that provides at least equivalent levels of HAP emission reductions as the GACT requirements that we are finalizing. Based on public comments, we have determined that GACT for storage tanks that vent to a control device includes alternative procedures during periods of planned routine maintenance of the control device. Therefore, the final rule specifies that no material may be added to the storage tank during periods of planned routine maintenance, and periods of planned routine maintenance may not exceed 240 hours per year (hrs/yr).

Surge control vessels and bottoms receivers were included in the proposed definition of storage tank because we proposed that these types of vessels would be subject to the same standards as storage tanks. Surge control vessels and bottoms receivers remain subject to the storage tank standards in the final rule. However, based on public comments, we removed surge control vessels and bottoms receivers from the definition of storage tank, and instead explicitly specify in section 63.11496(h) of the final rule that the storage tank standards apply to surge control vessels and bottoms receivers that meet the applicability criteria for storage tanks set forth in Table 5 of the final rule. All storage tanks that store liquid containing organic HAP and are part of a CMPU subject to the final rule are subject to the management practice requirements. In addition, the definition of storage tank in the final rule is changed to make the definition consistent with definitions in other NESHAP such as the Miscellaneous Organic NESHAP (MON), HON, and Pharmaceutical maximum achievable control technology (MACT) standards by excluding wastewater storage tanks and tanks storing liquid containing organic HAP only as impurities.

d. Wastewater

EPA proposed to subcategorize wastewater streams based on the size of the wastewater stream and determined that large wastewater streams were those with partially soluble HAP (PSHAP) concentrations of 10,000 parts per million by weight (ppmw) or greater. For wastewater streams with PSHAP concentrations of less than 10,000 ppmw discharge, we proposed as GACT to send the wastewater stream to an onsite or offsite wastewater treatment process, and, for wastewater streams containing PSHAP concentrations of 10,000 ppmw or greater, we proposed as GACT use of gravity separation or other techniques to separate organic and water layers and to send the water layer to a wastewater treatment process. We proposed that the organic layer must be recovered and reused in a process, used as a fuel, or disposed of as hazardous waste.

Based on comments, we are revising our subcategorization determination to account for wastewater streams with PSHAP concentrations of 10,000 ppmw or greater that do not have a separate organic layer. The separation techniques that we established as GACT for larger wastewater streams will not work for wastewater streams that contain only a water phase. For this reason, we are also now considering the type of stream in our subcategorization determination to account for the wastewater streams that do not separate at PSHAP concentrations of 10,000 ppmw. In the final rule, the larger wastewater stream subcategory is defined as those wastewater streams with PSHAP concentrations of 10,000 ppmw or greater that also have a separate organic layer.

As stated above, the proposed GACT requirement for a wastewater stream that contains PSHAP concentrations of 10,000 ppmw or greater was to separate the stream into the organic and aqueous phase and treat them according to the requirements in the proposed standards. The final rule retains these provisions for the newly defined large wastewater systems subcategory and also provides an alternative compliance option to hard-pipe the total stream to a combustion unit or other onsite hazardous waste treatment facility (or to a tank from which it is collected and shipped offsite). This alternative provides at least equivalent levels of HAP emission reductions as the emission control requirements contained in this proposed rule. We are also finalizing the proposed requirement

for single phase wastewater streams and the aqueous phase for two phase streams that requires the wastewater streams be sent to a wastewater treatment process.

Based on public comments, we also revised the definition of wastewater stream to be consistent with MON and HON wastewater stream definitions.

e. Transfer Operations

EPA proposed that management practices to minimize evaporation losses and use of submerged loading were GACT for transfer operations. After considering public comments on the transfer operations requirements, we have replaced in some cases and revised in others the management practices for transfer operations and are promulgating a comprehensive management practice requirement (see discussion in section III.B.1 of this preamble), which includes inspection of transfer operations. In addition to the management practices, we have determined that GACT for most material transfers is the use of submerged loading or bottom loading. In response to public comments, we have added an alternative compliance option to route emissions to a fuel gas system or process in accordance with 40 CFR part 63, subpart SS. This alternative provides at least equivalent levels of HAP emission reductions as the GACT requirements that we are finalizing.

Based on public comments, we have also determined that submerged or bottom loading is neither general industry practice nor GACT for the transfer of reactive and resinous materials because sources do not currently employ submerged or bottom loading for these materials due to operational issues. Therefore, the final rule defines reactive and resinous materials and requires sources to include in the initial Notifications of Compliance Status a list of any materials that meet these definitions. Source must also keep records of the use of these materials and report in the semiannual compliance report the use of any additional resinous or reactive materials occurring during the reporting period. Reactive materials are defined in the final rule as energetics, organic peroxides, and other unstable chemicals such as chemicals that react violently with water and chemicals that vigorously polymerize, decompose, condense, or become self-reactive under conditions of pressure or temperature. Resinous materials are defined in the final rule as viscous, high-boiling point material resembling pitch or tar that sticks to or hardens in the fill pipe under normal transfer conditions.

f. Heat Exchange Systems

The proposed rule used the term ''cooling tower'' systems; however, we intended to regulate ''heat exchange'' systems as is consistent with the HON. We also intended to include ''once-through'' systems as part of the affected source. Therefore, the final rule uses the term ''heat exchange system'' in place of the proposed term ''cooling tower system.'' The final rule also includes a definition of ''heat exchange system'' that is consistent with the definition in 40 CFR 63.101 of the HON and clearly specifies that once-through systems are included.

After considering public comments, we have retained the proposed inspection and leak repair requirements for small heat exchange systems and monitoring and leak repair requirements for large heat exchange systems as the GACT requirements in the final rule. The proposed rule also required compliance with 40 CFR 63.104(a), and several commenters did not understand what that requirement meant. To address the confusion caused by the proposed rule, we clarified in the final rule that heat exchange systems meeting the conditions set forth in 40 CFR 63.104(a) are not subject to the inspection or monitoring requirements contained in the final rule, as that is what we intended when we proposed the rule.

As a compliance alternative to the requirement to perform repairs after an inspection of a small heat exchange system reveals indications of a potential leak into cooling water, the final rule also allows the owner or operator to demonstrate that the HAP concentration in the cooling water does not constitute a leak, as defined in 40 CFR 63.104(b)(6). For both large and small heat exchange systems, the final rule also allows compliance with the HON heat exchange system requirements in 40 CFR 63.104(b) or (c). For equipment that meets Current Good Manufacturing Practice (CGMP) requirements in 21 CFR part 211, the physical integrity of the reactor may be used as the surrogate indicator of heat exchange system leaks under 40 CFR 63.104(c). These compliance alternatives provide at least equivalent levels of HAP emission reductions as the emission control requirements contained in this final rule.

g. Equipment Leaks

As discussed in section III.B.1 of this preamble, the proposed equipment leak requirements have been incorporated as part of the management practice requirements that apply to each CMPU subject to the final rule. However, following review of public comments, we added an alternative for equipment leaks in the final rule that allows an owner or operator to use Method 21 in lieu of sensory-based leak detection. Method 21 is at least equivalent to the leak inspection requirements we are finalizing in this rule.

h. Overlapping Rules

The final rule specifies that when equipment at an affected source is subject to both this rule and the provisions of another rule, compliance with the requirements of the other rule constitutes compliance with this final rule for the subject equipment if the owner or operator determines that the other emission control, monitoring, recordkeeping, and/or reporting requirements provide at least equivalent levels of HAP emission reductions and compliance assurance as the requirements in the final rule. For example, if the control requirements in the other rule are at least as stringent as those provided in this rule, but the monitoring, recordkeeping, or reporting requirement in the other rule are not as stringent or comprehensive, the source may comply with the control requirements from the other rule, but must comply with the more stringent monitoring, recordkeeping, and reporting requirements in this rule. The final rule requires a source that is subject to overlapping standards to identify in its Notification of Compliance Status all of the alternative requirements with which the source will be complying and provide an explanation of why the selected requirement is more stringent than this rule. The final rule also states that sources are responsible for making accurate determinations concerning the more stringent standard and noncompliance with this rule is not excused if it is later determined that the source was in error in its initial notification of compliance and, as a result, is violating this rule. Compliance with this rule is the responsibility of the affected source regardless of any notification of compliance.

C. Initial Compliance

For some control devices, the proposed rule allowed initial compliance to be demonstrated using either design evaluations or performance tests, but performance tests were required for certain other control devices. In response to comments, the final rule allows design evaluations as an alternative to performance tests for all control devices.

To clarify the initial compliance requirements for batch process vents and continuous process vents, some of the language from 40 CFR part 63, subpart FFFF that was referenced in Table 2 to the proposed rule has been written directly into 40 CFR 63.11496(g) of the final rule.

D. Monitoring, Recordkeeping, and Reporting

The proposed rule referenced parts of the General Provisions as well as subparts SS, FFFF, and NNNNNN in 40 CFR part 63 for all control device monitoring requirements. With two exceptions, these monitoring requirements are retained in the final rule. One change in the final rule is that pH may be measured once per day rather than continuously for any halogen scrubber. The second change from proposal is that Table 9 to the final rule specifies that 40 CFR 63.8(a)(2) does not apply to affected sources under this rule. We made this change so that EPA Performance Specification 17 (PS–17) and EPA Quality Assurance Procedure 4, when finalized, will not apply to affected sources under this rule.

In addition to monitoring requirements, the proposed rule referenced recordkeeping requirements in several other rules. To clarify these requirements, 40 CFR 63.11501(c) of the final rule lists all of the recordkeeping requirements and references the specific section in each rule that requires it. The notification and reporting requirements have also been revised in the final rule. For example, additional notification requirements have been incorporated into the final rule for certain transfer operations and overlapping rules as discussed above.

E. Startup, Shutdown, and Malfunction (SSM)

During the comment period of the proposed rule, the United States Court of Appeals for the District of Columbia Circuit vacated two provisions in EPA's CAA Section 112 regulations governing the emissions of HAP during periods of startup, shutdown, and malfunction (SSM). *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008). Specifically, the Court vacated 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that EPA promulgated under section 112 of the CAA. When incorporated into CAA Section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

Industry intervenors appealed the December 2008 *Sierra Club* decision by filing petitions for rehearing. On July 30, 2009, the District of Columbia Circuit denied these petitions. On August 5, 2009, EPA filed a motion seeking a 60-day stay of the mandate. On August 6, 2009, industry intervenors filed a motion to stay the mandate pending their appeal of the decision to the United States Supreme Court. The Court recently denied industry intervenors' motion to stay the mandate and granted EPA's motion, directing the Clerk of the Court not to issue the mandate prior to October 6, 2009. Until the District of Columbia Circuit issues the mandate effectuating the vacatur, 40 CFR 63.6(f)(1) and (h)(1) remain in effect.

The proposed rule included a reference to 40 CFR 63.6(f)(1) and (h)(1). In light of *Sierra Club* v. *EPA,* we revised Table 9, which addresses the applicability of the Part 63 General Provisions to the source categories at issue in this rule, to state that 40 CFR 63.6(f)(1) and (h)(1) do not apply. As such, the final emission standards summarized in section IV of this preamble apply at all times. As noted in section IV of this preamble, we are setting a separate emission standard for the nine source categories at issue here that applies to continuous process vents during periods of startup and shutdown, and that standard is 85 percent control, instead of the 95 percent control required at all other times. We are establishing a separate emission standard for these periods because they are characterized by activities such as the filling, emptying, and inerting of vessels, which generally result in significantly different emissions than normal operations. As for batch processes, startup and shutdown are part of their normal operations and, therefore, are already addressed by the standards. In addition, storage tanks, heat exchange systems, and transfer operations do not include startup and shutdown activities.

We have also added language making clear that, to the extent this rule incorporates by reference emission standards from other CAA section 112(d) rules, and those rules contain an exemption from the applicable emission standard during periods of SSM, that exemption does not apply for purposes of this rule.

F. Title V

Pursuant to section 502(a) of the CAA, the Administrator may ''in the Administrator's discretion and consistent with the applicable provisions of [the Act], promulgate regulations to exempt one or more [non-major] source categories (in whole or in part) from the requirements of [title V] if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. * * *'' We proposed to exempt the sources in the chemical manufacturing area source categories subject to this rule from compliance with the requirements of title V. Since proposal, we have reconsidered the proposed exemption and determined that it is not appropriate to finalize the exemption for certain synthetic area sources. Specifically, in proposing the exemption for these categories, we did not consider the large number of synthetic area sources that reduced their HAP emissions to below the major source thresholds by installing air pollution control devices. The oversight occurred because most sources subject to the other area source rules that exempted facilities from title V permitting have very low emissions before control (and most emit metal HAP). Conversely, for the chemical manufacturing area source category, we estimate 75 facilities are synthetic area sources for HAP and at least 10 percent of these facilities have uncontrolled HAP emissions over 100 tpy. Therefore, in the final rule, title V permits are required for area sources in the nine chemical manufacturing source categories that are synthetic area sources by virtue of the fact that they have reduced their HAP emissions to below the major source thresholds by installing air pollution control devices. We are, however, finalizing the exemption from the requirements of title V for those synthetic area sources that limited their HAP emissions to below the major source thresholds solely by complying with operational limits (*e.g.,* limiting the hours the facility can operate) and for natural area sources, which are sources that neither installed controls nor took operational limits to become an area source. The analysis in the proposed rule finding that compliance with title V is unnecessarily burdensome on these source categories remains accurate for the sources we are exempting.

Based on our additional review of the source categories since proposal, we conclude that exemption for the synthetic area sources that installed controls is not appropriate given the facts associated with these sources as set forth below, and we do not believe title V is unnecessarily burdensome on these area sources. Unlike many other area

source categories that we have exempted from title V while implementing the requirements of CAA sections 112(c)(3) and 112(k)(3)(B), the nine chemical manufacturing area source categories include a large number of synthetic area sources that installed air pollution controls to become area sources. We evaluated other area source categories and determined that most sources subject to the other area source rules that exempted facilities from title V permitting have very low emissions before control. For the chemical manufacturing area source categories, we estimate that at least seven of the 47 facilities that are synthetic area sources for HAP by virtue of installing controls would have uncontrolled HAP emissions over 100 tons per year. Synthetic area sources that installed controls represent more than 10 percent of the total number of sources that will be subject to the final rule. In fact, these sources are much more like the major sources of HAP subject to the HON and the MON. In addition, many of these sources are located in cities, and often in close proximity to residential and commercial centers where large numbers of people live and work. The record also indicates that many of these synthetic area sources have significantly higher emissions potential when uncontrolled than the other sources in the nine chemical manufacturing area source categories. For example, we have identified seven facilities that have uncontrolled emissions that exceed 100 tpy.

For these reasons, we believe that the additional public participation and compliance benefits of additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V should be the same for a major source that installed a control device after 1990 to become an area source as for a source that is major and installed a control device to comply with an applicable major source NESHAP, and thereby reduced emissions below major source levels (10 tpy of a single HAP or 25 tpy of total HAP). Many of the synthetic area sources that became area sources by virtue of installing add-on controls are large facilities with comprehensive compliance programs in place because their uncontrolled emissions would far exceed the major source threshold. We maintain that requiring additional public involvement and compliance assurance requirements through title V is important to ensure that these sources are maintaining their emissions at the area source level and, while there is some burden on the affected facilities, we think that the burden is not significant because these facilities are generally larger and more sophisticated than the natural area sources and sources that took operational limits to become area sources.

For these reasons above, we have decided not to finalize the title V exemption for these facilities. The final rule requires title V permits for major sources of HAP emissions that installed controls after 1990 to become area sources of HAP emissions. We estimate that approximately 150 sources that will be subject to this rule are required to have title V permits because of criteria pollutants and the final rule will require an additional 47 affected area sources to obtain title V permits.

We are not requiring title V permits for sources that reduced their emissions to area source levels by taking operational restrictions, such as restricting hours of operation or production, or for natural area sources. We conclude that our analysis in the proposed rule that title V is unnecessarily burdensome for sources in the Chemical Manufacturing source categories remains accurate for the sources we are exempting.

IV. Summary of Final Rule

A. Applicability

The final NESHAP applies to each CMPU that is located at an area source of HAP emissions that uses as feedstocks, generates as byproducts, or produces as products any of the Table 1 HAP, where the Table 1 HAP are present in the feedstocks or are generated and present in the process fluid at concentrations greater than 0.1 percent for carcinogens, as defined by the Occupational Safety and Health Administration, and greater than 1.0 percent for noncarcinogens. A CMPU includes all process equipment, vents, and activities involved in the production of a material described by NAICS code 325, and it consists of one or more unit operations and all associated recovery devices. A CMPU also includes each surge control vessel, bottoms receiver, pump, compressor, agitator, pressure relief device or valve, sampling connection system, open-ended valve or line, valve, connector, storage tank, transfer rack, and instrumentation system associated with the production of NAICS code 325 materials. An affected source is the facility-wide collection of all CMPUs that use, generate, or produce one or more Table 1 HAP. An affected source also includes each heat exchange system and wastewater system that is associated with any CMPU that uses, generates, or produces one or more Table 1 HAP.

The nine chemical manufacturing area source categories include production of most of the materials classified under NAICS 325. The final rule specifies applicability based on CMPUs that are used to produce chemicals classified under NAICS 325, except for production of materials in NAICS 325 that are subject to other area source standards, as specified in the rule, see 40 CFR 63.11494(c)(1), and specific operations that are not considered to be chemical manufacturing, such as photographic paper (NAICS 325992), as described in 40 CFR 63.11494(c)(2) of the final rule.

To be subject to the rule, the CMPU must use as feedstocks, generate as byproducts, or produce as products any of the 15 chemical manufacturing urban HAP. If the CMPU is subject to the final rule, the standards apply to all CAA section 112(b) organic HAP emitted from the CMPU and all CAA section 112(b) metal HAP emitted from the CMPU, depending on the type of HAP that triggers applicability under the rule. Specifically, a CMPU using only Table 1 organic HAP is required to control all CAA section 112(b) organic HAP from the CMPU, a CMPU using only Table 1 metal HAP is required to control all CAA section 112(b) metal HAP from the CMPU, and a CMPU using both metal and organic Table 1 HAP is required to control all CAA section 112(b) metal and organic HAP

B. Compliance Dates

All existing area source facilities with operations subject to this final rule must comply with the final rule requirements for their existing operations no later than October 29, 2012. A new area source must comply with the final rule requirements by October 29, 2009 or upon startup, whichever is later. For the purposes of determining compliance with the rule, a new source is a source that commenced construction or reconstruction after October 6, 2008.

C. Standards

For each CMPU that is part of an affected source, the final rule requires you to implement management practices that apply to all process equipment and other equipment (*e.g.,* pumps, valves, and connectors) in the CMPU. In addition to the management practices, the final rule requires compliance with numerical emission limits and additional emission control requirements for certain process vents, storage tanks, surge control vessels, bottoms receivers, wastewater systems,

and heat exchange systems that meet specified conditions. Management practice requirements and all numerical emission limits and other emission control requirements, except the emission limit for batch process vents, are the same at existing and new sources.

1. Management Practices

Owners and operators of CMPUs subject to this rule are required to comply with the following management practice requirements. All process vessels must be equipped with a cover or lid that is in place at all times when the vessel contains HAP, except for material addition and sampling. Transfer of liquids containing chemical manufacturing organic urban HAP to tank trucks or railcars must be conducted using submerged loading or bottom loading, except for reactive or resinous materials. You must identify each reactive or resinous material in your Notification of Compliance Status or the semiannual compliance report that covers the period when the material is first transferred. You must also conduct inspections of equipment within the CMPU quarterly to demonstrate compliance with the above management practices and confirm that all CMPU are sound and free of leaks. Any leaks must be repaired within 15 days of finding the leak or you must document the reason for the delay. In addition, you must keep records of the inspection dates, inspection results, and the dates of equipment repairs.

Owners or operators of small heat exchange systems that are part of a CMPU subject to this subpart with a cooling water flow rate of less than 8,000 gallons per minute (gal/min) and that do not meet the criteria in 40 CFR 63.104(a) are required to develop a heat exchange system inspection plan that describes the inspections that will be performed to identify hydrocarbons in the cooling water. The inspections must be conducted quarterly and may include a number of sensory inspection options for determining indications of a leak, such as visible floating hydrocarbon, hydrocarbon odor, discolored water, or chemical addition rates. You must either perform repairs to eliminate indications of a leak or take samples and determine there is no leak (as defined in 40 CFR 63.104(b)(6)). Repairs must be completed within 45 days after the inspection during which you observe indications of a leak, or you must document the reason for the delay. In addition, you must keep records of the heat exchange system inspection dates, inspection results, and the dates of leak repairs.

As an alternative to the management practice requirements for small heat exchange systems, the final rule allows compliance with the requirements for large heat exchange systems with flow rates of 8,000 gal/min or greater (*i.e.,* the HON heat exchange system requirements in 40 CFR 63.104(b) or (c)).

2. Standards for Batch Process Vents

Owners and operators of a CMPU with collective uncontrolled organic HAP emissions greater than or equal to 10,000 lbs/yr from all batch process vents associated with an affected CMPU must meet emission limits for the organic HAP emissions. Examples of batch process vents include, but are not limited to, vents on reactors, filters, centrifuges, condensers used for product recovery, and process tanks. These vents include intermittent emissions from continuous operations as well as emissions from batch operations.

For an existing source, one control option is to reduce the collective uncontrolled organic HAP emissions from the CMPU by at least 85 percent by venting emissions from a sufficient number of vents through one or more closed vent system to any combination of control devices (excluding a flare). Alternatively, you may route uncontrolled organic HAP emissions from one or more batch process vents within the CMPU through one or more closed vent systems and meet an outlet concentration limit of 20 parts per million by volume (ppmv) (as total organic carbon or total organic HAP) or through a closed vent system to a flare, and comply with the 85 percent reduction for the remaining vents in the CMPU. For a new source, the requirements are the same as for an existing source, except the required reduction is 90 percent instead of 85 percent.

When halogenated organic HAP compounds from batch process vents are controlled by combustion, you must also reduce the hydrogen halide and halogen HAP generated in the combustion device by at least 95 percent, to no more than 0.45 kilograms per hour (kg/hr), or to no more than 20 ppmv. As an alternative to post-combustion halogen control, you may instead reduce the halogen atom mass emissions prior to the combustion device to no more than 0.45 kg/hr or 20 ppmv.

3. Standards for Continuous Process Vents

We are finalizing the proposed GACT requirements for organic HAP emissions from each continuous process vent with a TRE index value less than or equal to 1.0. Specifically, organic HAP emissions from each continuous process vent with a TRE index value less than or equal to 1.0 must meet any one of several emission control alternatives. One option is to reduce the organic HAP emissions by at least 95 percent by routing through a closed vent system to one or more control devices. Alternatively, you may route the emissions to a flare, or you may meet the concentration option described above for batch process vents. Because a continuous process vent is determined after the last recovery device, another option is to use a recovery device from which the vent stream is determined to have a TRE greater than 1.0. In addition, we are establishing a requirement to reduce the organic HAP emissions from continuous process vents with a TRE less than 1.0 by at least 85 percent during periods of startup and shutdown. Halogenated organic emissions from continuous process vents are subject to the same requirements described above for halogenated organic HAP emissions from batch process vents.

4. Standards for Metal HAP Process Vents

Owners and operators are required to reduce metal HAP emissions by at least 95 percent from each CMPU with uncontrolled metal HAP emissions of 400 lbs/yr or more. The metal HAP process vent emissions must be routed through a closed-vent system to a control device.

5. Standards for Storage Tanks, Surge Control Vessels, and Bottoms Receivers

We are finalizing the proposed emission controls for emissions from storage tanks, surge control vessels, and bottoms receivers that have (1) a capacity of 40,000 gallons or greater with vapor pressure of total organic HAP of 5.2 kilopascals (kPa) or greater and less than 76.6 kPa or (2) a capacity of 20,000 gallons or greater and less than 40,000 gallons with vapor pressure of total organic HAP of 27.6 kPa or greater and less than 76.6 kPa. Control options in the final rule include: (1) Use of an internal or external floating roof; (2) venting through a closed vent system to a control device that reduces organic HAP emissions by at least 95 percent; (3) vapor balancing to the tank truck or railcar from which the tank is filled; (4) routing to a flare; or (5) routing to a fuel gas system or process. Storage tanks, surge control vessels, and bottoms receivers with capacity of 20,000 gallons or greater with vapor pressure of total organic HAP of 76.6 kPa or greater must be controlled using any of the above

options except a floating roof. Storage tanks, surge control vessels, or bottoms receivers with a vent stream that contains halogenated compounds and that is controlled by combustion must also meet the same requirements described above for halogenated batch process vents.

6. Standards for Wastewater Systems

All wastewater discarded from a CMPU subject to the rule must be treated. In addition, each process wastewater stream and each maintenance wastewater stream in which the total PSHAP concentration is 10,000 ppmw or greater, and which contains both an organic and an aqueous phase, must be decanted or separated by other techniques. Alternatively, wastewater streams that meet these conditions may be hard piped to onsite treatment as hazardous waste or hard piped to a collection tank or other vessel and shipped offsite for any of the same types of treatment. If the wastewater is separated into organic and aqueous layers, the organic material must be recycled to a process, used as fuel, or disposed of as hazardous waste. The separated aqueous phase, like other process wastewater and maintenance wastewater that does not separate into an organic and an aqueous phase, must receive some type of treatment, either onsite or offsite, as described above.

7. Standards for Heat Exchange Systems

Owners or operators of heat exchange systems with cooling water flow rate of 8,000 gal/min or greater must develop and operate in accordance with a monitoring plan that documents the procedures to be used to detect leaks of process fluids into cooling water. The plan must require monitoring of one or more surrogate indicators or monitoring of one or more process parameters or other conditions that indicate a leak. You must conduct the monitoring at least quarterly. Leaks must be repaired within 45 calendar days after detection unless specified conditions for delay of repair are met. You must keep records of leaks detected by methods described in your monitoring plan or by other methods, and you must keep records of the dates of repairs. A compliance alternative has been incorporated into the final rule that allows compliance with the HON heat exchange system requirements in 40 CFR 63.104(b). This alternative provides at least equivalent levels of HAP emission reductions as the standards that we are finalizing today.

D. Initial Compliance Requirements

To demonstrate initial compliance with the management practices in the final rule, owners and operators of affected new and existing sources must certify that they have implemented all required management practices by the compliance date. To demonstrate initial compliance with the emissions control requirements, by the compliance date, the source must install and have operational, any required add on control equipment and/or have implemented any design requirements necessary to comply with the applicable standard.

For batch process vents and metal HAP process vents, owners and operators must either calculate uncontrolled emissions or demonstrate that organic HAP usage is below 10,000 lb/yr or metal HAP usage is below 400 lb/yr. The final rule specifies that HAP emissions or usage may be determined based on process knowledge, engineering assessments, or test data. For continuous process vents with an organic HAP emission rate greater than 0.1 lb/hr, owners and operators must determine the TRE index value. For wastewater streams, owners and operators must determine if the PSHAP concentration exceeds 10,000 ppmw and contains separate aqueous and organic layers. All wastewater stream characterization determinations may be based on process knowledge, engineering assessments, or test data.

To demonstrate initial compliance with a percent reduction or outlet concentration emission limit in this final rule, owners and operators must conduct either a performance test or design evaluation. Limits for operating parameters that will be monitored to demonstrate ongoing compliance must be established during the performance test or design evaluation.

E. Continuous Compliance Requirements

Quarterly inspections are required to demonstrate compliance with the management practice requirements and the standards for large heat exchange systems. Storage tanks equipped with floating roofs are also subject to periodic inspections and, for external floating roofs, seal gap measurements. Control device operating parameters must be continuously monitored to demonstrate ongoing compliance with percent reduction or outlet concentration emission limits, and the continuous presence of a pilot flame must be verified in flares. Closed vent systems that convey emissions to a control device must be monitored using Method 21 or by audible, visual, or olfactory (AVO) techniques, depending on the construction material and the source of the emissions.

F. Notification, Recordkeeping, and Reporting Requirements

The owner or operator of a new or existing affected source is required to comply with certain requirements of the General Provisions to part 63 (40 CFR part 63, subpart A), which are identified in Table 9 of the final rule. Each facility is required to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions and 40 CFR 63.11501 of the final rule. Among other things, the owner or operator must submit a compliance report for each semiannual reporting period during which a deviation occurred, a leak was not repaired within the specified time period, or a process change occurred that affected a previous compliance determination or resulted in a new compliance determination, including changes in the method of compliance.

V. Summary of Comments and Responses

We received a total of 35 comments on the proposed rule from industry representatives, trade associations, State and Federal agencies, industry consultants, one environmental group, and the general public during the public comment period. In addition, two speakers provided testimony at a public hearing. Sections V.A through V.H of this preamble summarize the significant comments and explain our response. Other comments addressed minor clarifications to this rule or other issues that we did not consider to be significant; these comments and our responses to them are provided in the Response to Comments Document.

A. Applicability

Comment: Several commenters requested that EPA establish one or more *de minimis* applicability thresholds below which area sources that process or emit small amounts of urban HAP would be exempt from the rule. For example, some commenters requested a more comprehensive version of the proposed concentration thresholds of 0.1 and 1.0 percent urban HAP in feedstocks and products that would also apply to fuels, by-products, co-products, intermediates, HAP generated in the process, and/or catalysts. Other commenters requested a mass-based HAP usage or processing threshold (*e.g.,* 2 megagrams per year or 25,000 lbs/yr), actual or uncontrolled HAP emissions thresholds between 50

lbs/yr and 6.25 tpy, a threshold based on the quantity of HAP stored onsite (consistent with the criteria that are used to determine Superfund Amendments and Reauthorization Act 311/312 Tier 2 reporting thresholds), or a combination of thresholds.

Two commenters argued that EPA has legal authority to set *de minimis* applicability thresholds. One commenter noted that the courts have determined that EPA has the authority to establish *de minimis* thresholds where the application of the statutory requirements would be of trivial or no value environmentally (see *Alabama Power Co.* v. *Costle,* 636 F 2d 323.360–61; D.C. Cir. 1979). Another commenter noted that none of the provisions in the CAA related to EPA's obligation to regulate area sources expressly prohibits EPA from using thresholds to define the applicability of GACT standards, and they do not implicitly mandate that EPA must regulate every HAP emission from an area source.

Furthermore, one commenter noted that the proposed rule already includes *de minimis* thresholds (the 0.1 percent and 1.0 percent urban HAP concentrations in feedstocks and products), and previous rules have included *de minimis* thresholds.

Response: Regulation of the nine chemical manufacturing area source categories is necessary for the Agency to meet the requirements of CAA sections 112(c)(3) and 112(k)(3)(B) to regulate area source categories representing 90 percent of the emissions of the 30 urban HAP. We listed the nine chemical manufacturing area source categories because they emit urban HAP and these categories were necessary to satisfy our requirement to regulate area sources representing 90 percent of the area source emissions of 15 of the 30 urban HAP. Area sources are, by definition, smaller sources and we recognize that the nine area source categories at issue are comprised of a large number of relatively small facilities. But we note that, although area sources individually may emit relatively low amounts of HAP, collectively, the level of emissions is significant.

As discussed above and in the preamble to the proposed rule, the Agency determined that it was necessary to regulate these nine area source categories to fulfill the mandate of CAA sections 112(c)(3) and 112(k)(3)(B) to regulate area sources accounting for 90 percent of the emissions of the urban HAP. In listing the nine chemical manufacturing area source categories at issue, the Agency did not condition the listing of any of the categories based on a *de minimis* level of emissions of the 15 chemical manufacturing urban HAP, beyond the feedstock and product limitations discussed below and in the proposed rule. We are, therefore, appropriately issuing emission standards that regulate the emissions of the 15 chemical manufacturing urban HAP.

One commenter noted that EPA has included *de minimis* concentrations of urban HAP in feedstocks and products for purposes of determining applicability. In the proposed rule, feedstocks and products were defined as materials that contain the Table 1 HAP in concentrations greater than 0.1 percent for carcinogens or greater than 1.0 percent for noncarcinogens. As we have pointed out in several other area source rulemakings, the CAA section 112(k) inventory was primarily based on the 1990 Toxics Release Inventory (TRI), and that is the case for the chemical manufacturing area source categories as well. The reporting requirements for the TRI do not include *de minimis* concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. See 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the percentages noted above define the scope of the listed source category; they are not exemptions. We received no adverse comment on this issue, and we are finalizing the Table 1 HAP thresholds for feedstocks and products in this rule.

We have reviewed the listing decision for the nine chemical manufacturing area source categories and have not identified any information suggesting that small sources were not included in our listing decision. As such, we do not believe we can satisfy our requirement to regulate sources representing 90 percent of the emissions of the chemical manufacturing urban HAP unless we subject all sources that emit those HAP to regulation in this rule.

Comment: Many commenters stated that applicability of the affected source should be limited to individual emission points, individual process units, or the group of process units that involve urban HAP, not all chemical manufacturing operations, as was proposed. According to the commenters, this change is needed in order to alleviate burden and establish a cost-effective rule, particularly for specialty batch manufacturers that may operate processes that use an urban HAP infrequently. Commenters stated that EPA is not required to regulate HAP other than the 15 chemical manufacturing urban HAP needed to meet the 90 percent threshold. One commenter disagreed with EPA's basis for establishing the two batch process vent subcategories where EPA concluded that emissions > 19,000 lbs/yr represents solvent based, high production volume processes with concentrated emission streams. The commenter stated that this is only valid when applied to individual processes, but invalid when applied to entire sites. Another commenter stated that specialty chemical manufacturers would be disproportionately impacted by the proposed rule because of frequent variations and changes in product lines along with the unique aspects of batch processing. This commenter stated that specialty chemical producers will have to use thermal oxidizers with halogen controls, not condensers as EPA assumed, if all chemical manufacturing operations are covered. Commenters noted that costs to characterize wastewater streams that contain no urban HAP would be significant if all chemical manufacturing operations are covered. One commenter also expressed concern that a facility-wide grouping of operations is subject to various interpretations, which could lead to inconsistent implementation among the nine industry sectors covered by the rule. On the other hand, several commenters suggested that applicability be based on the familiar concept of ''chemical manufacturing process units'' as in other rules. Also, several commenters noted that a primary concern is that the proposed rule would require compliance facility-wide upon startup of any individual process that involves an urban HAP and that their concerns would be minimized, if not eliminated, if the affected source were based on process units that involve urban HAP rather than all chemical manufacturing operations.

Response: In the preamble to the proposed rule we explained the Agency's authority to regulate all HAP, not only urban HAP, for those area source categories needed to achieve the 90 percent requirement in CAA section 112(c)(3). See 73 FR 58358. In the proposal, we explained that we were applying the standards to the entire facility and all HAP because the management practice requirements are equally effective for all HAP and there is little, if any, additional cost for implementing the management practices for all emission sources. In addition, where add-on controls are required, demonstrating compliance for total HAP

is less burdensome than demonstrating compliance for speciated HAP and that the controls are equally effective at reducing non-urban HAP emissions. We also explained that it was our understanding that process vents could be ducted together easily so that the cost for controlling HAP emissions from all process vents would not greatly increase if the rule so applied. We also assumed when proposing the rule that facilities in these categories generally have only one or two processes and that the processes are in close proximity to one another and that facilities are not changing products or processes on a regular basis.

Commenters contend that many of our assumptions were in error and that if we based rule applicability on a CMPU basis instead of a facility wide basis the cost of compliance with the rule and many of their concerns would be addressed. As discussed below, based on the commenters' suggestion and an evaluation of the industry and costs associated with the proposed rule, we have in the final rule defined the affected source as the CMPUs that emit the Table 1 HAP and the heat exchange systems and wastewater systems associated with those CMPUs instead of requiring compliance for the entire facility if one process contains Table 1 HAP. As discussed in more detail below, we believe that most of our assumptions at proposal remain accurate because of this change.

In addition, as we stated in the proposal, we continue to believe that we have the authority to address all CAA section 112(b) organic and metal HAP for those CMPUs subject to this final rule. Commenters argue that EPA is not legally required to address all HAP, but they do not state that the Agency has exceeded its discretion in doing so. For the reasons set forth in the proposal, we appropriately exercised our discretion to regulate the HAP at issue in this final rule. Moreover, the commenter does not refute that the management practices and emission limits are equally effective at removing non-urban metal and organic HAP, and that demonstrating compliance for total HAP is less burdensome than demonstrating compliance for speciated HAP for those sources required to install add-on controls. For these reasons, the final rule requires area sources to control all 112(b) organic HAP from a CMPU that emits a Table 1 organic HAP and control all 112(b) metal HAP from a CMPU that emits Table 1 metal HAP, as well as the heat exchange systems and wastewater systems associated with those CMPUs.

At proposal we estimated four facilities would have uncontrolled batch process vent emissions greater than 19,000 lbs/yr, we assumed condensers could be used to control the emissions, and we estimated the total annual control cost would be $0.1 million/yr. We did not consider costs for facilities that are currently controlled to levels less than the proposed 90 percent level. After reevaluating the data, we estimate that 19 facilities have uncontrolled emissions greater than 19,000 lbs/yr, including the four uncontrolled facilities from the proposed analysis and another four facilities with control levels greater than 90 percent. If we had accounted for facilities with low current control levels, assumed centralized thermal oxidizers would be needed, and assumed considerably more duct work and related manifolding equipment was needed to connect numerous vents from several processes rather than only one or two processes, then the costs would be at least $2.1 million/yr, and the cost-effectiveness would be at least $17,000/ton of HAP controlled.

Because of our misunderstanding of the sources' configuration, we significantly underestimated the costs of compliance with the proposed rule when we defined the affected source as the entire facility if Table 1 HAP was emitted from any process. As stated above, we are revising the rule to require compliance only by CMPUs that emit one of the Table 1 HAP and heat exchange systems and wastewater systems associated with those CMPUs. Under the new construct, the cost and technological assumptions we made in the proposal are correct because the process vents of a CMPU are most likely to be located in the same building or otherwise in close proximity. In addition, estimating HAP in process vents and wastewater on a process basis is more consistent with normal operating practices for batch processes, and the owner or operator can estimate annual emissions by tracking the number of batches.

With this change, we are addressing the concern raised by some commenters that for complex facilities (according to a commenter the number of processes can exceed 100) costs may be significant for ducting all batch vents to a central control device. The change will also limit applicability such that the commenters' concern that the proposed rule would require compliance facility-wide upon startup of any individual process that involves an urban HAP will be eliminated. The Agency was mindful of the concern that requiring facility-wide compliance for each new process using a Table 1 HAP could affect a source's willingness to experiment with new products containing a Table 1 HAP. In addition, the costs to comply with such a rule would be significant and sources would not know whether new product lines would be profitable before being developed or whether the attempts to develop new products would be successful. Under the final rule, facilities using, producing, or generating a Table 1 HAP in a CMPU will only have to comply with the rule for that specific CMPU.

The change in scope of the affected source in the final rule from the entire facility to the CMPUs that emit Table 1 HAP is necessary because of our incorrect assumptions at proposal, as explained above. The actual costs and environmental benefits for the final rule will be similar to what was projected in the proposed rule. The rule will regulate the same number of facilities, the rule will require add-on controls for approximately the same number of units that we estimated at the time of proposal, and the rule will achieve comparable reductions of HAP and particulate matter (PM) emissions.

Although commenters agreed that EPA has the authority to regulate non-urban HAP, they suggest that the Agency only regulate the Table 1 HAP to reduce the burden and costs of compliance for some area sources. We believe we have addressed these concerns by redefining the affected source to be on a CMPU basis. If the CMPU uses, generates, or produces one of the chemical manufacturing organic urban HAP, then the standards apply to all CAA section 112(b) organic HAP in the affected CMPU. Similarly, if the CMPU uses, generates, or produces one of the chemical manufacturing metal urban HAP, then the standards apply to all CAA section 112(b) metal HAP in the process units and the associated vents. We continue to believe that the costs of controlling all organic or metal HAP, as applicable, are reasonable. We find here, as we explained at proposal, that the management practices and control requirements in this rule that reduce urban organic HAP and urban metal HAP from the affected sources are equally affective at reducing all CAA section 112(b) organic HAP or metal HAP, respectively.

Comment: Several commenters suggested exempting biological products (NAICS 325414), tall oil recovery systems, and carbon monoxide so that the area source rule is consistent with the MON. One commenter requested that the rule explicitly state whether or not it applies to ethanol production facilities.

Response: We have not exempted the cited processes, including industrial ethanol production, because they are

included in the scope of the nine listed area source categories (NAICS 325). However, the rule does not apply to beverage alcohol production, which is in NAICS 312.

Comment: Several commenters requested that facilities not be required to consider the presence of urban metal HAP in catalysts when determining applicability of the rule because the catalysts remain unchanged in the process equipment for significant periods of time, and their use results in little, if any, emissions. One commenter observed that, for catalysts, the potential for emissions is only from their production and recycling, not their use in fixed beds.

Other commenters requested exemptions for other forms of metals (*e.g.,* in nutrients for biological processes and metals in piping).

Response: We are concerned only with metal HAP emissions. Metal HAP in structures and metal HAP existing as articles (as defined in 40 CFR 372.3), where no metal HAP is released to the atmosphere, are not covered by this rule. However, if the use of catalysts in the processes results in Table 1 metal HAP emissions from the CMPU, then the CMPU is subject to the applicable standards for the affected CMPU. If the commenters' assessment of the level of emissions is accurate, management practices would likely apply in these cases because the sources would likely not fall within the subcategory for which add-on emission controls are required.

B. Compliance Dates

Comment: Several commenters requested adequate compliance time for existing sources that do not become subject to the rule until a change introduces urban HAP for the first time after promulgation of the final rule or the initial compliance date. The commenters indicated that such a situation would occur if a facility (1) adds a new process, with or without new equipment, that introduces an urban HAP, or (2) makes a process change that introduces an urban HAP (perhaps unexpectedly as an impurity in a feedstock or generated as a byproduct). Several commenters also requested adequate compliance time for new sources.

Response: The rule has a compliance period of 3 years for existing sources as authorized in the Part 63 General Provisions and section 112(i)(3) of the CAA. New processes at an existing source, whether for a new process unit or to expand an existing process unit, would become part of the existing source. If an existing source starts using a Table 1 HAP after the compliance date for existing sources has passed, the affected CMPU must comply with the standards at the time the new process begins. New sources must be in compliance upon startup or the date of publication of the final rule in the **Federal Register**, whichever is later.

C. Standards

1. General Issues

Comment: One commenter stated that, while the CAA gives the Agency the authority to issue GACT standards under section 112(d)(5) for area sources, EPA's decision to issue GACT standards instead of MACT standards is only valid if the Agency provides a rational explanation to support the decision. The commenter further stated that EPA provided no explanation for its decision to issue GACT standards instead of MACT standards and that this alone makes the Agency's decision arbitrary and capricious. The commenter also maintains that the Agency evaluated proposed GACT measures by considering only cost-effectiveness. The commenter states that the Agency rejected on cost-effectiveness grounds the control options for the following emission sources: continuous process vents with a TRE greater than 1; batch process vents for facilities emitting less than 19,000 lbs/yr of organic HAP emissions; metal HAP process vents for facilities emitting less than 100 lbs/yr; cooling tower systems with cooling water flow rates less than 8,000 gal/min; equipment leaks; and transfer operations. The commenter maintains that the statute does not direct EPA to set standards based on cost-effectiveness, and that the Agency cannot and does not argue that the control measures that were rejected are not appropriate for application by chemical manufacturing plants. The commenter also argues that the Agency does not claim that the economic impacts are too great, explain how profitable the plants are, or how economically significant the controls would be on the sources if required in this rule. The commenter maintains that EPA based its decision only on the Agency's views on cost-effectiveness and that EPA's views on this issue are not relevant under CAA section 112(d)(5) and, therefore, the standards are unlawful.

Response: As the commenter recognizes, in CAA section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, CAA section 112(d)(5), which is entitled ''Alternative standard for area sources,'' provides:

> With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may, in lieu of* the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

See CAA section 112(d)(5) (*Emphasis added*).

There are two critical aspects to CAA section 112(d)(5). First, CAA section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to CAA section 112(c). The commenter does not dispute that EPA listed the nine area source categories noted above pursuant to CAA section 112(c)(3). Second, CAA section 112(d)(5) provides that, for area sources listed pursuant to CAA section 112(c), EPA ''*may, in lieu of*'' the authorities provided in CAA section 112(d)(2) and 112(f), elect to promulgate standards pursuant to CAA section 112(d)(5). CAA Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as MACT). CAA section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. See CAA section 112(d)(3).[6] Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' See Webster's II New Riverside University (1994). Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards under CAA section 112(d)(5) that provide for the use of GACT, *instead of* issuing MACT standards pursuant to CAA section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under CAA section 112(d)(5) other than that the area source category or subcategory at issue must be

[6] Specifically, CAA section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for which the Administrator has emissions information. CAA Section 112(d)(2) directs EPA to consider whether more stringent emission reductions (so called beyond-the-floor limits) are technologically achievable considering, among other things, the cost of achieving the emission reduction.

one that EPA listed pursuant to CAA section 112(c), which is the case here.[7]

The commenter argues that EPA must provide a rationale for issuing GACT standards under CAA section 112(d)(5), instead of MACT standards. The commenter is incorrect, however. Had Congress intended that EPA first conduct a MACT analysis for each area source category, and only if cost or some other reason made applying the MACT standard inappropriate for the category, would EPA be able to issue a standard under CAA section 112(d)(5), Congress would have stated so expressly in CAA section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis, or beyond-the-floor analysis, before the Agency could issue a CAA section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under CAA section 112(c), and that is precisely what EPA has done in this rulemaking.

Although EPA has no obligation to justify why it is issuing a GACT standard for an area source category as opposed to a MACT standard, we did explain at proposal that being able to consider costs and economic impacts is important when establishing standards for categories like these with many small sources. Furthermore, EPA must set a GACT standard that is consistent with the requirements of CAA section 112(d)(5) and have a reasoned basis for its GACT determination. As explained in the proposed rule and below, in determining what constitutes GACT for a particular area source category, EPA evaluates the control technologies and management practices that reduce HAP emissions that are generally available for the area source category. See 73 FR 58354. The legislative history supporting CAA section 112(d)(5) provides that EPA may consider costs in determining what constitutes GACT for the area source category.[8] EPA cannot consider cost in setting MACT floors, pursuant to CAA section 112(d)(3). Congress plainly recognized that area sources differ from major sources, which is why Congress permitted EPA to consider costs in setting GACT standards for area sources under CAA section 112(d)(5), but did not permit that consideration in setting MACT floors for major sources. This important dichotomy between CAA section 112(d)(3) and CAA section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of CAA section 112(d)(5) states—provide EPA the authority to issue ''[a]lternative standards for area sources.''

Notwithstanding the commenter's claim, EPA properly issued standards for the area source categories at issue here under CAA section 112(d)(5), and cost-effectiveness was not the only consideration in setting the standards. As stated in the preamble to the proposed rule:

> Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

73 FR 58354, October 6, 2008.

As the commenter noted, EPA proposed emission standards for eight identified emission sources at chemical manufacturing area sources: Continuous process vents; batch process vents; metal HAP process vents; storage tanks; cooling tower systems; equipment leaks; transfer operations; and wastewater systems. We also proposed to subcategorize continuous process vents, batch process vents, metal HAP process vents, storage tanks, cooling tower systems, and wastewater systems based on variations of the size and type of the facility or the affected operation. We reviewed the GACT applied at area sources in the chemical manufacturing source categories at issue for each of the emission sources covered in the proposed rule. In determining what was generally available, we first considered what was generally available for each category or subcategory of emission source based on what was being applied at facilities or for emissions sources of a similar size and/or type of facility or emission source. For example, for continuous process vents, we considered what controls and management practices were in place for units with a TRE greater than 1 and what controls and management practices were in place for units with a TRE less than 1. For batch process vents, we considered what controls and management practices were in place at facilities that emitted more than 19,000 lbs/yr of organic HAP emissions and what controls and management practices were in place at facilities that emitted less than 19,000 lbs/yr of organic HAP emissions. We also considered the control technologies and management practices employed by chemical manufacturing area sources already subject to standards, by facilities in other areas source categories, and by chemical manufacturing major sources. 73 FR 58366.

After determining what controls and management practices were generally available to the emission sources in the nine source categories at issue, we considered the costs and economic impacts associated with requiring the various controls and management practices before determining what constituted GACT for each emission source. The Agency specifically considered the cost-effectiveness of the different control technologies and management practices on the categories and subcategories of emission sources as a means of evaluating the costs of those emission standards. EPA evaluated the controls and management practices that were generally available and, in certain circumstances, determined that GACT was not add-on controls because the cost-effectiveness of such controls would not have been reasonable if applied to all facilities or emission sources in a given category or subcategory.

Contrary to the commenter's assertions, the Agency's consideration of cost-effectiveness in establishing GACT and the Agency's views on what is a cost-effective requirement under CAA section 112(d)(5) are relevant. The United States Court of Appeals for the District of Columbia Circuit has stated that cost-effectiveness is a reasonable measure of cost as long as the statute does not mandate a specific method of determining cost. See *Husqvarna AB* v. *EPA,* 349 U.S. App. D.C. 118, 254 F.3d 195, 201 (D.C. Cir. 2001) (Finding EPA's decision to consider costs on a per ton of emissions removed basis reasonable because CAA section 213 did not mandate a specific method of cost analysis). CAA section 112(d)(5) does

[7] CAA Section 112(d)(5) also references CAA section 112(f). See CAA section 112(f)(5) (entitled ''Area Sources'' and providing that EPA is not required to conduct a review or promulgate standards under CAA section 112(f) for any area source category or subcategory listed pursuant to CAA section 112(c)(3), and for which an emission standard is issued pursuant to CAA section 112(d)(5)).

[8] Additional information on the definition of ''generally available control technology or management practices'' (GACT) is found in the Senate report on the 1990 amendments to the CAA (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). That report states that GACT is to encompass:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

not mandate a specific method for considering cost when setting GACT standards.

The commenter has provided no information to support the argument that add-on control requirements for process vents, storage tanks, and heat exchange systems are generally available for all such emission sources in each of the subcategories. The commenter also failed to provide any information indicating that our cost-effectiveness determinations were unreasonable and, likewise, failed to provide any information concerning the economic impacts associated with requiring the standards that the commenter suggests represent GACT. The commenter appears to take issue with the manner in which the Agency establishes GACT but provides no alternative approach, instead only attacking the Agency's consideration of cost (*i.e.,* cost-effectiveness) as a consideration in the establishment of GACT. The Agency proposed GACT standards for the nine chemical manufacturing area source categories and subcategories that were established consistent with the requirements of CAA section 112(d)(5).

Comment: To avoid duplicative and conflicting requirements and to minimize burden, several commenters requested clarification of requirements when parts of an affected source under the area source NESHAP are also subject to requirements under other rules. Collectively, the commenters requested that the final rule address overlap with Part 60 NSPS in subparts Kb, VV, VVa, DDD, III, NNN, RRR, and the proposed YYY; Part 61 NESHAP in subparts V (as referenced from subparts F and J), L, Y, BB, and FF; subparts AA, BB, and CC in parts 264 and 265; State and local leak detection and repair (LDAR) requirements; other area source rules; and permit requirements that incorporate MACT standards. The commenters made three types of suggestions: (1) Specify that compliance with provisions in the other rule demonstrates compliance with the requirements in 40 CFR part 63, subpart VVVVVV, (2) allow compliance with whichever rule is the most stringent, or (3) exempt sources from the requirements in the area source rule when another rule applies. For example, one commenter requested that compliance with any existing Federal, State, local, or permitted LDAR requirements be allowed to demonstrate compliance with the subpart VVVVVV equipment leak standards, provided the current requirements are at least as stringent as the final subpart VVVVVV standards. This commenter also requested exclusions from the wastewater standards for any wastewater stream that is subject to 40 CFR part 61, subpart FF, whether or not treatment is required under subpart FF, and for any wastewater streams that become subject to 40 CFR part 60, subpart YYY after the compliance date of subpart YYY. Another commenter stated that when more than one area source rule applies, sources should be allowed to opt for compliance with the more stringent requirements.

Response: Provisions regarding overlap between 40 CFR part 63, subpart VVVVVV and other rules are included in the final rule. Compliance with provisions in overlapping rules as a means of demonstrating compliance with this final rule is allowed to the extent that requirements in the overlapping rule are at least as stringent as the requirements in subpart VVVVVV. For example, if the emission limits, monitoring requirements, and associated recordkeeping and reporting requirements in the overlapping rule are all at least as stringent as the requirements in subpart VVVVVV, then compliance with the overlapping rule demonstrates compliance with subpart VVVVVV. Conversely, if all of the provisions in subpart VVVVVV are more stringent than the corresponding requirements in the overlapping rule, then the final rule requires compliance with all of the provisions in subpart VVVVVV. In all other situations where some provisions in the overlapping rule are more stringent and others are less stringent than those in this final rule, an owner or operator may demonstrate compliance with the final rule by complying with all of the most stringent requirements, whichever rule they are from. Specifically, to comply with any requirement (emission limit, monitoring requirement, recordkeeping requirement, and/or reporting requirement) in an overlapping rule as an alternative to the requirement in subpart VVVVVV, an owner or operator must first determine that the requirement in the overlapping rule is at least as stringent as the corresponding requirement in subpart VVVVVV. This determination also must be documented in the notification of compliance status or, for processes added in the future, in the semiannual compliance report that covers the period when the process starts up. The final rule also states that sources are responsible for making accurate determinations concerning the more stringent standard and noncompliance with this rule is not excused if it is later determined that the source was in error in its initial notification of compliance and, as a result, is violating this rule. Compliance with this rule is the responsibility of the affected source regardless of any notification of compliance or semiannual compliance report.

Although the final rule includes these provisions for minimizing the compliance burden associated with overlapping rules, we did not include all of the commenters' other suggestions, for the reasons discussed below.

We disagree with one commenter's suggestion that a wastewater stream subject to 40 CFR part 61, subpart FF, but exempt from treatment under subpart FF should also be exempt from treatment requirements under 40 CFR part 63, subpart VVVVVV. The subpart FF requirements apply to the benzene content of the stream (or the total benzene in all waste). The benzene content has no relationship to the urban HAP (or other PSHAP) content of the stream. Therefore, treatment in accordance with subpart FF satisfies the treatment requirement under the final rule, but a stream that contains PSHAP and is exempt from treatment under subpart FF must receive treatment under this final rule.

40 CFR part 63, Subpart VVVVVV and another area source rule should never apply at the same time because the affected sources do not overlap. However, equipment could be subject to subpart VVVVVV and either the chemical preparations or paint and allied products area source rules at different times depending on what is being produced. In these situations, sources should comply with each rule, whenever it is applicable. Alternatively, the owner or operator may determine the most stringent requirements in the applicable rules and comply with that combination of requirements at all times.

Coke by-product recovery plants are not part of the chemical manufacturing area source category (*i.e.,* they are described by NAICS 324199, All Other Petroleum and Coal Products Manufacturing); therefore, 40 CFR part 61, subpart L does not overlap with 40 CFR part 63, subpart VVVVVV.

Comment: Several commenters stated that the proposed management practice requirements for process vents and storage tanks should not be finalized. Each of these commenters objected to the management practice requirements for one or more of the following reasons: (1) The proposed requirements are not GACT because they are not industry practice, are not required in other rules, achieve little or no emission reduction, and cost more than EPA has estimated;

(2) some equipment is not designed to operate with covers or enclosed, often because to do so would jeopardize the physical integrity of the unit (*i.e.,* pressure/vacuum vents on storage tanks); and/or (3) the requirements duplicate and/or potentially conflict with the proposed requirements for equipment leaks.

Several commenters made additional points. Two commenters stated that operating under vacuum should be exempted from or allowed as an alternative to having all closure mechanisms in the closed position. One commenter stated that equipment integrity verification procedures that are part of CGMP required by the U.S. Food and Drug Administration for pharmaceutical production processes should be recognized as an acceptable alternative to the management practices. One commenter requested an exemption from inspection requirements for inaccessible and unsafe openings, and another commenter noted that the burden estimates did not appear to reflect the cost to inspect openings that are not generally accessible. One commenter stated that, in order to protect themselves against disagreements with enforcement agencies, facilities will feel the need to use instrument-based LDAR techniques instead of the required sensory-based inspections.

One commenter indicated that facilities supplement applicable equipment leak regulations by having operation personnel watch for AVO indications of a hydrocarbon leak during their rounds, but they do not specifically check ''openings'' in equipment. Another commenter suggested that EPA rely on the equipment leak provisions because many of the elements in the proposed management practice requirements are already addressed in the equipment leak provisions.

Several commenters presented estimates of the level of effort and costs to implement the proposed management practices. One commenter estimated that total setup and training time would involve 100 hours for operations personnel, 20 hours of technical time, and 10 hours of administrative support. This commenter also estimated 20 to 40 hours to conduct each inspection, and an additional 5 to 10 hours of administrative support per inspection to manage the program.

A second commenter estimated 40 hours of engineering time to develop the initial list of openings and equipment, and 4 hours per year to maintain the list. In addition, this commenter estimated each inspection would take 24 hours of technician time, and a cost of several thousand dollars would be incurred for scaffolding and man-lift rentals. Overall, this commenter estimated the average cost to be about $6,000/yr per facility; however, the commenter estimated the cost for one facility would be cut by a factor of 5 if the rule applied only to processes using or emitting urban HAP rather than all processes.

A third commenter estimated the cost for process vent inspections to be about $1,200/yr rather than the $300/yr estimated by EPA because of the potentially large number of process vents that would have to be considered under the proposed applicability requirements.

A fourth commenter estimated 4 hours per process for setup of the data management system, 1.25 hours per inspection per process, and a contractor fee of $125/hr.

Response: In consideration of the specific comments on management practices as well as comments above regarding the scope of the affected source, we have made several changes to the proposed management practices. We made these changes because the proposed management practice requirements were redundant for CMPU with both batch and continuous process vents because the proposed requirements for both emission points applied to all process equipment. In addition, a more streamlined approach reduces the compliance burden without causing an increase in emissions.

In the final rule, the various proposed management practices for process vents, equipment leaks, transfer operations, and storage tanks were consolidated and simplified into one comprehensive set of management practices that are applicable to each affected CMPU. The comprehensive management practices in the final rule include requirements to equip each vessel with a cover or lid that must be in place when the vessel contains HAP (except for material addition and sampling) and to conduct sensory inspections for leaks throughout each affected CMPU on a quarterly basis. The proposed inspections for equipment leaks are included without change in the final management practice requirements, but the final rule also requires comparable inspections for leaks from process equipment in a CMPU (*e.g.,* reactors, distillation units, process tanks) and for storage tanks that are part of a CMPU and that store liquid that contains any Table 1 organic urban HAP.

We have also reevaluated the costs of the management practices. In the proposal, we estimated the cost of inspections for equipment leaks to be $1,187 per year per affected facility. This estimate included initial costs of $1,200 for 15 hours for planning and training that were annualized over 10 years plus estimated costs for quarterly inspection, recordkeeping, and program administration. The average time for an inspection and related recordkeeping was estimated to be 2 hours (8 hours per year) per facility, and an additional 7 hours per year were estimated for administration. We also estimated in the proposal that management practice inspections for batch process vents, continuous process vents, metal HAP process vents, and storage tanks each would take four hours per year, and that recordkeeping related to the inspections would require 1 hour per year. The total cost per inspection was estimated to be $276 per year (or $1,100/yr for a facility with all four types of emission points). This total is consistent with the low end of the range presented by commenters.

As discussed in sections III.A and V.A of this preamble, the final rule includes a narrower definition of the affected source and we believe that this will result in a lower level of effort for conducting the inspections required by the management practices. Instead of facility-wide inspections as anticipated at proposal, the final rule requires inspections only for CMPUs that use, generate or produce Table 1 urban HAP. Therefore, we think that the overall estimates from commenters are higher than warranted for the final rule. This is supported by one commenter's estimate of $240/yr (instead of $1,200/yr) for management practice costs if the inspections apply only to process units containing chemical manufacturing urban HAP.

The overall time estimated for the final management practice requirements is less than the total time for the proposed equipment leak inspections and management practices for process vents and storage tanks. This is due to fewer process units being subject to management practice requirements under the final rule. For the final standards, we assumed 3 hours for each inspection of an average affected facility with organic HAP and 2 hours for each inspection of an average facility with metal HAP. The estimated time is lower for facilities with metal HAP because the inspections will be focused more on openings than on leak points (*e.g.,* inspections of pumps and valves are not relevant because metal HAP is only released from process units). We also assumed 2 hours per year for recordkeeping at an average facility. Overall, the inspection and recordkeeping time was estimated to be

14 hrs/yr per facility for organic HAP and 10 hrs/yr per facility for metal HAP. We also estimated that the average initial planning and setup costs for management practices is the same as the proposed estimate for the equipment leak inspections. As a result, the total cost was estimated to be $1,500 per year for an affected facility with organic HAP and $1,200 per year for an affected facility with metal HAP emissions. These estimates are in reasonable agreement with the estimates of costs for management practices put forth by several of the commenters that suggested the applicability of the rule be based on the CMPUs using Table 1 HAP as opposed to the entire facility as in the proposed rule.

One commenter stated that some equipment is not designed to operate with covers or enclosed, often because to do so would jeopardize the physical integrity of the unit, but the commenter only listed pressure/vacuum vents on storage tanks. Because pressure/vacuum vents are not openings as we contemplate them in the final rule, and are instead part of the necessary design of certain tanks used for storage, we have determined that there is no need to amend the final rule to address this comment.

2. Batch and Continuous Process Vents

Comment: One commenter supported the proposed GACT control level of 90 percent for batch process vents as a reasonable approach for pharmaceutical manufacturing area sources. Other commenters, however, stated that the proposed control levels for both batch process vents and continuous process vents are too high to be GACT. According to one commenter, most State implementation plans (*e.g.,* Ohio) contain volatile organic compounds (VOC) reasonably available control technology (RACT) requirements that set control efficiency between 81 and 90 percent. Instead of using combustion controls that are typical at major sources, this commenter further stated that area sources most likely use condensers, carbon adsorption systems, or other material recovery systems, which have emission removal efficiencies in the 85 to 95 percent range. Therefore, the commenter encouraged EPA to adopt 85 percent removal as GACT for both batch process vents and continuous process vents. According to another commenter, the control level at existing sources should be set at 90 percent for combustion devices other than flares and 80 percent for process condensers. This commenter noted that a condenser at one of their facilities is permitted for 85 percent control and pointed out that the efficiency of condensers varies with changes in ambient temperature, humidity, and the type and concentration of HAP in the emission stream.

In addition to (or instead of) changing the required control level, several commenters suggested that existing controls be grandfathered because it would not be cost-effective to replace them. For example, one commenter suggested grandfathering any control equipment currently in compliance with State air pollution rules and permits until the next reconstruction or replacement of the control device or 10 years after the effective date of the rule, whichever occurs first. Another commenter requested grandfathering provisions for control devices achieving at least 80 percent reductions, either voluntarily or in accordance with State rules or permits. Another commenter stated that EPA should grandfather controls installed recently to meet RACT requirements.

Response: Based on comments received on the control efficiency requirements, we have reviewed and revised the GACT analysis for batch process vents. At proposal, detailed information on the control levels achieved at area sources was limited. Because we had limited control information, we pointed to various control level data at major source facilities in the source categories of interest and we assumed that these major source controls were used at or were transferable to area sources. Multiple commenters pointed out that the control efficiency requirement in the proposal was too high and reflective of major sources only and was not consistent with the typical control efficiencies achieved for batch process vents at their area source facilities. Multiple comments provided information that the control efficiency at area sources was lower than the control levels achieved at major sources. Commenters stated that control efficiency at an area source is in the range of 81 percent to 95 percent. Commenters also noted that area sources use condensers and recovery systems with control efficiencies lower than 90 percent. Based on a revised cost analysis, which considers existing control devices and efficiencies, we have determined that the GACT control efficiency for existing batch process vents should be 85 percent. We estimated that 13 process units that will be subject to the emission limit for batch process vents in the final rule are not already controlled to at least 85 percent. The total annual costs to control the batch process vents in these process units are estimated to be $360,000 and the cost-effectiveness is estimated to be $8,500/ton organic HAP. We do not have sufficient information to estimate the number of process units that have batch process vents controlled to levels between 85 percent and 90 percent. Based on the comments, there may be many such processes. However, if there are as few as two such processes (*i.e.*, total of 15 process units controlled to less than 90 percent), the total annual costs are estimated to be $0.43 million/yr, and the incremental cost-effectiveness relative to the 85 percent control option is estimated to be $13,500/ton. This cost is unreasonable; therefore, we have determined GACT for batch process vents at existing sources is 85 percent control and not 90 percent control. We are finalizing the proposed requirements for batch process vents at new sources (90 percent control) because the estimated cost-effectiveness relative to uncontrolled vents is reasonable ($2,300/ton as proposed).

The commenters have provided no legal analysis in support of their request that we grandfather existing controls as suggested. However, given the change to the control requirements for batch vents, we believe we have resolved the commenters' concerns with the proposed rule and established final GACT standards that reflect the efficiencies generally available at area sources. We have not revised the GACT control efficiency for new batch process vents or new and existing continuous process vents because we continue to believe that the standards that we are finalizing are generally available and reasonable from a cost perspective.

Comment: Several commenters requested that the MON batch process vent definition be used to be consistent with the preamble, database, other regulations applicable to chemical manufacturing, and general industry practice. Another commenter requested exclusions from the definition for the following: Opening of a safety device, heating, ventilation, and air conditioning exhaust vents, storage tank vents, and wastewater treatment unit vents.

One commenter asked that EPA exclude emissions from bottles and other containers from the batch process vent definition. According to the commenter, emissions from these containers are negligible and controlling them was not considered in the rulemaking record, is not cost-effective, and does not reflect GACT.

Response: As noted in the response to a comment about subcategorization of batch process vents later in this section,

applicability and standards for control of batch process vents in the final rule are consistent with the MON. Therefore, the definition for the term ''batch process vent'' is very similar to the definition of this term in the MON. A key feature of this definition is that it cites examples of equipment with emissions that may be batch process vents, and it specifies types of streams that are not batch process vents. For example, the definition states that storage tanks, surge control vessels, and bottoms receivers do not have batch process vents (because they are classified separately and subject to separate standards). Process tanks, however, do have batch process vents. Process tanks collect material discharged from a feedstock storage tank or unit operation within the process, discharge the material to another unit operation or product storage tank, have emissions related to the characteristics of the batch cycle, and do not accumulate product over multiple batches.

Comment: Several commenters asked that 40 CFR 63.11496(a)(1) be revised to allow alternatives to the referenced emissions calculations procedures in 40 CFR 63.1257(d)(2)(i) of the Pharmaceuticals Production NESHAP because the referenced procedures are difficult, costly, and do not allow the use of historical information. For example, one commenter requested that area sources be allowed to use mass balances, other calculation methodologies published by EPA (such as AP–42 and control techniques guidelines), and other technically acceptable methods (otherwise, the commenter estimated that small sources would need to spend $5,000 to $10,000 for emission estimation software).

Two commenters encouraged EPA to allow use of the emissions calculations procedures in 40 CFR 63.1323(b) and (e) of the Polymers and Resins IV NESHAP. One commenter asked that calculation procedures in the Batch Alternative Control Techniques (ACT) document be allowed, and another commenter asked that area sources be allowed to use (1) engineering estimates (in accordance with 40 CFR 63.1257(d)(2)(ii)) for any calculation rather than only if the 40 CFR 63.1257(d)(2)(i) procedures do not apply, (2) existing emissions calculations developed for compliance with a State or Federal rule for batch process vents, and (3) procedures to back-calculate uncontrolled emissions using inlet HAP and VOC concentrations based on controlled outlet permit limits, control removal capability, or knowledge of HAP and VOC concentrations in the vent (if not indicated in permit).

Response: Emissions must be calculated to determine whether the batch process vents are in the subcategory of greater than or equal to uncontrolled emissions of 10,000 lbs/yr, which requires management practices and compliance with emissions limits and control requirements, or in the subcategory of less than 10,000 lbs/yr of uncontrolled emissions, which requires only management practices for the process. For the purpose of this determination at area sources, we have concluded that all of the methods suggested by the commenters to calculate uncontrolled emissions at area sources are acceptable. Having choices also reduces the burden on affected sources. Therefore, the final rule specifies that organic HAP emissions from batch process vents may be estimated using process knowledge, engineering assessments, or test data. The procedures specified in 40 CFR 63.1257 of subpart GGG, in the Polymers and Resins IV rule, or in the Batch ACT are classified as engineering assessments.

Comment: One commenter stated that the GACT analysis for batch process vents is flawed and inconsistent with rule applicability. The commenter noted that batch process vent control requirements should be on a process unit basis to better reflect the Agency's analysis, industry practice, and GACT. This commenter also stated that the control threshold of 19,000 lb/yr HAP emissions for batch process vents is GACT, but only if EPA adopts a process unit basis.

Another commenter asked that EPA sharply limit control requirements for process vents in order to achieve GACT. To do this, the commenter suggested limiting source applicability to a process unit basis, setting a threshold for control at 10,000 lbs/yr/process as in MON, and requiring only management practices for all affected process units below 10,000 lbs/yr/process.

Response: It appears the commenters are addressing the basis for the proposed subcategorization of batch process vents. As we noted in the preamble for the proposed rule, the CAA provides EPA authority to distinguish among classes, types or sizes of sources within a source category. For the proposal, we concluded that ''factors relating to the type of operation (high solvent use) and size of operation (based on the number of batches) provide a reasonable basis for subcategorization'' of batch process vents. The commenters did not address application of these factors directly, but they stated that control requirements should be applied on a process unit basis. The process unit construct is consistent with standards for batch process vents in several MACT standards. We have considered this point in response to comments on applicability and concluded that the factors we considered at proposal in support of our subcategorization determinations for the entire facility apply equally to individual CMPUs. Furthermore, as noted above, the affected source for the final rule is defined as the collection of specific CMPUs that use, generate, or produce Table 1 HAP rather than the entire chemical manufacturing operations. Therefore, for the final rule, we determined that establishing subcategories based on individual CMPUs is also appropriate.

For the proposal, we ''considered the relative emissions reduction and costs for the area sources in the category in determining the appropriate emissions level at which to subcategorize the batch process vents.'' Specifically, we established two subcategories based on whether the total organic HAP emissions from all batch process vents in the entire affected source are less than 19,000 lbs/yr or equal to or greater than 19,000 lbs/yr. One commenter stated that this threshold is reasonable, but only if it is applied to an individual CMPU. Another commenter suggested using a threshold of 10,000 lbs/yr per CMPU.

We considered both suggestions. We do not believe 19,000 lbs/yr per CMPU is appropriate because the 19,000 lb threshold was intended to represent emissions from multiple CMPUs, several of which may not be part of the affected source under the final rule because we changed the scope of the rule to cover only those CMPUs that emit one of the chemical manufacturing urban HAP. Based on the results of a survey of five facilities by one commenter, area sources have, on average, two CMPUs that use, generate, or produce Table 1 HAP. Facilities in the MON database with urban HAP emissions also had an average of two process units with urban HAP emissions. A threshold of 10,000 lbs/yr per process was also used in the MON and that provides indicia of the size of a CMPU because the MON applies to major sources of HAP. Furthermore, as discussed in the response to another comment in this section, the estimated costs to meet an 85 percent control requirement for existing CMPUs with uncontrolled organic HAP emissions equal to or greater than 10,000 lbs/yr are reasonable ($8,700/ton). Therefore, we have established two subcategories for

the final rule. One subcategory is for batch process vents with uncontrolled organic HAP emissions less than 10,000 lbs/yr per CMPU, and the other is for batch process vents with uncontrolled organic HAP emissions equal to or greater than 10,000 lbs/yr per CMPU.

Comment: Three commenters suggested that the definition of ''continuous process vent'' should be consistent with the definitions in other rules such as the HON, MON, and/or Generic MACT (40 CFR part 63, subpart YY). One commenter requested this change because the proposed definition does not reflect the description given in the preamble, the supporting analyses, the rulemaking database, industry practice, or other chemical industry regulations. Another commenter requested that definitions for items that are exempted from the definition of ''continuous process vent'' such as ''relief device or valve'' and ''equipment leak'' be added to the rule.

Response: The final rule includes a definition for ''continuous process vent'' that is consistent with the definition of ''process vent'' in 40 CFR 63.101 and 40 CFR 63.107 of the HON. Terms or items in the definition mentioned by the commenters have the same meaning given in the HON.

Comment: One commenter recommended that small continuous process vents (*i.e.,* <0.1 lb/hr and <800 lbs/yr) be exempt from requirements to calculate a TRE value because the commenter estimated that the lowest TRE index for a HAP emission stream with these characteristics would be 30 or higher. Another commenter estimated the burden of establishing the variables needed to calculate the TRE index to be at least 4 hours per process vent.

Response: We have considered this issue and determined that, at an emission rate of 0.1 lb/hr, the TRE will be well above 1.0 regardless of other characteristics of the stream (*e.g.,* type of HAP, HAP concentration, and ratio of HAP to total VOC). The minimum TRE is obtained for streams with high concentrations of organic compounds. For streams containing common non-halogenated HAP (*i.e.,* benzene, toluene, and/or methanol), the lowest TRE values were determined to be between 16 and 30. As the concentration of these HAP decreases (due to increased air and other VOC in the emission stream) the TRE increases, typically to values above 30, as noted by the commenter. For streams with the halogenated compound methylene chloride, the minimum and typical TRE values were determined to be over 80. Therefore, to minimize the burden of characterizing streams, the final standards specify that calculation of the TRE is not required if the organic HAP emission rate is less than 0.1 lb/hr. We did not include a corresponding annual mass limit (*i.e.,* 800 lbs/yr, which is approximately equal to 0.1 lb/hr venting continuously for an entire year) because the TRE varies with changes in the operating hours per year. For a process that operates only a few weeks during the year, emissions of 800 lbs could result in a TRE less than 1.0.

Comment: One commenter stated that the impacts analysis for batch process vents is unrealistic and incomplete. According to this commenter, a more appropriate cost evaluation would include several batch vents per process, several processes per site, and either multiple control devices or expensive collection systems. In addition, the commenter stated that the cost analysis for incinerators should include the cost of halogen scrubbers when halogenated organics (*e.g.,* methylene chloride) are controlled in the incinerator. The commenter further stated that more widespread use of combustion devices in place of or in addition to existing scrubbers and condensers would be needed to meet the facility-wide 90 percent reduction requirement. Even if existing controls are grandfathered, the commenter stated all sites with emissions in the subcategory subject to control would incur costs to meet performance test, monitoring, recordkeeping, and reporting requirements.

One commenter stated that the impacts analysis for continuous process vents must include costs associated with existing controls, including control upgrades, performance tests, monitoring, and recordkeeping and reporting. Even with grandfathering of controls, all continuous process vents with TRE ≤1.0 would have to meet performance test, monitoring, and recordkeeping and reporting requirements.

Response: We have reevaluated the costs for control of batch process vents because the final rule applies to a smaller affected source than the proposed rule. We have also reevaluated the costs because the analysis in the proposed rule did not account for facilities that are achieving some level of control, but less than the required percent reduction. As stated above, we have also redefined GACT as 85 percent control for existing batch process units (90 percent for new units) that have uncontrolled organic HAP emissions equal to or greater than 10,000 lbs/yr, and our cost analysis at proposal was based on 90 percent control for batch process vents subject to emission limits.

In reevaluation of the costs, we concluded that information regarding the number of CMPU per area source, the number of CMPU with emissions of chemical manufacturing organic urban HAP, the fraction of total organic HAP emissions from batch process vents in process units with chemical manufacturing organic urban HAP, the typical control levels, flow rates, concentrations, operating hours, and other relevant data are either lacking or limited. Therefore, information from the baseline facility database from development of the MON was extrapolated to area sources. Details of this revised analysis are in the docket, but a summary of the analysis is set forth below.

We estimated that four facilities have uncontrolled batch process vent emissions from one CMPU with emissions greater than 10,000 lbs/yr per process. Another seven facilities have an estimated one or two CMPUs per facility with batch process vent emissions (for a total of nine CMPUs at the seven facilities) controlled to some level less than 85 percent. Information available to EPA indicates that each CMPU at the remaining facilities that have chemical manufacturing organic urban HAP emissions have uncontrolled batch process vent emissions less than 10,000 lbs/yr.

Based on this analysis, we estimated that the capital cost to add controls for the 13 CMPUs at 11 facilities that do not meet the 85 percent standard is $390,000, and the annual cost is $370,000/yr. These costs are based on the use of condensers. We do not believe incinerators will be needed, as suggested by a commenter, because the final standards apply to individual CMPUs (rather than facility-wide), and the required control for existing batch process vents (85 percent) can be averaged over all batch process vents within the CMPU. Because the analysis is based on the use of condensers, halogen reduction devices are not needed and have not been included in the analysis. Costs for performance tests (or design evaluations), monitoring, recordkeeping, and reporting are included in the final information collection request, not this cost analysis. The estimated HAP reductions are 43 tpy (versus 45 tpy at proposal). Thus, the cost-effectiveness is $8,700/ton of organic HAP reduced, which we consider to be reasonable for GACT.

For continuous process vents, we have not changed the cost impacts to include control equipment upgrades. Typically, if a continuous process vent is controlled in the absence of a regulatory driver, the vent has relatively

large emissions. We anticipate that such controls will be achieving the required 95 percent reduction requirement. Performance test, monitoring, recordkeeping, and reporting costs are estimated in the information collection request. We have updated these costs in two ways. First, we increased the number of affected facilities that must conduct initial and ongoing compliance to include facilities with controlled continuous process vents. Second, we increased the percentage of facilities that will conduct design evaluations instead of performance tests because the final rule allows design evaluations for all control devices used to reduce emissions from continuous process vents. Monitoring, recordkeeping, and reporting costs are minimal in the current information collection request because it covers only the 3 years after the promulgation date. Most existing sources will not be in compliance during this time because the compliance date is 3 years after promulgation. Subsequent information collection requests will have higher costs for these activities.

3. Metal HAP Process Vents

Comment: Several commenters recommended that EPA apply the threshold for control on a vent basis rather than facility-wide because the commenters interpreted the impacts analysis as applying to model plants where all emissions were assumed to come from a single vent and routed to a single control device. Two commenters noted that, unlike organic HAP, particulate-containing emission streams can be ducted only small distances. Numerous commenters recommended using the proposed 400 lbs/yr threshold for control rather than the alternative proposed threshold of 100 lbs/yr because the incremental cost to lower the threshold from 400 lbs/yr to 100 lbs/yr is unreasonable at an incremental cost-effectiveness of $33,660 per ton of particulate and $442,000 per ton of metal HAP.

Response: After careful consideration, we have decided to set the threshold for the subcategory of metal HAP process vents that are subject to emission limits of 95 percent reduction at the proposed level of 400 lbs/yr, for each CMPU that emits a Table 1 metal HAP (not the entire facility, as proposed). We selected the CMPU basis rather than the proposed facility-wide basis for the same reasons as for organic HAP process vents (see response above), although we estimate that a higher percentage of facilities that emit Table 1 metal HAP subject to this control requirement have only a single process that emits metal HAP, which means the affected source on a CMPU basis under the final rule may be the same as the facility-wide affected source under the proposed rule.[9] For example, the four largest emitters all make electrolytic manganese dioxide. Even if these facilities make the product in multiple processing ''lines,'' they have only a single CMPU under the rule because a CMPU is defined based on the product produced. Many other facilities make inorganic pigments, catalysts, or animal feed products. These facilities likely make a number of products with slight variations that are grouped in ''families'' that qualify as a single CMPU under the rule. For example, these manufacturers may make a variety of similar products that differ only in the form or purity of the final product (such as powders versus pellets), or the animal feed products may differ only in the specific mix of additives. But in each case, the metal HAP feedstock is the same, the processing steps and emissions are comparable, and the end-use or functionality of each product is the same; therefore, the activities would all be part of a single CMPU under this rule.

As we stated above, the final rule requires consideration of emissions from all vents associated with a CMPU when determining if the threshold for the 400 lbs/yr or greater subcategory is exceeded. We did not base the threshold for the subcategory on the emissions levels from individual vents because the CMPU may emit metal HAP from a number of different steps such as roasting, calcining, grinding, blending, drying, and packaging. The end result of basing the emission rate threshold on a vent basis would be to drastically reduce the urban HAP emission reductions under the rule.

Under the final rule, we estimate that up to 3 of the 30 facilities with uncontrolled metal HAP emissions greater than 400 lbs/yr on a facility basis may not be part of the subcategory when the threshold is applied on a CMPU basis.

In the preamble to the proposed rule, as part of our subcategorization discussion, we determined that the level of metal HAP emissions from the vents is a function of the purpose for which the metal HAP is present in the process. We found that emissions varied according to whether the metal HAP were intended to be incorporated into the product of the chemical manufacturing process and that metal HAP emissions from those types of facilities were generally larger where the metal was incorporated into the product. We also identified some vents that emit larger amounts of metal HAP, even though the metal HAP is not incorporated into the final product, and we determined that, in those circumstances, there were likely higher metal HAP emissions because of the large size of the facility or because the facility is using raw materials and/or fuel with higher levels of metal HAP impurities. We concluded that it was appropriate to base the subcategory on the amount of emissions of metal HAP from the process vents as a proxy for the type and size of the vent. In determining the appropriate emissions level, we considered relative emissions reductions and costs to the affected area sources and co-proposed subcategorizing based on either 100 lbs/yr or 400 lbs/yr of metal HAP emissions. We received no adverse comments on the proposed subcategorization approach.

The preamble to the proposed rule stated that costs for both the 100 lbs/yr and 400 lbs/yr thresholds are comparable to costs for PM control in other area source rules and for mobile sources. However, as noted above, numerous commenters stated that the incremental costs do not justify the 100 lbs/yr threshold and recommended selecting the 400 lbs/yr threshold. We recognize that the incremental cost for PM would be at the high end of the range of costs for other area source rules. The high incremental cost-effectiveness reflects a small incremental PM reduction (40 tpy from 25 facilities), and, in regards to the basis for the subcategory, the 400 lbs/yr level indicates a much higher emission potential (*i.e.,* size of facility) and we have decided that the 400 lbs/yr threshold best defines the subcategory. We received no adverse comments on the proposed 400 lbs/yr threshold.

4. Storage Tanks

Comment: Two commenters asked that the storage tank requirements be based on the organic HAP partial vapor pressure instead of the VOL vapor pressure, as specified in 40 CFR part 60, subpart Kb because it is the HAP that are subject to standards.

Response: Most rules in 40 CFR part 63 (*i.e.,* NESHAP rules) establish MTVP thresholds for total organic HAP because HAP is the regulated pollutant.

[9] We assumed at proposal that facilities emitting Table 1 metal HAP would generally have one process so the change of affected source from the facility to the CMPU does not require us to reevaluate our subcategorization determination as with the change in batch process subcategories. The factors we considered in establishing the subcategories for metal HAP process vents at proposal still apply under this final rule.

This area source rule also regulates only HAP. As with the other rules, we intended to base the MTVP thresholds in the proposed rule on organic HAP, but we inadvertently neglected to override the provisions in the referenced section of 40 CFR part 60, subpart Kb that specify the threshold is based on the MTVP of the entire VOL. We have corrected this error in the final rule. Table 5 to the final rule specifies all applicable thresholds, and each MTVP threshold is based on the organic HAP vapor pressure.

Comment: Several commenters requested that the definition of ''storage tank'' be changed to match the language in the preamble to the proposed rule and/or definitions in MACT rules. Specific requested changes included: (1) Exclude wastewater storage because wastewater storage tanks are included under the wastewater provisions (similar to other MACT standards); (2) exclude bottoms receivers and surge control vessels because these vessels are typically used in the chemical industry as process vessels; (3) exclude process tanks to be consistent with language in the MON; (4) exclude waste tanks because they are ancillary to the process and are typically subject to regulation under the Resource Conservation and Recovery Act (RCRA) (40 CFR Parts 264/265 and Subpart BB); and (5) limit the definition to tanks that store liquid that contains any of the urban HAP listed in Table 1 to 40 CFR part 63, subpart VVVVVV, not all HAP.

Response: We have considered the comments and determined that using similar definitions across the multiple standards is appropriate. The definition in the final rule is consistent with the preamble and definitions in the MON, the HON, and the Pharmaceutical MACT. The definition of ''storage tank'' in the final rule excludes tanks storing organic liquids containing HAP only as impurities. It excludes process tanks because these tanks are subject to the process vent standards. Wastewater tanks are excluded from the definition of ''storage tank.'' It also excludes surge control vessels and bottoms receivers because these vessels are associated with continuous process operations; note, however, that, as in the proposed rule, they are subject to the same standards as storage tanks (*i.e.,* all are subject to management practice requirements, and controls are required for those that contain Table 1 HAP and meet the same size and MTVP thresholds specified for storage tanks).

Comment: Several commenters asked that the rule include alternative storage tank control options such as vapor balancing, the procedures specified in 40 CFR part 63 subparts WW and SS, and the procedures specified in the Consolidated Federal Air Rule (CAR) (40 CFR part 65, subpart C).

Response: Vapor balancing is a technique whereby the vapor space of the storage tank is connected to the vapor space of a tank truck or railcar that contains liquid that will be transferred to the storage tank. As liquid from the tank truck or rail car is transferred to the storage tank, vapors displaced from the storage tank are routed back to the tank truck or railcar. This technique has been determined to provide at least equivalent reductions in HAP emissions as the use of an internal or external floating roof or routing displaced vapor to a control device, provided several conditions are met: (1) The tank vent pressure setting must be high enough to prevent breathing losses, (2) the tank truck or railcar must be vapor tight, and (3) the tank truck or railcar cleaning or reloading facility must also vapor balance or route the collected vapors to a control device.

The tank vent pressure setting must be high enough to prevent breathing losses because vapor balancing controls only the working loss emissions that are generated by filling the tank. As discussed in the preamble to proposed amendments to 40 CFR part 63, subpart GGG (69 FR 19161, April 10, 2000), we determined that a setting of at least 2.5 lbs per square inch gage will eliminate breathing losses from tanks.

If a system is leak-tight and very little or no air is drawn into the system to become saturated with HAP, a source of emissions is essentially eliminated. To ensure that the tank truck or rail car is vapor-tight, the vapor balancing provisions in MACT rules (*e.g.,* 40 CFR 63.1253(f) of the Pharmaceuticals Production NESHAP) require tank trucks and railcars to have a current certification in accordance with the U.S. Department of Transportation pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars. To further ensure the system is leak tight, the vapor balancing provisions in MACT rules require that pressure relief devices on the storage tank and the railcar or tank truck from which the storage tank is filled shall not open during loading. To ensure that the applicable emission limit is met, vapor balancing provisions in MACT rules require that the cleaning or reloading facility shall implement vapor balancing when filling the tank truck or railcar or the tank truck or railcar shall be connected to a closed-vent system with a control device that reduces emissions by the required amount. Because GACT for storage tanks in the subcategory of larger tanks storing liquids with higher vapor pressures for which an emission control device is required at chemical manufacturing area sources is equivalent to the NESHAP requirements applicable to MON and HON facilities, we determined that vapor balancing requirements of the MON and HON also achieves HAP emission reductions at least equivalent to the emission reductions required by the standards set forth in this final rule. Therefore, the final rule allows vapor balancing in accordance with the provisions in 40 CFR 63.2470(e) of the MON as a compliance option for storage tanks at chemical manufacturing area sources.

Subpart WW in part 63 includes design, operational, and inspection requirements for internal and external floating roofs that are comparable to the GACT requirements that are based on 40 CFR part 60, subpart Kb. The primary difference between the two subparts is that subpart WW allows up to 10 years to come into full compliance with seal and deck fitting control requirements if the tank is currently equipped with a floating roof that does not meet these requirements. In the preamble to the final Gasoline Distribution Area Source NESHAP (40 CFR part 63, subpart BBBBBB) (73 FR 1926, January 10, 2008), we determined that the requirements in subpart WW are equivalent to the GACT requirements that were based on subpart Kb for gasoline distribution facilities. Since the GACT requirements for chemical manufacturing area sources are also based on subpart Kb requirements, implementing the subpart WW requirements at chemical manufacturing area sources also will achieve HAP reductions that are at least equivalent to the HAP reductions resulting from implementing the subpart Kb requirements. Therefore, the final rule allows compliance with subpart WW as an alternative compliance option, but without the 10 year compliance period. All storage tanks must be in full compliance by the relevant compliance date, as set forth in this final rule.

40 CFR part 63, subpart SS contains provisions for flare and non-flare control devices that are comparable to the requirements for control devices in 40 CFR part 60, subpart Kb. For example, both require the closed-vent system to operate with no detectable emissions as indicated by an instrument reading less than 500 parts per million (ppm) above background and visual inspections; subpart SS may even be more stringent in that it requires bypass monitoring and it specifies how frequently to conduct both instrument and visual inspections. Both subpart Kb

and subpart SS require the owner or operator to demonstrate initial compliance based on a design evaluation, although subpart SS provides more details of what to consider in the design evaluation, and subpart SS explicitly allows performance test results as a means to demonstrate initial compliance. Both subpart Kb and subpart SS also require the owner or operator to develop and operate in accordance with an operating or monitoring plan that specifies what parameter(s) will be monitored to demonstrate ongoing compliance with the percent reduction emission limit. Based on these similarities, we have determined that compliance with subpart SS will achieve HAP emission reductions at least equivalent to the reductions achieved by compliance with subpart Kb. Therefore, the final rule allows compliance with subpart SS as an alternative compliance option.

The CAR was developed as an alternative for facilities to comply with a single rule in place of a variety of different new source performance standards (NSPS) and NESHAP rules. We do not think it is appropriate to allow compliance with the CAR as an alternative for area sources subject to this final rule because 40 CFR part 60, subpart VVVVVV is the only NESHAP that applies to most chemical manufacturing area sources. While we are not including compliance with the CAR as an option, the final rule includes provisions that allow an owner or operator to comply with the most stringent requirements from both an overlapping rule and the final subpart VVVVVV as a means of demonstrating compliance with the final rule.

Comment: Two commenters stated that EPA significantly underestimated the number of storage tank controls that will be required and, thus, the capital cost and burden. Based on their review of Docket Document EPA–HQ–OAR–2008–0334–0008, the commenters concluded that EPA only considered controls for tanks storing urban HAP. However, as drafted, the proposed rule requires control of all storage vessels at a site meeting the size and vapor pressure criteria and storing any material containing any HAP above impurity levels.

Response: As discussed above, the final rule applies only to storage tanks that are part of a CMPU in the affected source and that contain a chemical manufacturing organic urban HAP. Although management practices are required for all storage tanks that are part of an affected CMPU, add-on controls are required only for tanks that meet specified size and organic HAP vapor pressure thresholds. Many of these tanks are likely already subject to 40 CFR part 60, subpart Kb and already in compliance. We believe that the number of tanks that will be subject to the control requirement applicable to the subcategory for large storage tanks under the final rule is consistent with the proposed impacts analysis.

5. Wastewater

Comment: Numerous commenters requested changes to the definition of ''wastewater'' to clarify which streams are included and to limit the scope of the term. Each of the commenters requested one or more of the following changes: (1) Clarify that wastewater streams are water that is discarded from the CMPU or control device (or, alternatively, the chemical manufacturing operations), not from the affected source; (2) specify that the water must contain PSHAP, not any HAP listed in Table 9 to 40 CFR part 63, subpart G; (3) specify that wastewater must be at least 50 percent water or ''primarily'' water; (4) include flow and HAP concentration thresholds; (5) identify types of water streams that are not considered wastewater, as in the preamble to the proposed rule and previous MACT rules; and/or (6) make the definition consistent with the definition of wastewater in previous MACT rules.

Response: We have considered the comments and decided that using similar definitions across the multiple standards is appropriate. The definition in the final rule includes most of the suggestions made by commenters and is consistent with definitions in the MON and the HON. However, the definition does not include a minimum water percentage. As in the HON and other NESHAP, EPA intends to regulate as wastewater any stream that: (1) Exits process unit equipment; and (2) meets the concentration and flow rate criteria that are specified in the definition because such wastewater streams have a significant potential for emissions and should, therefore, be regulated.

Comment: One commenter noted that the solubility in water of some PSHAP is greater than 10,000 ppmw. Therefore, the commenter requested that decanting not be required if no separable organic phase is present in the wastewater stream.

Response: Based on the comments and our additional analysis, we have determined it is appropriate to redefine the subcategories of wastewater. Specifically, we are amending the subcategories to account for wastewater that has 10,000 ppmw or greater concentration of PSHAP but does not have a water phase and an organic phase. In the proposed rule, we determined that removal of the organic layer by gravity separation was GACT, but gravity separation is not feasible for wastewater that does not contain separate organic and water phases. Under the final rule, we are establishing one subcategory based on both the PSHAP concentration of 10,000 ppmw or greater and the presence of a separate organic phase. Wastewater with a PSHAP concentration of 10,000 ppmw or greater, but without a separate organic phase, and wastewater with a PSHAP concentration of less than 10,000 ppmw represent the other subcategory.

As in the proposed rule, we have determined that GACT is removal of a separate organic layer by gravity separation when the PSHAP concentration exceeds 10,000 ppmw and there is a separate organic phase. The treatment requirements in the final rule for both the organic and wastewater phases are consistent with the requirement set forth in the proposed rule.

Comment: Several commenters requested additional compliance options for streams that contain more than 10,000 ppmw PSHAP, particularly for wastewater that is collected for shipment offsite for treatment or disposal. For example, one commenter recommended that decanting be required only when the aqueous phase will be sent to on-site or offsite treatment, but facilities should not have to separate a free organic phase from wastewater that is managed in recycle, energy use, or hazardous disposal operations that either have integral organic phase separation or do not require such separation before recycle, energy use, or disposal. Another commenter stated that wastewater sent to a permitted wastewater treatment facility (such as a publicly owned treatment works (POTW)) should be exempt. Another commenter stated that separation should not be required for wastewater collected for shipment offsite to be treated by a RCRA-permitted hazardous waste incinerator, a POTW, or oil recycling operations. According to one commenter, the rule should allow both direct piping to biological treatment and combustion of the entire stream without separating out the water phase, and another commenter added that combustion should be allowed for streams that contain small amounts of water relative to the organic phase. One commenter also noted that other separation techniques, such as stripping or distillation, may be more effective than

decanting, and some oil-water separators do not rely on the principle of gravity.

Response: The final rule contains provisions for alternative control of organic HAP from streams with >10,000 ppmw PSHAP. The final rule allows: (1) Several separation techniques; (2) hard piping to an on-site hazardous waste treatment unit; or (3) shipment offsite for any similar treatment. These compliance options are included in Table 6 of the final rule and provide at least equivalent emission reductions. The other alternatives cited by the commenters may not provide at least equivalent emission reductions as the final rule and, therefore, we are not including them in the final rule.

Comment: One commenter argued that the proposed requirements for wastewater streams that contain >10,000 ppmw of PSHAP are not GACT because the actual costs are significantly higher than EPA estimated. According to the commenter, EPA's impacts analysis omitted the cost to determine the partially soluble HAP concentration in each wastewater stream, which ranged from 10 to 250 streams per facility at facilities the commenter surveyed.

Response: In the burden analysis for the information collection requirements for the proposed rule, we estimated compliance demonstration costs assuming that all area sources with organic urban HAP would have wastewater. We also assumed that a typical area source would spend 20 hours characterizing the wastewater (*e.g.,* based on knowledge of the wastewater), and that 50 percent of the facilities would conduct sampling and analysis for an average of 10 streams. The cost of analysis was assumed to be $435. The total cost was estimated to be $169,400 per year for characterizing the streams according to process knowledge and $210,400 per year for sampling and analysis.

For the final burden estimate, we believe the number of streams will be lower than the 10 estimated at proposal because only those wastewater streams that are discarded from a CMPU that uses, generates, or produces chemical manufacturing organic urban HAP are part of the affected source for the final standards. According to one commenter, the average number of points of determination for five surveyed facilities is approximately two wastewater streams per process. We are estimating two CMPUs per facility and 2 points of determination per CMPU for a total of four process streams per facility.

The final rule allows PSHAP concentration to be determined based on either process knowledge or sampling and analysis. We assumed that 50 percent of facilities would perform sampling and analysis and the other 50 percent would rely on process knowledge. For the process knowledge approach, we assumed 20 hours of in-house labor per facility at a total cost of $1,750, as in the proposed analysis. However, we corrected an error in the proposed analysis and applied this cost to only 50 percent of the facilities rather than all of them for the final rule. For the sampling and analysis approach, we assumed $435 per sample for analysis and 20 hours of time for a contractor ($125 per hour labor rate) to collect one sample per wastewater stream per facility; thus, the total cost of this approach is estimated to be $4,240 per year per facility. We assumed one sample per stream because one sample would be sufficient to meet the compliance requirements. The estimate of 20 hours at $125 per hour is based on a commenter's estimate for retrieving four samples. One commenter noted that the cost of triplicate analysis is approximately $885. Assuming that the average cost per sample is not based on the number of samples, the cost on a per sample basis would be $295. We retained the $435 sampling cost used at proposal for consistency and to be somewhat conservative in our estimate.

The total respondent burden for the final wastewater standards was estimated to be $84,700 per year for characterizing the streams according to process knowledge and $205,100 per year for sampling and analysis, which we believe is reasonable. The overall respondent burden for wastewater streams has decreased by $90,000 from proposal to the final standards.

Comment: According to several commenters, decanting is not justified for small streams, given the expense of the equipment and the small potential benefit. For example, one commenter indicated the capital and operating cost for a facility could exceed $100,000 while achieving only minimal emissions reductions because of low throughput or low volatility of the HAP. Another commenter requested that streams containing up to 200 lbs/yr of PSHAP be excluded from the decanting requirement.

One commenter stated that small streams that contact only highly insoluble materials and streams that are excluded from the definition of wastewater in other rules should not be subject to the treatment requirement because such streams are not currently treated, the cost and burden to treat such streams were not considered in the rulemaking record and, therefore, treatment for all streams cannot be GACT.

Response: The revised definition of wastewater clarifies the types of water discharges that are wastewater. With the changes to the final rule for wastewater systems, we do not agree that our cost estimates are in error and that there will be additional costs incurred to meet the treatment requirements in the final rule.

Comment: Several commenters objected to the proposed maintenance wastewater requirements and stated that the wastewater requirements should be limited to process wastewater. One commenter stated that the proposed requirement to decant the organic phase from maintenance wastewater is particularly problematic because maintenance wastewater is often generated in small volumes and collected in various vessels prior to on-site or offsite energy recovery, reuse, or recycling. The maintenance wastewater is not discharged directly into an individual drain system. The commenter pointed out that decanting these streams first would add a second transfer step, which would increase the emissions potential relative to the current operating practice.

Response: By adding the compliance options discussed above, we have addressed industry concerns regarding wastewater generated in small quantities, wastewater that is reused or recycled, and wastewater shipped offsite. For example, instead of requiring only decanting, the final rule allows an owner or operator the alternative to collect a small wastewater stream and send it to an offsite hazardous waste treatment facility. This option applies to maintenance wastewater as well as to process wastewater. Considering the requirements of the final rule, we see no reason to distinguish between a process wastewater stream and a maintenance wastewater stream.

6. Transfer Operations

Comment: One commenter stated that the data and analysis supporting the proposed rule demonstrate that the controls currently in place at chemical manufacturing area sources are already GACT and that no additional requirements are justified. The commenter indicated the rule should be revised to incorporate criteria that reflect the submerged fill or equivalent controls currently in place and should impose no additional requirements. This commenter also stated the management practice requirements that are based on requirements for transfer at gasoline distribution facilities should be deleted. According to the commenter, these requirements generally are not

GACT (because they impose significant cost but achieve no emission reduction), are unclear, and conflict with other requirements and regulations. The commenter provided labor hour estimates for the various management practice tasks and estimated that the total cost would be more than 10 times higher than EPA estimated.

Response: As discussed in section III of this preamble, the management practice requirements have been revised in the final rule to better reflect what is generally available for these categories. Upon review of the comments, we recognized that the proposed management practice requirements were redundant for CMPU with both batch and continuous process vents because the proposed requirements for both emission points applied to all process equipment. In this final rule, the various proposed management practices for process vents, equipment leaks, transfer operations, and storage tanks were consolidated and simplified into one comprehensive set of management practices that are applicable to each affected CMPU. The comprehensive management practices in the final rule include requirements to equip each vessel with a cover or lid that must be in place when the vessel contains HAP (except for material addition and sampling) and to conduct sensory inspections for leaks throughout each affected CMPU on a quarterly basis. The proposed inspections for equipment leaks are included without change in the final management practice requirements, but the final rule also requires comparable inspections for leaks from process equipment in a CMPU (*e.g.,* reactors, distillation units, process tanks) and for storage tanks that are part of a CMPU and that store liquid that contains any Table 1 organic urban HAP.

For transfer operations, we retained in the final rule the requirement to use submerged/bottom filling or other controls for all loading of tank trucks and railcars (excluding reactive and resinous materials). As the commenter noted, the combination of these loading procedures and process unit-wide management practices is consistent with operation at most area sources and has been determined to be GACT, unlike the proposed requirements that were based on the requirements in the gasoline distribution rule. Therefore, the final standards generally do not impose many additional requirements except for the few facilities that may not already be implementing these procedures. Although emissions from transfer operations are less than emissions from other emission points at chemical manufacturing area sources, we believe that the reason for this is, in part, that most facilities are implementing submerged loading or other control techniques. The standards ensure that these practices continue.

Comment: Three commenters requested that the submerged (and bottom) fill requirement be deleted for transfer of resins because of operational and safety concerns. One commenter noted that resins can stratify and some of the layers formed might be flammable. Another commenter noted that submerged fill may be dangerous for certain resins and polymers, particularly those that contain styrene. The third commenter noted that the Amino and Phenolic Resins NESHAP (40 CFR part 63, subpart OOO) has no requirements for transfer of resins because EPA determined that the resins contain insignificant quantities of HAP and are not cost-effective to regulate. One commenter also requested an exemption from the submerged/bottom loading requirement for loading of all reactive, viscous, and sticky materials due to safety concerns, the fact that such procedures are not general industry practice, and because past efforts have shown the liquids stick and sometimes harden in the fill pipe, resulting in a significant expense to replace the fill pipe and dispose of the hardened material as a RCRA hazardous waste.

Response: In response to commenters concerns, we reevaluated types of liquid transfers to determine GACT for transfers of the types of materials described by the commenters. We determined that submerged loading is not a generally available industry practice for transferring reactive or resinous materials for the reasons articulated by the commenters. To address this issue, the final rule specifies that submerged or bottom loading is not required for reactive or resinous material. However, transfer operations associated with these materials must comply with the other management practices.

7. Heat Exchange Systems

Comment: One commenter stated that EPA should regulate cooling towers where process fluid contains not less than 5- or 10-percent HAP to keep applicability consistent with historic LDAR applicability criteria and to minimize burden. Other commenters stated only re-circulating cooling towers serving process heat exchangers containing 5 percent by weight organic HAP that could leak into the water should be subject to cooling tower requirements.

Two commenters requested EPA clarify whether ''once-through'' cooling systems, comfort cooling towers, or other non-process cooling towers are excluded. These commenters suggested that exemptions in the HON under 40 CFR 63.104(a) be included in the rule, with some modifications, and that the exemptions apply to all cooling towers, not only those with >8,000 gal/min circulation rates.

Response: Although the proposed rule used the term ''cooling tower'' systems, we intended it to mean ''heat exchange'' systems as is consistent with the HON. Furthermore, the language in item 5.b of Table 2 to the proposed rule required affected sources to comply with the requirements contained in 40 CFR 63.104(a)(1) through (6) of the HON. That provision listed systems that were not subject to the proposed rule (*i.e.,* systems with cooling water side pressure that is at least 35 kPa greater than the process side, systems with intervening fluids with <5 weight percent total HAP, systems used to cool process fluids containing <5 weight percent HAP [as specified in Table 4 of 40 CFR part 63, subpart F for recirculating systems, and as specified in Table 9 of 40 CFR part 63, subpart G for once-through systems], and once-through systems that meet specified National Pollution Discharge Elimination System permit requirements).

Therefore, the final standards for heat exchange systems apply to all heat exchange systems that are part of the affected source and that do not meet conditions in 40 CFR 63.104(a) of the HON. The heat exchange systems covered by the final rule are also exactly the same as the cooling tower systems we intended to cover under the proposal and on which our cost and emission reduction estimates were based.

While a commenter noted that once-through systems are exempted in the HON, it should be noted that the HON covers both recirculating and once-through heat exchange systems under the 40 CFR 63.104 heat exchange system requirements. Consistent with the proposal, the final rule applies to once-through cooling waters in accordance with 40 CFR 63.104(a).

We believe that control of once-through heat exchanger cooling systems is appropriate for several reasons. Emissions of volatile HAP occur readily from open water sources. While the stripping process may not be as fast as in a cooling tower, once-through cooling water will have a much longer exposure to the atmosphere than a system with a cooling tower. While the emissions may occur over a longer time period, all

available scientific evidence and fate modeling studies of open water systems leads us to conclude that essentially all volatile HAP will be released into the atmosphere. Therefore, we see no reason why HAP leaks from heat exchange systems into once-through cooling water should be treated any differently than HAP leaks from heat exchange systems that have cooling towers.

For the final rule, we clarify that heat exchange systems are part of the affected source and specifically address once-through cooling systems. We have included a definition of ''heat exchange system'' as in the HON. These changes clarify the applicable requirements and also clarify that comfort cooling towers and any other non-process cooling towers are not subject to standards.

Comment: Two commenters stated that the management practice requirement for systems with <8,000 gal/min circulation rate should be clarified. These commenters requested that area sources be allowed to sample to determine if indications of a leak identified by an inspection actually reflect a leak that is large enough to justify a costly repair or a process shutdown. Because § 63.104(b) of the HON defines a leak as 1 ppm, and this level was also used in the impacts analysis for the proposed standards, the commenters requested that area sources be allowed to determine if this condition is met before being required to repair after an inspection reveals indications of a leak.

Response: The final rule specifies that the owner or operator must either eliminate indications of a potential leak or demonstrate that the HAP concentration in the cooling water does not constitute a leak, as defined in 40 CFR 63.104(b)(6). If the concentration threshold is not met, the system is assumed not to be leaking, and no other requirements apply for that inspection cycle. We believe this is appropriate because HAP may be inadvertently introduced to the heat exchange system in ways other than through a leak. Requiring the facility to cease operations based on minimal HAP present is not GACT as it would create considerable cost with virtually no HAP reductions. In addition, an alternative has been added for small heat exchange systems to allow compliance with the same requirements that apply to large heat exchange systems instead of the requirements that would otherwise apply to the small heat exchange system.

Comment: One commenter stated the costs estimated for the cooling tower requirements are significantly underestimated and suggested several specific revisions to the cost analysis involving the number of cooling towers per site, number of samples to be collected, operator sampling time, and sample analysis costs. Specifically, commenters suggested that EPA should: Assume two cooling towers per site; assume four samples per quarter for Options 2 and 3 because many cooling towers have several return headers that each must be monitored and because both inlet and outlet monitoring will be required for many cooling towers to account for organic cooling tower additives, heavy HAP and soluble HAP which build up in the system; operator sampling time should be 1 hour under Options 2 and 3; sampling of total hydrocarbons or surrogate species costs $200 to $400 per sample under Option 2; sampling for HAP speciation requires multiple samples or gas chromatography/mass spectroscopy for $300 to $800 per analysis; HON procedures require triplicate samples; and add cost associated with check samples and identifying the source of the leak.

Response: We have made several revisions to the costs based on comments and to correct omissions at proposal. While commenters suggested that there are two cooling towers at each facility, after limiting the affected source to CMPUs and associated heat exchange systems and wastewater systems that use, produce, or generate chemical manufacturing urban HAP, it is likely that area sources have one cooling tower (or heat exchange system) in the affected source. Option 1 in both the proposed and final analyses is a quarterly sensory inspection and leak repair program, and Option 2 consists of the requirements for surrogate monitoring and leak repair in 40 CFR 63.104(c) of the HON. As discussed in section III.B.2.f of this preamble, the Option 1 requirements were determined to be GACT for small heat exchange systems, and the Option 2 requirements were determined to be GACT for large heat exchange systems.

For the final Option 2 cost analysis, we increased the number of quarterly samples as suggested by one commenter, *i.e.,* increased the number to be taken from one sample to three samples, given that some operators will monitor the heat exchange exit stream before the outlet cooling water is manifolded with other streams. We included a 1-hour sampling time for Option 2, as suggested by a commenter. We also revised the recordkeeping time to 1 hour per quarter for both Options 1 and 2 because the type and amount of information to be recorded are comparable under the two options. We inadvertently omitted the labor costs to conduct the quarterly sensory inspections for Option 1 at proposal and have included those cost estimates in the final analysis.

We did not incorporate other suggested changes from the commenters in the final impacts analysis. One suggestion was to incorporate costs for identifying the specific source of the leak. However, with the changes noted above regarding the monitoring of individual heat exchangers, *i.e.,* conducting three samples per quarterly event at heat exchanger exits rather than one sample at a manifolded location, we assumed that no additional cost would be associated with finding the specific leaking heat exchanger because the leak will be easier to locate based on HAP concentrations in the samples taken at different locations. Other suggested changes were to include costs for ''water sampling,'' monitoring both inlet and outlet locations, and conducting sampling in triplicate. We did not include costs for these activities because they are not required under either Option 1 or Option 2. An owner or operator may elect to conduct monitoring in accordance with 40 CFR 63.104(b) of the HON, which does require sampling at the inlet and outlet of each heat exchange system and in triplicate, but we did not include costs for compliance with these procedures because we do not expect many facilities to choose to comply with this option. Similarly, facilities that choose to conduct water sampling to meet the surrogate indicator monitoring under Option 2 could incur additional lab analysis costs and would perhaps choose to take two or three samples; however it is not required by the rule.

8. Equipment Leaks

Comment: One commenter requested that the rule allow use of Method 21 as an option to confirm that AVO indication of a leak is or is not actually a leak, *i.e.,* less than 10,000 ppmv, as is consistent with HON. Another commenter asked that Method 21 inspections be allowed in lieu of sensory inspections.

Response: The final rule allows Method 21 inspections in lieu of sensory inspections. This alternative is equivalent to the method in the proposed rule at detecting organic HAP leaks. The leak definition in the final rule for Method 21 is set at 500 ppmv, the most stringent level used in any Federal LDAR program.

D. Initial Compliance Demonstrations

Comment: Three commenters requested that sources be allowed to demonstrate initial compliance using

design evaluations (or a combination of design evaluation, engineering calculation, or information from the equipment supplier) as an alternative to performance testing for any control device and any type of HAP, not just under the conditions where it is already allowed in the MON and 40 CFR part 63, subpart SS. One commenter also stated that sources should be allowed to designate vents as having a TRE <1.0 and allow engineering estimates as an alternative to testing in all cases (rather than requiring testing when estimating procedures result in a TRE between 1.0 and 4.0). These commenters stated that this would be a way to reduce burden and costs while having little impact on emissions reductions, and they pointed out that, in some cases, testing is impossible (*e.g.,* at the inlet to sintered metal filters that are used to control particulate emissions from storage bins). One commenter added that some problems that area sources with limited testing experience are likely to encounter include the need to modify sampling methods, the lack of inlet sampling ports and the lack of a location that will allow ports to meet EPA Method 1 location requirements, and difficulty sampling inlet streams due to toxicity or flammability of the gas.

Response: Performance tests provide the greatest assurance that required control levels are being achieved. However, they can be costly (>$20,000 per test). Design evaluations based on engineering principles are allowed in the MON and other MACT rules for small control devices primarily due to cost considerations and the limited emission potential from small control devices. Considering the cost of testing and the fact that overall emissions from area sources are much lower than emissions from major sources, we do not think a requirement for testing at area sources is justified. Therefore, the final rule specifies that design evaluations may be used to demonstrate initial compliance with any organic HAP emission limits, hydrogen halide and halogen HAP emission limits for scrubbers associated with combustion controls for halogenated vent streams, and metal HAP emission limits.

The final rule also does not require compliance with the referenced requirements in § 63.115(d)(1)(ii) that specify the owner or operator must either perform measurements to verify that the TRE determined using an engineering assessment is really between 1 and 4 or consider the TRE to be <1; thus, an engineering assessment is sufficient to determine the TRE in this range.

E. Monitoring Requirements

Comment: Several commenters urged EPA to specify that the proposed PS–17 and EPA Quality Assurance Procedure 4 do not apply to chemical manufacturing area sources because the burden and cost of these requirements is significant. Another commenter stated that the costs for complying with the proposed PS–17 and EPA Quality Assurance Procedure 4 need to be considered in the impacts analysis if they are to apply to chemical manufacturing area sources. One commenter noted that sophisticated instrumentation systems, centralized computer data systems, and on-site instrumentation specialists would be needed to comply with the proposed PS–17 and EPA Quality Assurance Procedure 4 requirements.

Response: PS–17 and EPA Quality Assurance Procedure 4 have not been finalized. As one commenter pointed out, these requirements go beyond existing MACT and NSPS standards, area sources in the categories being regulated today do not generally comply with these procedures, and the costs to comply with PS–17 and EPA Quality Assurance Procedure 4 are not reasonable. For these reasons, PS–17 and EPA Quality Assurance Procedure 4 do not apply to affected sources under 40 CFR part 63, subpart VVVVVV.

F. Recordkeeping and Reporting

Comment: Two commenters stated that imposing almost all 40 CFR part 63 General Provisions is overly burdensome and unjustified, because area sources have limited technical expertise and staff resources and small emission potential compared to major sources. For example, one commenter indicated that the ''negative'' records required by 40 CFR 63.1(b)(3) and 40 CFR 63.10(b)(3) should be indicated as ''No'' in Table 4; the performance testing and monitoring provisions in 40 CFR part 63, subpart SS should supersede 40 CFR 63.7 and 40 CFR 63.8; and only the 40 CFR part 63 General Provisions, not the 40 CFR part 60 General Provisions, should apply.

Response: In consideration of these comments, we have reviewed the General Provisions and made a few minor changes to Table 9 of the final rule with respect to recordkeeping and reporting requirements (Applicability of General Provisions to Subpart VVVVVV). We determined that 40 CFR 63.7(a)(2) does not apply because the rule references the procedures in 40 CFR part 63, subpart SS for certain control device compliance requirements, and 40 CFR 63.997(c)(1) of subpart SS contains performance testing schedule requirements that are comparable, although slightly more descriptive, than the schedule requirements in 40 CFR 63.7(a)(2). To ensure that area sources do not have to comply with PS–17 and EPA Quality Assurance Procedure 4 when they are finalized, we determined that 40 CFR 63.8(a)(2) does not apply. We also specify in Table 9 that references to SSM in the General Provisions requirements for recordkeeping and reporting do not apply. Finally, we determined that the notification of changes to information already provided that is required by 40 CFR 63.9(j) does not apply because it is redundant with 40 CFR 63.11501(d)(4) of the final rule, which specifies that notifications of process changes that affect a compliance determination, result in a new compliance determination, or change the method of compliance must be reported in the semi-annual compliance reports.

In addition to the changes in Table 9, we also added a statement in 40 CFR 63.11501(a) of the final rule to clarify that an affected source must only comply with those Part 63 General Provisions as specified in 40 CFR Table 9. The General Provisions in other Parts, such as Part 60, do not apply except to the extent that a source is subject to an overlapping requirement, and that requirement calls for compliance with the General Provisions of another part.

G. Requirements During Periods of Startup, Shutdown, and Malfunction (SSM)

Comment: Several commenters suggested changes to simplify and reduce the burden of SSM requirements. One commenter stated that no special reporting should be required after an SSM event if the SSM plan was followed, and sources should not have to submit revised plans if the plan is modified in a timely fashion. One commenter recommended that 40 CFR part 63, subpart VVVVVV explicitly state that emission limits and control requirements do not apply during SSM periods. Three commenters stated that facilities subject only to management practice requirements should not be required to develop an SSM plan because no purpose is served by requiring an SSM plan for anything that does not impact required controls.

One commenter stated EPA should simplify SSM reporting requirements by: (1) Waiving immediate reporting as required by 40 CFR 63.10(d)(5); (2) requiring the information required by 40 CFR 63.10(d)(5) to be recorded and maintained onsite and submitted in the periodic report; (3) requiring SSM

reporting only if excess emissions occurred and they did not follow their SSM plan; and (4) allowing SSM reporting to be consolidated with semiannual compliance reports.

One commenter stated that Table 4 should indicate that the immediate reporting requirements and separate SSM reports required in 40 CFR 63.6(e)(3)(iii) and (iv) do not apply to 40 CFR part 63, subpart VVVVVV, and that failure to follow the SSM plan during an event where there are excess emissions should be reported in the deviation report. This commenter also requested that EPA use time and labor rate assumptions provided by the commenter in revised burden estimates related to SSM plans.

This same commenter stated that EPA developed the emission limitations and work practices in the proposed rule without considering any emission data during SSM of control or process equipment. As such, the EPA cannot legally impose the emission limitations required during normal operations on sources during periods of SSM. The commenter points out that EPA may set a standard based on GACT or management practices, and management practices is the most appropriate requirement for SSM. The commenter suggests provisions of the HON be used as a model for SSM management practices. The commenter also requested that EPA clarify that area sources may take all actions necessary to ensure that sources operate safely at all times, including during SSM events, by including language similar to that in the MON in regards to opening a safety device.

Another commenter also submitted comments in response to the court decision on SSM issues. The commenter submitted additional compliance options that would show compliance at all times, including periods of SSM because, according to the commenter, these periods are not steady state conditions and, therefore, operating parameter limits determined through performance testing or engineering evaluations would not be indicative of those periods. The commenter stated that SSM provisions should still be included in the final rulemaking for area sources. Alternatives suggested by the commenter include demonstration of compliance of emission limit using a long term rolling average; conduct performance testing for periods of startup and shutdown; allow use of storage tank when control device is not operational if tank is not filled and has a tight fitting cover; run no new batches until malfunction is over; and ensure that the control device is at normal operating conditions before the process is started.

Response: Table 9 to the final rule (Table 4 to the proposed rule) contains references to the 40 CFR part 63 General Provisions and lists the applicability of the General Provisions to the sources subject to the rule. As explained above, in *Sierra Club* v. *EPA, 551 F.3d 1019,* the Court vacated 40 CFR 63.6(f)(1) and 63.6(h)(1). In light of this court decision, we revised Table 9 to state that 40 CFR 63.6(f)(1) and (h)(1) do not apply. Table 9 also states that the requirements for SSM plans and reports in 40 CFR 63.6(e)(3) and 40 CFR 63.10(d)(5) do not apply. The final emission standards summarized in section IV above apply at all times. As noted in sections III and IV above, we are establishing a separate emission standard for periods of startup and shutdown for continuous process vents for the nine source categories at issue here, because these periods are characterized by activities, such as the filling of vessels and the inerting of vessels, and these activities generally result in significantly different emissions than normal operations. See *Sierra Club, 551 F.3d at 1027* (recognizing that the CAA does not require EPA to set a single emission standard under CAA section 112(d) that applies during all operating periods).

Some commenters complain that EPA failed to consider emissions data during startup and shutdown, and that EPA should set different standards for these periods. EPA is limited to the emissions information before it, which, of course, includes any information provided by the commenters. In this case, EPA carefully analyzed all of the emissions information before it, including that provided by commenters, and concluded that only continuous vents presented a situation where a separate standard during startup and shutdown was appropriate. Although EPA recognizes that startup and shutdown events associated with a continuous process can impact the quantity of wastewater sent to the wastewater system, these events do not warrant a separate standard for wastewater systems. The final GACT standards for wastewater systems appropriately control HAP emissions, and the commenters have not provided any data or other information that would justify a separate standard for wastewater systems. Contrary to the commenters' assertion, for batch processing, startup and shutdown are considered part of normal operations. Storage tanks, heat exchange systems, and transfer operations also do not undergo startup and shutdown activities.

Consistent with *Sierra Club* v. *EPA,* EPA has established CAA section 112(d) compliant standards in this rule that apply continuously. The standards, as described above, apply at all times. In establishing the standards in this rule, EPA has taken into account startup and shutdown periods and has established different standards for such periods where appropriate. Periods of start-up, normal operations, and shut-down are all predictable and routine aspects of a source's operations. Batch processes start up and shutdown as part of their routine process and continuous process operations undergo startups and shutdowns for a variety of reasons, including changes in product demand or product line, and upgrading of equipment. By contrast, a malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' 40 CFR 63.2. EPA has properly accounted for different periods of operation in establishing the standards in this rule. EPA does not view malfunctions as a distinct operating mode and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 112(d) standards, which, once promulgated, apply at all times. Thus, EPA is not setting separate standards for malfunctions in this rule, as the commenters requested.

Further, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take into account malfunctions in setting CAA section 112(d) standards. Because, by definition, malfunctions are sudden and unexpected events, it would be difficult to set a standard that would account for the myriad of different emissions that could occur during malfunctions. In addition, the type, frequency, and duration of the malfunctions may differ significantly between sources. Furthermore, emissions during malfunctions can substantially exceed the level of emissions during start-up, shut-down, and normal operations. Finally, setting an emissions standard that accounts for all different types of malfunctions could allow a source to emit excessive quantities of uncontrolled pollution.

Commenters raised a concern that certain malfunctions necessitate the opening of a safety device to avoid damage to equipment or injury to personnel working at the site. EPA shares the commenters' concerns that plants must be operated safely and that

plant operators should run their facilities in a safe manner.

H. Title V Permitting

As discussed above in section III.F, we are not finalizing the exemption from title V requirements for those sources that became area sources by installing emission controls. We maintain, as explained below in this response to significant comments, that we properly applied the test for determining whether title V is unnecessarily burdensome on the other sources subject to this NESHAP and we are finalizing that exemption in this rulemaking.

Comment: One commenter argued that the Agency's proposal to exempt the nine area source categories from title V requirements is unlawful and arbitrary. The commenter states that section 502(a) of the CAA authorizes EPA to exempt area source categories from title V permitting requirements if the Administrator finds that compliance with such requirements is ''impracticable, infeasible or unnecessarily burdensome.'' 42 U.S.C. § 7661a(a). The commenter notes that EPA did not claim that title V requirements are impracticable or infeasible for any of the source categories it proposes to exempt, but that EPA instead relied entirely on its claim that title V would be ''unnecessarily burdensome.''

Response: We have reconsidered our proposed exemption for major sources that installed controls to become area sources after 1990. Based on our additional review of the source categories since proposal, we conclude that exemption for these synthetic area sources is not appropriate as discussed above in section III.F. We are finalizing the exemption for synthetic area sources that took operational limits and for natural minor sources.

Section 502(a) of the CAA states, in relevant part, that:

> * * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations.

See 42 U.S.C. 7661a(a).

The statute plainly vests the Administrator with discretion to determine when it is appropriate to exempt non-major (*i.e.,* area) sources of air pollution from the requirements of title V. The commenter correctly notes that EPA based the proposed exemptions solely on a determination that title V is ''unnecessarily burdensome,'' and did not rely on whether the requirements of title V are ''impracticable'' or ''infeasible'', which are alternative bases for exempting area sources from title V.

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are ''impracticable, infeasible *or* unnecessarily burdensome.'' See CAA section 502 (*emphasis added*). If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word ''and,'' in place of ''or.''

Comment: One commenter stated that in order to demonstrate that compliance with title V would be ''unnecessarily burdensome,'' EPA must show, among other things, that the ''burden'' of compliance is *unnecessary.* According to the commenter, by promulgating title V, Congress indicated that it viewed the burden imposed by its requirements as necessary, as a general rule. The commenter maintained that the title V requirements provide many benefits that Congress viewed as necessary. Thus, in the commenter's view, EPA must show why, for any given category, special circumstances make compliance unnecessary. The commenter believed that EPA has not made that showing for any of the categories it proposes to exempt.

Response: EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule''). In addition to interpreting the term ''unnecessarily burdensome'' and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category, and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).[10]

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together,

[10] In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of CAA section 502(a), whether exempting the area source category would adversely affect public health, welfare, or the environment. See 70 FR 75326, December 19, 2005. As shown above, after conducting the four-factor balancing test and determining that title V requirements would be unnecessarily burdensome on the area source categories at issue here, we examined whether the exemption from title V would adversely affect public health, welfare, and the environment, and found that it would not.

support an exemption from title V for a particular source category.

The commenter asserts that ''EPA must show * * * that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the October 6, 2008 proposed rule for the categories at issue in this rule. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the source categories for which we proposed title V exemptions. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the October 6, 2008, proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking.[11]

Furthermore, we believe that the commenter's position that ''EPA must show * * * that the ''burden'' of compliance is *unnecessary''* is unreasonable and contrary to Congressional intent concerning the applicability of title V to area sources. Congress intended to treat area sources differently under title V, as it expressly authorized the EPA Administrator to exempt such sources from the requirements of title V at her discretion. There are several instances throughout the CAA where Congress chose to treat major sources differently than non-major sources, as it did in CAA section 502. In addition, it is worth noting that, although the commenter espouses a new interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' for an area source category, the commenter does not explain why EPA's interpretation of the term ''unnecessarily burdensome'' is arbitrary, capricious, or otherwise not in accordance with law. We maintain that our interpretation of the term ''unnecessarily burdensome'' in CAA section 502, as set forth in the Exemption Rule, is reasonable.

Comment: One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information for the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level. The commenter stated that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations, and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that, likewise, it is difficult or impossible for citizens to bring enforcement actions. The commenter continued that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt *without* title V permits. The commenter also said that, likewise, EPA does not claim—far less demonstrate with substantial evidence — that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claimed that, to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt. The commenter concluded that EPA does not even *acknowledge* these benefits of title V, far less explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response: Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with *substantial evidence* that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. In any event, EPA interpretation is reasonable. Furthermore, the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the sources we are exempting, nor do the comments provide a basis for the Agency to reconsider the exemption as we are finalizing it.

EPA reasonably applied the four factors to the facts of the nine source categories at issue in this rule, and the commenter has not identified any flaw in EPA's application of the four-factor test to the nine area source categories at issue here.

Moreover, as explained in the proposal, we considered implementation and enforcement issues in the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. See 70 FR 75326.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in

[11] If the commenter objected to our interpretation of the term ''unnecessarily burdensome'' in the Exemption Rule, it should have commented on, and challenged, that rule. Any challenge to the Exemption Rule is now time barred by CAA section 307(b). Although we received comments on the title V Exemption Rule during the rulemaking process, no one sought judicial review of that rule.

the proposal, we believe that state-delegated programs are sufficient to assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. 73 FR 58373. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources, and that these additional programs will supplement and enhance the success of compliance with this NESHAP. 73 FR 58373. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under these NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of the NESHAP. Furthermore, the fourth factor is one factor that we evaluated in determining if the title V requirements were unnecessarily burdensome. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemptions for natural area sources and synthetic area sources that took operational limits in the source categories at issue in this rule, but we are not finalizing the title V exemption for sources that became synthetic area sources through the use of add-on controls for the reasons set forth above in section III.F.

Comment: One commenter explained that title V provides important monitoring benefits, and, according to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for each category. The commenter said that, in its proposal, EPA proposed to require ''management practices, which are practices that are currently used at most facilities, for most subcategories (73 FR 58372).'' The commenter further states that ''EPA argues that its proposed standard, including these practices, 'provides monitoring in the form of recordkeeping that will assure compliance with the requirements of the proposed rule.' '' Id. The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter stated that, for this reason, as well, its claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and its exemption is unlawful and arbitrary and capricious.

Response: As noted in the earlier comment, EPA used the four-factor test to determine if title V requirements were unnecessarily burdensome. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source categories. See 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping, and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. See 70 FR 75323.

The commenter asserts that ''EPA argues that its proposed standard, including these practices, 'provides monitoring in the form of recordkeeping that will assure compliance with the requirements of the proposed rule.' '' The commenter has taken a phrase from the preamble out of context to imply that EPA has only required monitoring in the form of recordkeeping. In the proposal, we stated:

> The proposed rule requires implementation of certain management practices, which are practices that are currently used at most facilities, for most subcategories, and add on controls and other requirements, in addition to management practices for other subcategories of sources. The proposed rule requires direct monitoring of emissions or control device parameters, both continuous and periodic, recordkeeping that also may serve as monitoring, and deviation and other semi-annual reporting to assure compliance with these requirements.
>
> The monitoring component of the first factor favors title V exemption. For the management practices, this proposed standard provides monitoring in the form of recordkeeping that would assure compliance with the requirements of the proposed rule. Monitoring by means other than recordkeeping for the management practices is not practical or appropriate. Records are required to ensure that the management practices are followed. The proposed rule requires the owner or operator to record the date and results of inspections, as well as any actions taken in response to findings of the inspections. The records are required to be maintained as checklists, logbooks and/or inspection forms. The rule also requires emission limit requirements for some subcategories. Monitoring of control device or recovery device operating parameters using CPMS or periodic monitoring is required to assure compliance with these emission limits.

See 73 FR 58372.

We nowhere state or imply that the only monitoring required for the rule is in the form of recordkeeping. As the above excerpt states, we required continuous and periodic direct monitoring of emission control devices and recovery devices when the rule requires the installation of such controls in addition to the recordkeeping that serves as monitoring for the management practices. The commenter does not provide any evidence that contradicts the conclusion that the proposed monitoring requirements are sufficient to assure compliance with the standards in the rule.

Based on the foregoing, we considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring, recordkeeping, and reporting requirements in this area source rule can assure compliance for those sources we are exempting.

For the reasons described above and in the proposed rule, the first factor supports an exemption. Assuming, for arguments sake, that the first factor alone cannot support the exemption, the four-factor balancing test requires EPA to examine the factors, in combination, and determine whether the factors, viewed together, weigh in favor of exemption. See 70 FR 75326. As explained above, we determined that the factors, weighed together, support title V exemption for the natural area sources and synthetic area sources that took operational limits in these source categories.

Comment: One commenter believes EPA argued that its own belief that title V is a ''significant burden'' on area sources further justifies its exemption (73 FR 58372–58373). According to the commenter, regardless of whether EPA regards the burden as ''significant,'' the Agency may not exempt a category from compliance with title V requirements unless compliance is ''unnecessarily burdensome.'' The commenter stated that, in any event, EPA's claims about

the alleged significance of the burden of compliance is entirely conclusory and could be applied equally to any major or area source category. The commenter also stated that the Agency does not show that the compliance burden is especially great for any of the sources it proposes to exempt, and, thus, does not demonstrate that the alleged burden necessitates treating them differently from other categories by exempting them from compliance with title V requirements.

Response: The commenter appears to take issue with the formulation of the second factor of the four-factor balancing test. Specifically, the commenter states that EPA must determine that title V compliance is ''unnecessarily burdensome'' and not a ''significant burden,'' as expressed in the second factor of the four-factor balancing test.

As we have stated before, at proposal we found the burden placed on these sources in complying with the title V requirements is significant when we applied the four-factor balancing test.[12] We note that the commenter in other parts of its comments on the title V exemptions argues that EPA must demonstrate that every title V requirement is ''unnecessary'' for a particular source category before an exemption can be granted, but makes no mention of the ''burden'' of those requirements on area sources, but here the commenter argues that ''significant burden'' is not appropriate for the second factor. Notwithstanding the commenter's inconsistency, as explained above, the four-factor balancing test was established in the Exemption Rule and we did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in this rule. As explained above, we maintain that the Agency's interpretation of the term ''unnecessarily burdensome,'' as set forth in the Exemption Rule and reiterated in the proposal to this rule, is reasonable.

Contrary to the commenter's assertions, we properly analyzed the second factor of the four-factor balancing test. See 70 FR 75320. Under that factor, EPA considers whether title V permitting would impose a significant burden on the area source categories, and whether that burden would be aggravated by any difficulty that the sources may have in obtaining assistance from the permitting agencies. See 70 FR 75324. The commenter appears to assert that the second factor *must* be satisfied for EPA to exempt an area source category from title V, but, as explained above, the four factors are considered in combination. We have concluded that the second factor, in combination with the other factors, supports an exemption for the chemical manufacturing area sources that we are exempting from compliance with title V in this final rule.

Therefore, we disagree with the commenter's assertion that EPA's finding (*i.e.,* that the burden of obtaining a title V permit is significant, does not equate to the required finding that the burden is unnecessary) is misplaced. While EPA could have found that the second factor alone could justify the exemption for the sources we are exempting in this rule, EPA found that the other three factors also support exempting these sources from the title V requirements because the permitting requirements are unnecessarily burdensome for the chemical manufacturing area sources we are exempting.

Comment: According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (73 FR 58373). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to any of the categories it proposes to exempt—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in these NESHAP, would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response: The commenter mischaracterizes the first and third factors of the four-factor balancing test and takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition of title V permit requirements is unnecessarily burdensome for the source categories. The commenter also mischaracterizes the first factor of the four-factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts. In fact, our decision to not exempt synthetic area sources that installed add-on controls was based, in part, on our determination that the additional public participation and oversight attendant to title V permitting was appropriate for those sources. While EPA recognizes that requiring a title V permit offers additional compliance options, the statute provides EPA with the discretion to evaluate whether compliance with title V would be unnecessarily burdensome to specific area sources. For the sources we are exempting, we conclude that requiring title V permits would be unnecessarily burdensome.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of ''whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.'' Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

The monitoring, recordkeeping and reporting requirements in the rule are sufficient to assure compliance with the requirements of this rule for the sources we are exempting, consistent with the goal in title V permitting. For example, in the Notification of Compliance Status report, the source must certify that it has implemented management practices, and, if necessary, installed controls and established monitoring parameters. See 40 CFR 63.11501 in the final rule. The source must also submit deviation reports to the permitting agency every 6 months if there has been a deviation in the requirements of the rule. See 40 CFR 63.11501 in the final rule. The requirements in the final rule provide sufficient basis to assure compliance,

[12] As discussed in Section III above, since proposal, we have reconsidered the proposed exemption for synthetic area sources that became area sources by virtue of installing add-on controls and determined that these sources are generally larger and more sophisticated sources and, that for these and other reasons, the burden on these sources would not be significant.

and EPA does not believe that the title V requirements, if applicable to the sources that we are exempting, would offer significant improvements in the compliance of the sources with the rule.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination.

Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA considers the costs of title V permitting requirements, including consideration of any improvement in compliance above what the rule requires. In considering the third factor, we stated, in part, that, ''[b]ecause the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for these area source categories.'' See 73 FR 58373.

Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the area source categories we are exempting from title V in this final rule. As stated above, we have determined that title V is appropriate for synthetic area sources that installed add-on controls and we are not finalizing the exemption for those sources. As to the remaining sources, the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the sources we are exempting, nor do the comments provide sufficient basis for the Agency to reconsider its proposal to exempt the natural area sources and synthetic area sources that took operational limits to maintain HAP below major source levels.

Comment: According to one commenter, EPA argued that alternative State implementation and enforcement programs assure compliance with the underlying NESHAP without relying on title V permits (73 FR 58373). The commenter stated that again, EPA's claim is entirely conclusory and generic. The commenter also stated that ''the Agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary'' (e*mphasis added*). Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter said that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, the Agency's argument boils down to the generic and conclusory claim that it generally views title V requirements as unnecessary. The commenter stated that, while this may be EPA's view, it was not Congress' view when Congress enacted title V, and a general view that title V is unnecessary, does not suffice to show that title V compliance is unnecessarily burdensome.

Response: Contrary to the commenters' assertions, EPA does believe that title V is appropriate under certain circumstances. Indeed, we are not finalizing the title V exemption for synthetic area sources that became area sources by virtue of installing add-on controls. However, given the facts associated with the remainder of the sources in the categories, we think that exemption from title V is appropriate for those sources.

In this comment, the commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. In any event, as explained above, we believe the Agency's interpretation of the term ''unnecessarily burdensome'' is a reasonable one. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that, prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. EPA believes that these programs will be sufficient to assure compliance with the rule. EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113, and 114. EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source NESHAP.

The commenter argues that EPA cannot exempt any of the area sources in these categories from title V permitting requirements because ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary'' (*emphasis added*). As an initial matter, EPA cannot exempt major sources from title V permitting. 42 U.S.C. 502(a). As for area sources, the standard that the commenter proposes—that EPA must show that ''title V compliance is unnecessary''—is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome.

Furthermore, we disagree that the basis for excluding the chemical manufacturing area sources we are exempting from title V requirements is generally applicable to sources in any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the nine source categories at issue in this rule. For example, in assessing whether the costs of requiring the sources to obtain a title V permit was burdensome, we concluded that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance, particularly for sources that are required to comply only with the management practice requirements contained in the final rule. Almost all of the sources we are exempting from title V are required to comply only with management practices.

Comment: One commenter stated that, as EPA concedes, the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. Furthermore, the commenter stated that EPA conceded this point. See 73 FR 58373. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare, and the environment. The commenter stated that, instead, EPA offered only the conclusory assertion that ''the level

of control would remain the same'' whether title V permits are required or not (73 FR 58373). The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons given above, and, therefore, EPA's claims about public health, welfare, and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: To assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA's proposed rule *deprives* the public—would improve compliance with the underlying standards and, thus, have benefits for public health, welfare, and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again, simply rests on its own apparent belief that they are never necessary. The commenter concluded, for the reasons given above, that the attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response: Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' See CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome,'' as requiring consideration of the four factors discussed above. At proposal, EPA applied these four factors to the nine chemical manufacturing area source categories subject to this rule and concluded that requiring title V for these area source categories would be unnecessarily burdensome. We maintain that this conclusion is accurate for the sources we are exempting in this rule.

In addition to determining that title V would be unnecessarily burdensome on the area source categories for which we proposed exemptions, as in the Exemption Rule, EPA also considered, consistent with our interpretation of the legislative history, whether exempting the area source categories would adversely affect public health, welfare, or the environment. As explained in the proposal preamble, we concluded that exempting the area source categories at issue in this rule would not adversely affect public health, welfare, or the environment because the level of control would be the same even if title V applied. We further explained in the proposal preamble that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information to demonstrate that the exemption from title V that we are finalizing will adversely affect public health, welfare, or the environment.

VI. Impacts of the Final Area Source Standards

A. What are the air impacts?

We estimate that the final standard will reduce organic HAP emissions by 207 tpy and metal HAP by 41 tpy from the baseline level, for an overall HAP emission reduction of 248 tpy from the baseline. Table 1 of this preamble summarizes the estimated HAP reductions under the final standards for each type of emission point.

TABLE 1—ESTIMATED NATIONWIDE HAP EMISSION REDUCTIONS

Emission point	HAP emission reduction (tpy)	Urban HAP emission reduction (tpy)
Batch process vents	<43	13
Continuous process vents	<29	9
Metal HAP process vents	41	38
Storage tanks	5	5
Heat exchange systems	79	24
Transfer operations	1	0.2
Wastewater systems	51	16
Total	248	105

B. What are the cost impacts?

The total capital cost of the final standard is estimated at $2.8 million. The total annualized cost of the final standard, including the annualized cost of capital equipment, is estimated at $3.2 million/yr. Additional information on our impact estimates on the sources is available in the docket (See Docket Number EPA–HQ—OAR–2008–0334.)

C. What are the economic impacts?

The final standard is estimated to impact a total of approximately 450 existing source facilities and 27 new sources in the next 3 years. Many of the facilities affected by this final rule are small entities. Our analyses indicate that the final rule will not impose a significant adverse impact on any facilities, large or small. The average cost for each chemical manufacturing industry is projected to be less than 0.06 percent of average sales. In addition, the average costs in each industry are projected to be less than 0.2 percent of average sales for the smallest facilities within each industry (*i.e.,* facilities with 50 to 99 employees).

D. What are the non-air health, environmental, and energy impacts?

The secondary impacts would include energy impacts associated with direct operation of combustion control devices, energy impacts associated with the generation of electricity to operate control devices, and solid waste generated as a result of the metal HAP emissions collected. Organic materials that are recovered from wastewater using gravity separation techniques would also be a solid waste if the material could not be reused in a process or as fuel.

We estimate that an additional 175 megawatt-hr/yr of electricity and 260,000 standard cubic feet per year of natural gas will be needed to operate control devices. We estimate that an additional 1.7 tpy of criteria pollutants will be generated from the combustion of natural gas in combustion control devices and from the combustion of coal to generate electricity. We estimate that controlling metal HAP emissions will generate an additional 580 tpy of solid

waste, including about 41 tpy of HAP metals. An estimated 8 tpy of organic material will be recovered from wastewater using gravity separation techniques.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions to part 63. These recordkeeping and reporting requirements are mandatory pursuant to section 113 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP requires chemical manufacturing area sources to submit an initial notification of applicability, Notification of Compliance Status report, performance test results, and semiannual compliance reports. The semiannual compliance reports are only required to be submitted if any deviations from any requirements in the rule occurred during the applicable semiannual reporting period. Area sources must also estimate emissions from batch process vents and metal HAP process vents, determine the TRE for continuous process vents, identify and characterize the PSHAP concentration in wastewater streams, prepare a heat exchange system monitoring plan, conduct design evaluations to determine control efficiency, and conduct inspections for leaks.

Records will be required to demonstrate compliance with the TRE calculation requirements for continuous process vents, batch and metal process vent emissions estimation requirements, inspections and vapor pressure calculations for storage tanks, wastewater HAP concentration requirements, and management practice inspection records for each CMPU.

The annual burden associated with the monitoring, recordkeeping, and reporting requirements for this information collection, averaged over the first 3 years of this ICR, is estimated to total 10,566 labor hours per year at a cost of $803,906. Capital/startup costs for performance tests and monitoring equipment were annualized and estimated at $69,484/yr; operation and maintenance costs for the monitoring equipment were estimated at $28,787/yr. The costs attributable to the final standards are associated with the initial compliance demonstration, monitoring, recordkeeping, and reporting requirements. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500, 750, or 1,000 employees depending on the specific NAICS Code under subcategory 325); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is estimated to impact a total of approximately 450 chemical manufacturing area sources; more than 150 of these facilities are estimated to be small entities. An economic impacts analysis was performed to compare the control costs associated with producing a product at facilities in the various chemical manufacturing industries to the average value of shipments from such facilities. In all industries, the average costs are projected to be less than 0.07 percent of average sales. For the smallest facilities in each industry (those with 50 to 99 employees), the average costs are all projected to be less than 0.2 percent of average sales. Thus, any price increases or loss of profit would be quite small.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. The standards represent practices and controls that are common throughout the sources engaged in chemical manufacturing, and in many cases only require management practices. The standards require only the recordkeeping and reporting needed to demonstrate and verify compliance.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total annual cost of the rule is estimated at $3.2 million/yr. This final rule is not expected to impact State, local, or tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

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

This action involves technical standards. EPA cites the following standards: EPA Methods 5 and 5D in 40 CFR part 60, Appendix A–3 and EPA Method 29 in 40 CFR part 60, Appendix A–8. Therefore, EPA conducted a search to identify potentially applicable VCS. No applicable VCS were identified for EPA Methods 5D and 29. The search identified four VCS as possible alternatives to EPA Method 5. EPA determined that these four standards were impractical alternatives to the EPA test methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 4 methods are discussed in a memorandum included in the docket for this action.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The final rule increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The nationwide standards will reduce HAP emissions and thus decrease the amount of emissions to which all affected populations are exposed.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on October 29, 2009.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding subpart VVVVVV to read as follows:

Subpart VVVVVV—National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

Sec.

Applicability and Compliance Dates

63.11494 What are the applicability requirements and compliance dates?

Standards and Compliance Requirements

63.11495 What are the management practices and other requirements?

63.11496 What are the standards and compliance requirements for process vents?

63.11497 What are the standards and compliance requirements for storage tanks?

63.11498 What are the standards and compliance requirements for wastewater systems?

63.11499 What are the standards and compliance requirements for heat exchange systems?
63.11500 What compliance options do I have if part of my plant is subject to both this subpart and another Federal standard?
63.11501 What are the notification, recordkeeping, and reporting requirements?

Other Requirements and Information

63.11502 What definitions apply to this subpart?
63.11503 Who implements and enforces this subpart?

Tables to Subpart VVVVVV of Part 63

Table 1 to Subpart VVVVVV of Part 63—Hazardous Air Pollutants Used to Determine Applicability of Chemical Manufacturing Operations
Table 2 to Subpart VVVVVV of Part 63—Emission Limits and Compliance Requirements for Batch Process Vents
Table 3 to Subpart VVVVVV of Part 63—Emission Limits and Compliance Requirements for Continuous Process Vents
Table 4 to Subpart VVVVVV of Part 63—Emission Limits and Compliance Requirements for Metal HAP Process Vents
Table 5 to Subpart VVVVVV of Part 63—Emission Limits and Compliance Requirements for Storage Tanks
Table 6 to Subpart VVVVVV of Part 63—Emission Limits and Compliance Requirements for Wastewater Systems
Table 7 to subpart VVVVVV of Part 63—Partially Soluble HAP
Table 8 to Subpart VVVVVV of Part 63—Emission Limits and Compliance Requirements for Heat Exchange Systems
Table 9 to Subpart VVVVVV of Part 63—Applicability of General Provisions to Subpart VVVVVV

Applicability and Compliance Dates

§ 63.11494 What are the applicability requirements and compliance dates?

(a) Except as specified in paragraph (c) of this section, you are subject to this subpart if you own or operate a chemical manufacturing process unit (CMPU) that meets the conditions specified in paragraphs (a)(1) through (3) of this section.

(1) The CMPU uses as feedstocks, generates as byproducts, or produces as products any of the hazardous air pollutants (HAP) listed in Table 1 to this subpart (Table 1 HAP).

(2) The CMPU is located at an area source of HAP emissions.

(3) Table 1 HAP are present in feedstocks, or Table 1 HAP are generated or produced in the CMPU and are present in process fluid, at concentrations greater than 0.1 percent for carcinogens, as defined by the Occupational Safety and Health Administration at 29 CFR 1910.1200(d)(4), and greater than 1.0 percent for noncarcinogens. To determine the Table 1 HAP content of feedstocks, you may rely on formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet (MSDS) for the material. If the concentration in an MSDS is presented as a range, use the upper bound of the range.

(b) A CMPU includes all process vessels, equipment, and activities necessary to operate a chemical manufacturing process that produces a material or a family of materials described by North American Industry Classification System (NAICS) code 325. A CMPU consists of one or more unit operations and any associated recovery devices. A CMPU also includes each storage tank, transfer operation, surge control vessel, and bottoms receiver associated with the production of such NAICS code 325 materials.

(c) This subpart does not apply to the operations specified in paragraphs (c)(1) through (6) of this section.

(1) Affected sources under the following chemical manufacturing area source categories listed pursuant to Clean Air Act (CAA) section 112(c)(3) and 112(k)(3)(B)(ii) that are subject to area source standards under this part:

(i) Manufacture of Paint and Allied Products, subject to subpart CCCCCCC of this part.

(ii) Mercury Emissions from Mercury Cell Chlor-Alkali Plants, subject to subpart IIIII of this part.

(iii) Polyvinyl Chloride and Copolymers Production, subject to subpart DDDDDD of this part.

(iv) Acrylic and Modacrylic Fibers Production, subject to subpart LLLLLL of this part.

(v) Carbon Black Production, subject to subpart MMMMMM of this part.

(vi) Chemical Manufacturing Area Sources: Chromium Compounds, subject to subpart NNNNNN of this part.

(2) Production of the following chemical manufacturing materials described in NAICS code 325:

(i) Manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium, uranium.

(ii) Manufacture of photographic film, paper, and plate where the material is coated with or contains chemicals. This subpart does apply to the manufacture of photographic chemicals.

(iii) Fabricating operations (such as spinning or compressing a solid polymer into its end use); compounding operations (in which blending, melting, and resolidification of a solid polymer product occurs for the purpose of incorporating additives, colorants, or stabilizers); and extrusion and drawing operations (converting an already produced solid polymer into a different shape by melting or mixing the polymer and then forcing it or pulling it through an orifice to create an extruded product). An operation is subject if it involves processing with Table 1 HAP solvent or if an intended purpose of the operation is to remove residual Table 1 HAP monomer.

(iv) Manufacture of chemicals classified in NAICS code 325222, 325314, 325413, or 325998.

(3) Research and development facilities, as defined in CAA section 112(c)(7).

(4) Quality assurance/quality control laboratories.

(5) Ancillary activities, as defined in § 63.11502(b).

(6) Metal HAP in structures or existing as articles as defined in 40 CFR 372.3.

(d) This subpart applies to each new or existing affected source. The affected source is the facility-wide collection of CMPUs and each heat exchange system and wastewater system associated with a CMPU that meets the criteria specified in paragraphs (a) and (b) of this section. A CMPU using only Table 1 organic HAP is required to control only total CAA section 112(b) organic HAP. A CMPU using only Table 1 metal HAP is required to control only total CAA section 112(b) metal HAP.

(1) An affected source is an existing source if you commenced construction or reconstruction of the affected source before October 6, 2008.

(2) An affected source is a new source if you commenced construction or reconstruction of the affected source on or after October 6, 2008.

(e) Any source that was a major source and installed a control device on a CMPU after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71. Otherwise, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

(f) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than October 29, 2012.

(g) If you start up a new affected source on or before October 29, 2009, you must achieve compliance with the

applicable provisions of this subpart no later than October 29, 2009.

(h) If you start up a new affected source after October 29, 2009, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11495 What are the management practices and other requirements?

(a) *Management practices.* If you have a CMPU subject to this subpart, you must comply with paragraphs (a)(1) through (5) of this section.

(1) Each process vessel in organic HAP service or metal HAP service must be equipped with a cover or lid that must be in place at all times when the vessel contains HAP, except for material addition and sampling.

(2) You must use any of the methods listed in paragraphs (a)(2)(i) through (iv) of this section to control total organic HAP emissions from transfer of liquids containing Table 1 organic HAP to tank trucks or railcars. You are not required to comply with this paragraph (a)(2) if you have notified the Administrator in your initial notification that a material is reactive or resinous, and you will not be able to comply with any of the methods in paragraphs (a)(2)(i) through (iv) of this section for the transfer of such material.

(i) Use submerged loading or bottom loading.

(ii) Route emissions to a fuel gas system or process in accordance with § 63.982(d) of subpart SS.

(iii) Vapor balance back to the storage tank or another storage tank connected by a common header.

(iv) Vent through a closed-vent system to a control device.

(3) You must conduct inspections of process vessels and equipment for each CMPU in organic HAP service or metal HAP service at least quarterly to demonstrate compliance with these requirements and to determine that the process vessels and equipment are sound and free of leaks. For these inspections, detection methods incorporating sight, sound, or smell are acceptable. The inspection must include direct and proximal (thorough) inspection of all areas of potential leak within the CMPU. Indications of a leak identified using such method constitutes a leak unless you demonstrate that the indications of a leak are due to a condition other than loss of HAP. Alternatively, Method 21 of 40 CFR part 60, appendix A–7, with a leak definition of 500 parts per million by volume (ppmv), may be used for detection of leaks or to determine if the indications of a leak are due to a condition other than loss of HAP. If indications of a leak are determined not to be HAP in one quarterly monitoring period, you must still perform the inspection and demonstration in the next quarterly monitoring period. Inspections must be conducted while the subject CMPU is operating. No inspection is required in a calendar quarter during which the subject CMPU does not operate for the entire calendar quarter and is not in organic HAP service or metal HAP service. If the CMPU operates at all during a calendar quarter, an inspection is required.

(4) You must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. For the purposes of this paragraph (a)(4), a leak will be considered ''repaired'' if a condition specified in paragraph (a)(4)(i), (ii), or (iii) of this section is met.

(i) The visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated, or

(ii) No bubbles are observed at potential leak sites during a leak check using soap solution, or

(iii) The system will hold a test pressure.

(5) You must keep records of the dates and results of each inspection event, the dates of equipment repairs, and, if applicable, the reasons for any delay in repair.

(b) *Small heat exchange systems.* For each heat exchange system subject to this subpart with a cooling water flow rate less than 8,000 gallons per minute (gal/min) and not meeting one or more of the conditions in § 63.104(a), you must comply with paragraphs (b)(1) through (3) of this section, or as an alternative, you may comply with any one of the requirements in Item 1.a or 1.b of Table 8 to this subpart.

(1) You must develop and operate in accordance with a heat exchange system inspection plan. The plan must describe the inspections to be performed that will provide evidence of hydrocarbons in the cooling water. Among other things, inspections may include checks for visible floating hydrocarbon on the water, hydrocarbon odor, discolored water, and/or chemical addition rates. You must conduct inspections at least once per quarter, even if the previous inspection determined that the indications of a leak did not constitute a leak as defined by § 63.104(b)(6).

(2) You must perform repairs to eliminate the leak and any indications of a leak or demonstrate that the HAP concentration in the cooling water does not constitute a leak, as defined by § 63.104(b)(6), within 45 calendar days after indications of the leak are identified, or you must document the reason for any delay of repair in your next semiannual compliance report.

(3) You must keep records of the dates and results of each inspection, documentation of any demonstrations that indications of a leak do not constitute a leak, the dates of leak repairs, and, if applicable, the reasons for any delay in repair.

(c) Startup, shutdown, and malfunction (SSM) provisions in subparts that are referenced in paragraphs (a) and (b) of this section do not apply.

§ 63.11496 What are the standards and compliance requirements for process vents?

(a) *Organic HAP Emissions from Batch Process Vents.* You must comply with the requirements in paragraphs (a)(1) through (4) of this section for organic HAP emissions from your batch process vents for each CMPU using Table 1 organic HAP. If uncontrolled organic HAP emissions from all batch process vents from a CMPU subject to this subpart are equal to or greater than 10,000 pounds per year (lb/yr), you must also comply with the emission limits and other requirements in Table 2 to this subpart.

(1) You must determine the sum of actual organic HAP emissions from all of your batch process vents within a CMPU subject to this subpart using process knowledge, engineering assessment, or test data. Emissions for a standard batch in a process may be used to represent actual emissions from each batch in that process. You must maintain records of the calculations. Calculations of annual emissions are not required if you meet the emission standards for batch process vents in Table 2 to this subpart.

(2) As an alternative to calculating actual emissions for each affected CMPU at your facility, you may elect to estimate emissions for each CMPU based on the emissions for the worst-case CMPU. The worst-case CMPU means the CMPU at the affected source with the highest organic HAP emissions per batch. The worst-case emissions per batch are used with the number of batches run for other affected CMPU. Process knowledge, engineering assessment, or test data may be used to identify the worst-case process. You must keep records of the information and procedures used to identify the worst-case process.

(3) If your current estimate is that emissions from batch process vents from a CMPU are less than 10,000 pounds per

year (lb/yr), then you must keep a record of the number of batches of each process operated per month. Also, you must reevaluate your total emissions from batch process vents prior to making any process changes that affect emission calculations in paragraphs (a)(1) and (2) of this section. If projected emissions increase to 10,000 lb/yr or more, you must be in compliance options for batch process vents in Table 2 to this subpart upon initiating operation under the new operating conditions. You must maintain records documenting the results of all updated emissions calculations.

(4) As an alternative to determining the HAP emissions, you may elect to demonstrate that the amount of organic HAP used in the process is less than 10,000 lb/yr. You must keep monthly records of the organic HAP usage.

(b) *Organic HAP Emissions from Continuous Process Vents.* You must comply with the requirements in paragraphs (b)(1) through (3) of this section for organic HAP emissions from your continuous process vents for each CMPU subject to this subpart using Table 1 organic HAP. If the total resource-effectiveness (TRE) index value for a continuous process vent is less than or equal to 1.0, you must also comply with the emission limits and other requirements in Table 3 to this subpart.

(1) You must determine the TRE index value according to the procedures in § 63.115(d), except as specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) You are not required to calculate the TRE index value if you control emissions in accordance with Table 3 to this subpart.

(ii) Sections 63.115(d)(1)(i) and (ii) are not applicable for the purposes of this paragraph (b)(1)(ii).

(iii) You may assume the TRE for a vent stream is > 1.0 if the amount of organic HAP emitted in the vent stream is less than 0.1 pound per hour.

(2) If the current TRE index value is greater than 1, you must recalculate the TRE index value before you make any process or operational change that affects parameters in the calculation. If the recalculated TRE is less than or equal to 1.0, then you must comply with one of the compliance options for continuous process vents in Table 3 to this subpart before operating under the new operating conditions. You must maintain records of all TRE calculations.

(3) If a recovery device as defined in § 63.11502 is used to maintain the TRE index value at a level greater than 1.0 and less than or equal to 4.0, you must comply with § 63.982(e) and the requirements specified therein.

(c) *Combined Streams.* If you combine organic HAP emissions from batch process vents and continuous process vents, you must comply with the more stringent standard in Table 2 or Table 3 to this subpart that applies to any portion of the combined stream, or you must comply with Table 2 for the batch process vents and Table 3 for the continuous process vents. The TRE index value for continuous process vents and the annual emissions from batch process vents shall be determined for the individual streams before they are combined, and prior to any control, in order to determine the most stringent applicable requirements.

(d) *Combustion of Halogenated Streams.* If you use a combustion device to comply with the emission limits for organic HAP from a halogenated batch process vent or a halogenated continuous process vent, you must use a halogen reduction device to meet the emission limit in either paragraph (d)(1) or (d)(2) of this section and in accordance with § 63.994 and the requirements referenced therein.

(1) Reduce overall emissions of hydrogen halide and halogen HAP after the combustion device by greater than or equal to 95 percent, to less than or equal to 0.45 kilograms per hour (kg/hr), or to a concentration less than or equal to 20 parts per million by volume (ppmv).

(2) Reduce the halogen atom mass emission rate before the combustion device to less than or equal to 0.45 kg/hr or to a concentration less than or equal to 20 ppmv.

(e) *Alternative Standard for Organic HAP.* Exceptions to the requirements for the alternative standard requirements specified in Tables 2 and 3 to this subpart and § 63.2505 are specified in paragraphs (e)(1) through (5) of this section.

(1) When § 63.2505 of subpart FFFF refers to Tables 1 and 2 to subpart FFFF and §§ 63.2455 and 63.2460, it means Tables 2 and 3 to this subpart and § 63.11496(a) and (b).

(2) Sections 63.2505(a)(2) and (b)(9) do not apply.

(3) When § 63.2505(b) references § 63.2445 it means § 63.11494(f) through (h).

(4) The requirements for hydrogen halide and halogen HAP apply only to hydrogen halide and halogen HAP generated in a combustion device that is used to comply with the alternative standard.

(5) When § 63.1258(b)(5)(ii)(B)(*2*) refers to a ''notification of process change'' report, it means the semi-annual compliance report required by § 63.11501(d) for the purposes of this subpart.

(f) *Emissions from Metal HAP Process Vents.* You must comply with the requirements in paragraphs (f)(1) and (2) of this section for metal HAP emissions from each CMPU using Table 1 metal HAP. If the collective uncontrolled metal HAP emissions from all metal HAP process vents from a CMPU are equal to or greater than 400 lb/yr, then you must also comply with the emission limits and other requirements in Table 4 to this subpart and in paragraph (f)(3), (4), or (5) of this section.

(1) You must determine the sum of metal HAP emissions from all metal HAP process vents within a CMPU subject to this subpart, except you are not required to determine the annual emissions if you control the metal HAP process vents within a CMPU in accordance with Table 4 to this subpart or if you determine your total metal HAP usage in the process unit is less than 400 lb/yr. To determine the mass emission rate you may use process knowledge, engineering assessment, or test data. You must keep records of the emissions calculations.

(2) If your current estimate is that total uncontrolled metal HAP emissions from a CMPU subject to this subpart are less than 400 lb/yr, then you must keep records of either the number of batches operated per month (batch vents) or the process operating hours (continuous vents). Also, you must reevaluate your total emissions before you make any process or operational change that affects emissions of metal HAP. If projected emissions increase to 400 lb/yr or more, then you must be in compliance with one of the options for metal HAP process vents in Table 4 to this subpart upon initiating operation under the new operating conditions. You must keep records of all recalculated emissions determinations.

(3) If you have an existing source subject to the HAP metals emission limits specified in Table 4 to this subpart, you must comply with the initial compliance and monitoring requirements in paragraphs (f)(3)(i) through (iii) of this section. You must keep records of monitoring results to demonstrate continuous compliance.

(i) You must prepare a monitoring plan containing the information in paragraphs (f)(3)(i)(A) through (E) of this section. The plan must be maintained on-site and be available on request. You must operate and maintain the control device according to a site-specific monitoring plan at all times.

(A) A description of the device;

(B) Results of a performance test or engineering assessment conducted in accordance with paragraph (f)(3)(ii) of this section verifying the performance of the device for reducing HAP metals or particulate matter (PM) to the levels required by this subpart;

(C) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(D) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(E) Operating parameter limits based on either monitoring data collected during the performance test or established in the engineering assessment.

(ii) You must conduct a performance test or an engineering assessment for each CMPU subject to a HAP metals emissions limit in Table 4 to this subpart and report the results in your Notification of Compliance Status (NOCS) report. If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the 5 years prior to the effective date using the same methods specified in paragraph (f)(3)(iii) of this section and either no process changes have been made since the test, or if you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. For each performance test, sampling must be conducted at both the inlet and outlet of the control device, and the test must be conducted under representative process operating conditions.

(iii) If you elect to conduct a performance test, it must be conducted according to requirements in § 63.11410(j)(1). As an alternative to conducting a performance test using Method 5 or 5D to determine the concentration of PM, you may use Method 29 in 40 CFR part 60, appendix A–8 to determine the concentration of HAP metals. You have demonstrated initial compliance if the overall reduction of either HAP metals or total PM is equal to or greater than 95 percent.

(4) If you have a new source using a baghouse as a control device, you must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the HAP metals emissions limit in Table 4 to this subpart. You must comply with the testing, monitoring, and recordkeeping requirements in § 63.11410(g), (i), and (j)(1), except you are not required to submit the monitoring plan required by § 63.11410(g)(2) for approval.

(5) If you have a new source using a control device other than a baghouse to comply with the HAP metals emission limits in Table 4 to this subpart, you must comply with the initial compliance and monitoring requirements in paragraphs (f)(3)(i) through (iii) of this section.

(g) *Exceptions and Alternatives to 40 CFR Part 63, Subpart SS.* If you are complying with the emission limits and other requirements for continuous process vents in Table 3 to this subpart, the provisions in paragraphs (g)(1) through (7) and (9) of this section apply in addition to the provisions in 40 CFR part 63, subpart SS. If you are complying with the emission limits and other requirements for batch process vents in Table 2 to this subpart, the provisions in paragraphs (g)(1) through (8) of this section apply in addition to the provisions in subpart SS.

(1) *Requirements for Performance Tests.* The requirements specified in §§ 63.2450(g)(1) through (4) apply instead of or in addition to the requirements specified in 40 CFR part 63, subpart SS.

(2) *Design Evaluation.* To determine initial compliance with a percent reduction emission limit, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of this part 63. You must establish the value(s) and basis for the operating limits as part of the design evaluation. For continuous process vents, the design evaluation must be conducted at maximum representative operating conditions for the process, unless the Administrator specifies or approves alternate operating conditions. For batch process vents, the design evaluation must be conducted under worst-case conditions, as specified in § 63.2460(c)(2).

(3) *Outlet Concentration Correction for Combustion Devices.* When § 63.997(e)(2)(iii)(C) requires you to correct the measured concentration at the outlet of a combustion device to 3 percent oxygen if you add supplemental combustion air, the requirements in either paragraph (g)(3)(i) or (g)(3)(ii) of this section apply for the purposes of this subpart.

(i) You must correct the concentration in the gas stream at the outlet of the combustion device to 3 percent oxygen if you add supplemental gases, as defined in § 63.2550, to the vent stream, or;

(ii) You must correct the measured concentration for supplemental gases using Equation 1 of § 63.2460; you may use process knowledge and representative operating data to determine the fraction of the total flow due to supplemental gas.

(4) *Continuous Parameter Monitoring.* The provisions in § 63.2450(k)(1) through (6) apply in addition to the requirements for continuous parameter monitoring systems (CPMS) in subpart SS of this part 63, except as specified in paragraphs (g)(4)(i) and (ii) of this section.

(i) You may measure pH at least once per day for any halogen scrubber within a CMPU subject to this rule.

(ii) The requirements in § 63.2450(k)(6) to request approval of a procedure to monitor operating parameters does not apply for the purposes of this subpart. You must provide the required information in your NOCS report required by § 63.11501(b).

(5) *Startup, Shutdown, Malfunction (SSM).* Section 63.998(b)(2)(iii),(b)(6)(i)(A), and (d)(3) do not apply for the purposes of this subpart.

(6) *Excused Excursions.* Excused excursions, as defined in subpart SS of this part 63, are not allowed.

(7) *Energetics and Organic Peroxides.* If an emission stream contains energetics or organic peroxides that, for safety reasons, cannot meet an applicable emission limit specified in this subpart, then you must submit an application to the Administrator explaining why an undue safety hazard would be created if the air emission controls were installed, and you must describe the procedures that you will implement to minimize HAP emissions from these vent streams in lieu of the emission limitations in this section.

(8) *Additional Requirements for Batch Process Vents.* The provisions specified in § 63.2460(c) apply in addition to the provisions in subpart SS of this part 63, except as specified in paragraphs (g)(8)(i) through (iii) of this section.

(i) References to emission limits in Table 2 to subpart FFFF mean the emission limits in Table 2 to this subpart.

(ii) References to MCPU mean CMPU for purposes of this subpart.

(iii) Section 63.2460(c)(8) does not apply for the purposes of this subpart.

(9) *Parameter Monitoring Averaging Periods.* Daily averages required in § 63.998(b)(3) apply at all times except during startup and shutdown. Separate averages shall be determined for each period of startup and period of shutdown.

(h) *Surge Control Vessels and Bottoms Receivers.* For each surge control vessel and bottoms receiver that meets the applicability criteria for storage tanks specified in Table 5 to this subpart, you must meet the emission limits and control requirements specified in Table 5 to this subpart.

(i) *Startup, shutdown, and malfunction (SSM).* References to SSM provisions in subparts that are referenced in paragraphs (a) through (h) of this section or Tables 2 through 5 to this subpart do not apply.

§ 63.11497 What are the standards and compliance requirements for storage tanks?

(a) You must comply with the emission limits and other requirements in Table 5 to this subpart and in paragraph (b) of this section for organic HAP emissions from each of your storage tanks that meet the applicability criteria in Table 5 to this subpart.

(b) *Planned Routine Maintenance for a Control Device.* Operate in accordance with paragraphs (b)(1) through (3) of this section for periods of planned routine maintenance of a control device for storage tanks.

(1) Add no material to the storage tank during periods of planned routine maintenance.

(2) Limit periods of planned routine maintenance for each control device (or series of control devices) to no more than 240 hours per year (hr/yr), or submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr. The application must explain why the extension is needed and it must be submitted at least 60 days before the 240-hour limit will be exceeded.

(3) Keep records of the day and time at which planned routine maintenance periods begin and end, and keep a record of the type of maintenance performed.

(c) References to SSM provisions in subparts that are referenced in paragraphs (a) or (b) of this section or Table 5 to this subpart do not apply.

§ 63.11498 What are the standards and compliance requirements for wastewater systems?

(a) You must comply with the requirements in paragraph (a)(1) and (2) of this section and in Table 6, Item 1 to this subpart for all wastewater streams from a CMPU subject to this subpart. If the partially soluble HAP concentration in a wastewater stream is equal to or greater than 10,000 parts per million by weight (ppmw) and the wastewater stream contains a separate organic phase, then you must also comply with Table 6, Item 2 to this subpart for that wastewater stream. Partially soluble HAP are listed in Table 7 to this subpart.

(1) Except as specified in paragraph (a)(2) of this section, you must determine the total concentration of partially soluble HAP in each wastewater stream using process knowledge, engineering assessment, or test data. Also, you must reevaluate the concentration of partially soluble HAP if you make any process or operational change that affects the concentration of partially soluble HAP in a wastewater stream.

(2) You are not required to determine the partially soluble concentration in wastewater that is hard piped to a combustion unit or hazardous waste treatment unit, and you are not required to determine the partially soluble HAP concentration in wastewater that is hard piped to a storage tank from which the wastewater is collected and shipped offsite for treatment in a combustion unit or hazardous waste treatment unit.

(3) Separated organic material that is recycled to a process is no longer wastewater and no longer subject to the wastewater requirements after it has been recycled.

(b) The requirements in Item 2 of Table 6 to this subpart do not apply during periods of startup or shutdown. References to SSM provisions in subparts that are referenced in paragraph (a) of this section or Table 6 to this subpart do not apply.

§ 63.11499 What are the standards and compliance requirements for heat exchange systems?

(a) If the cooling water flow rate in your heat exchange system is equal to or greater than 8,000 gal/min and is not meeting one or more of the conditions in § 63.104(a), then you must comply with one of the requirements specified in Table 8 to this subpart.

(b) For equipment that meets Current Good Manufacturing Practice (CGMP) requirements of 21 CFR part 211, you may use the physical integrity of the reactor as the surrogate indicator of heat exchanger system leaks when complying with Item 1.a in Table 8 to this subpart.

(c) Any reference to SSM provisions in other subparts that are referenced in paragraphs (a) and (b) of this section or Table 8 to this subpart do not apply.

§ 63.11500 What compliance options do I have if part of my plant is subject to both this subpart and another Federal standard?

For any CMPU, heat exchange system, or wastewater system subject to the provisions of both this subpart and another rule, you may elect to comply only with the more stringent provisions as specified in paragraphs (a) through (d) of this section. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the subject CMPU, heat exchange system, and/or wastewater system, and the provisions with which you will comply in your NOCS report required by § 63.11501(b). You also must demonstrate in your NOCS report that each provision with which you will comply is at least as stringent as the otherwise applicable requirement in this subpart VVVVVV. You are responsible for making accurate determinations concerning the more stringent standards and noncompliance with this rule is not excused if it is later determined that your determination was in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS report does not alter or affect that responsibility.

(a) *Compliance with Other Subparts of this Part 63.* If any part of a CMPU that is subject to the provisions of this subpart is also subject to the provisions of another subpart of 40 CFR part 63, then compliance with any of the requirements in the other subpart of this part 63 that are at least as stringent as the corresponding requirements in this subpart VVVVVV constitutes compliance with this subpart VVVVVV.

(b) *Compliance with Subparts of 40 CFR Part 60.* If any part of a CMPU that is subject to the provisions of this subpart is also subject to the provisions of subpart VV, DDD, III, NNN, RRR, or YYY in 40 CFR part 60, then compliance with any of the requirements in 40 CFR part 60, subpart VV, DDD, III, NNN, RRR, or YYY that are at least as stringent as the corresponding requirements in this subpart VVVVVV constitutes compliance with this subpart VVVVVV.

(c) *Compliance with Subparts of 40 CFR Part 61.* If any part of a CMPU that is subject to the provisions of this subpart is also subject to the provisions of subpart V, Y, BB, or FF of 40 CFR part 61, then compliance with any of the requirements in 40 CFR part 61, subpart V, Y, BB, or FF that are at least as stringent as the corresponding requirements in this subpart VVVVVV constitutes compliance with this subpart VVVVVV.

(d) *Compliance with 40 CFR Parts 260 through 272.* If any part of a CMPU that is subject to the provisions of this subpart is also subject to the provisions of 40 CFR parts 260 through 272, then compliance with any of the requirements in 40 CFR part 260

through 272 rule that are at least as stringent as the corresponding requirements in this subpart VVVVVV constitutes compliance with this subpart VVVVVV.

§ 63.11501 What are the notification, recordkeeping, and reporting requirements?

(a) *General Provisions.* You must meet the requirements of the General Provisions in 40 CFR part 63, subpart A, as shown in Table 9 to this subpart. The General Provisions in other parts do not apply except when a requirement in an overlapping standard, which you determined is at least as stringent as subpart VVVVVV and with which you have opted to comply, requires compliance with general provisions in another part.

(b) *Notification of Compliance Status (NOCS).* Your NOCS required by § 63.9(h) must include the following additional information as applicable:

(1) This certification of compliance, signed by a responsible official:

(i) ''This facility complies with the management practices in § 63.11495.''

(ii) ''This facility complies with the requirements in § 63.11496 for HAP emissions from process vents.''

(iii) ''This facility complies with the requirements in § 63.11496 and § 63.11497 for surge control vessels, bottoms receivers, and storage tanks.''

(iv) ''This facility complies with the requirements in § 63.11498 to treat wastewater streams.''

(v) ''This facility complies with the requirements in § 63.11499 for heat exchange systems.''

(2) If you comply with the alternative standard as specified in Table 2 to this subpart or Table 3 to this subpart, include the information specified in § 63.1258(b)(5), as applicable.

(3) If you establish an operating limit for a parameter that will not be monitored continuously in accordance with §§ 63.11496(g)(4) and 63.2450(k)(6), provide the information as specified in §§ 63.11496(g)(4) and 63.2450(k)(6).

(4) A list of all transferred liquids that are reactive or resinous materials, as defined in § 63.11502(b).

(5) If you comply with provisions in an overlapping rule in accordance with § 63.11500, identify the affected CMPU, heat exchange system, and/or wastewater system; provide a list of the specific provisions with which you will comply; and demonstrate that the provisions with which you will comply are at least as stringent as the otherwise applicable requirements, including monitoring, recordkeeping, and reporting requirements, in this subpart VVVVVV.

(c) *Recordkeeping.* You must maintain files of all information required by this subpart for at least 5 years following the date of each occurrence according to the requirements in § 63.10(b)(1). If you are subject, you must comply with the recordkeeping requirements of § 63.10(b)(2) and the applicable requirements specified in paragraphs (c)(1) through (7) of this section.

(1) For each CMPU subject to this subpart you must keep the records specified in paragraphs (c)(1)(i) through (vi) of this section, as applicable.

(i) Records of management practice inspections, repairs, and reasons for any delay of repair, as specified in § 63.11495(a)(5).

(ii) Records of small heat exchange system inspections, demonstrations of indications of leaks that do not constitute leaks, repairs, and reasons for any delay in repair as specified in § 63.11495(b).

(iii) If batch process vent emissions are less than 10,000 lb/yr for a CMPU, records of batch process vent emission calculations, as specified in § 63.11496(a)(1), the number of batches operated each month, as specified in § 63.11496(a)(3), and any updated emissions calculations, as specified in § 63.11496(a)(3). Alternatively, keep records of the worst-case processes or organic HAP usage, as specified in § 63.11496(a)(2) and (4), respectively.

(iv) Records of all TRE calculations for continuous process vents as specified in § 63.11496(b)(2).

(v) Records of metal HAP emission calculations as specified in § 63.11496(f)(1) and (2). If total uncontrolled metal HAP process vent emissions from a CMPU subject to this subpart are estimated to be less than 400 lb/yr, also keep records of either the number of batches per month or operating hours, as specified in § 63.11496(f)(2).

(vi) Records identifying wastewater streams and the type of treatment they receive, as specified in Table 6 to this subpart.

(2) For batch process vents subject to Table 2 to this subpart and continuous process vents subject to Table 3 to this subpart, you must keep records specified in paragraphs (c)(2)(i) or (ii) of this section, as applicable.

(i) If you route emissions to a control device other than a flare, keep records of performance tests, if applicable, as specified in § 63.998(a)(2)(ii) and (4), keep records of the monitoring system and the monitored parameters, as specified in § 63.998(b) and (c), and keep records of the closed-vent system, as specified in § 63.998(d)(1). If you use a recovery device to maintain the TRE above 1.0 for a continuous process vent, keep records of monitoring parameters during the TRE index value determination, as specified in § 63.998(a)(3).

(ii) If you route emissions to a flare, keep records of the flare compliance assessment, as specified in § 63.998(a)(1)(i), keep records of the pilot flame monitoring, as specified in § 63.998(a)(1)(ii) and (iii), and keep records of the closed-vent system, as specified in § 63.998(d)(1).

(3) For metal HAP process vents subject to Table 4 to this subpart, you must keep records specified in paragraphs (c)(3)(i) or (ii) of this section, as applicable.

(i) For a new source using a control device other than a baghouse and for any existing source, maintain a monitoring plan, as specified in § 63.11496(f)(3)(i), and keep records of monitoring results, as specified in § 63.11496(f)(3).

(ii) For a new source using a baghouse to control metal HAP emissions, keep a site-specific monitoring plan, as specified in §§ 63.11496(f)(4) and 63.11410(g), and keep records of bag leak detection systems, as specified in §§ 63.11496(f)(4) and 63.11410(g)(4).

(4) For each storage tank subject to Table 5 to this subpart, you must keep records specified in paragraphs (c)(4)(i) through (vi) of this section, as applicable.

(i) Keep records of the vessel dimension, capacity, and liquid stored, as specified in § 63.1065(a).

(ii) Keep records of each inspection of an internal floating roof, as specified in § 63.1065(b)(1).

(iii) Keep records of each seal gap measurement for external floating roofs, as specified in § 63.1065(b)(2), and keep records of inspections of external floating roofs, as specified in § 63.1065(b)(1).

(iv) If you vent emissions to a control device other than a flare, keep records of the operating plan and measured parameter values, as specified in §§ 63.985(c) and 63.998(d)(2).

(v) If you vent emissions to a flare, keep records of all periods of operation during which the flare pilot flame is absent, as specified in §§ 63.987(c) and 63.998(a)(1), and keep records of closed-vent systems, as specified in § 63.998(d)(1).

(vi) For periods of planned routine maintenance of a control device, keep records of the day and time at which each maintenance period begins and ends, and keep records of the type of maintenance performed, as specified in § 63.11497(b)(3).

(5) For each wastewater stream subject to Item 2 in Table 6 to this subpart, keep records of the wastewater stream identification and the disposition of the organic phase(s), as specified in Item 2 to Table 6 to this subpart.

(6) For each large heat exchange system subject to Table 8 to this subpart, you must keep records of detected leaks; the date the leak was detected; if demonstrated not to be a leak, the basis for that determination; the date of efforts to repair the leak; and the date the leak is repaired, as specified in Table 8 to this subpart.

(7) You must keep a record of all transferred liquids that are reactive or resinous materials, as defined in § 63.11502(b), and not included in the NOCS.

(d) *Semiannual Compliance Reports.* You must submit semiannual compliance reports that contain the information specified in paragraphs (d)(1) through (7) of this section, as applicable. Reports are required only for semiannual periods during which you experienced any of the events described in paragraphs (d)(1) through (7) of this section.

(1) *Deviations.* You must clearly identify any deviation from the requirements of this subpart.

(2) *Delay of Repair for a Large Heat Exchange System.* You must include the information specified in § 63.104(f)(2) each time you invoke the delay of repair provisions for a heat exchange system with a cooling water flow rate equal to or greater than 8,000 gal/min.

(3) *Delay of Leak Repair.* You must provide the following information for each delay of leak repair beyond 15 days for any process equipment, storage tank, surge control vessel, bottoms receiver, and each delay of leak repair beyond 45 days for any heat exchange system with a cooling water flow rate less than 8,000 gal/min: information on the date the leak was identified, the reason for the delay in repair, and the date the leak was repaired.

(4) *Process Change.* You must report each process change that affects a compliance determination and submit a new certification of compliance with the applicable requirements in accordance with the procedures specified in paragraph (b) of this section.

(5) *Data for the Alternative Standard.* If you comply with the alternative standard, as specified in Table 2 to this subpart or Table 3 to this subpart, report the information required in § 63.1258(b)(5).

(6) *Overlapping Rule Requirements.* Report any changes in the overlapping provisions with which you comply.

(7) *Reactive and Resinous Materials.* Report any transfer of liquids that are reactive or resinous materials, as defined in § 63.11502(b), and not included in the NOCS.

Other Requirements and Information

§ 63.11502 What definitions apply to this subpart?

(a) The following terms used in this subpart have the meaning given them in the CAA, § 63.2, subpart SS (§ 63.981), subpart WW (§ 63.1061), 40 CFR 60.111b, subpart F (§ 63.101), subpart G (§ 63.111), subpart FFFF (§ 63.2550), as specified after each term:

Administrator (§ 63.2)
Article (40 CFR 372.3)
Boiler (§ 63.111)
Bottoms receiver (§ 63.2550)
CAA (§ 63.2)
Closed-vent system (§ 63.981)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Container (§ 63.111)
Continuous monitoring system (§ 63.2)
Distillation unit (§ 63.111)
Emission standard (§ 63.2)
EPA (§ 63.2)
Family of materials (§ 63.2550)
Fill or filling (§ 63.111)
Floating roof (§ 63.1061)
Fuel gas system (§ 63.981)
Halogen atoms (§ 63.2550)
Halogenated vent stream (§ 63.2550)
Halogens and hydrogen halides (§ 63.2550)
Hazardous air pollutant (§ 63.2)
Heat exchange system (§ 63.101)
Incinerator (§ 63.111)
Maintenance wastewater (§ 63.2550)
Major source (§ 63.2)
Maximum true vapor pressure (§ 63.111)
Oil-water separator or organic-water separator (§ 63.111)
Operating permit (§ 63.101)
Owner or operator (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Process condenser (§ 63.2550)
Process heater (§ 63.111)
Process tank (§ 63.2550)
Process wastewater (§ 63.101)
Reactor (§ 63.111)
Responsible official (§ 63.2)
State (§ 63.2)
Supplemental gases (§ 63.2550)
Surge control vessel (§ 63.2550)
Test method (§ 63.2)
Unit operation (§ 63.101)

(b) All other terms used in this subpart shall have the meaning given them in this section. If a term is defined in the CAA, § 63.2, subpart SS (§ 63.981), subpart WW (§ 63.1061), 40 CFR 60.111b, subpart F (§ 63.101), subpart G (§ 63.111), or subpart FFFF (§ 63.2550), and in this section, it shall have the meaning given in this section for purposes of this subpart.

Ancillary activities means boilers, incinerators, and process heaters not used to comply with the emission standards in §§ 63.11495 through 63.11500, chillers and other refrigeration systems, and other equipment and activities that are not directly involved (*i.e.,* they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a product or intermediates used in the production of the product.

Batch process vent means a vent from a CMPU or vents from multiple CMPUs within a process that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Batch process vents include vents with intermittent flow from continuous operations that are not combined with any stream that originated as a continuous gas stream from the same continuous process. Examples of batch process vents include, but are not limited to, vents on condensers used for product recovery, reactors, filters, centrifuges, and process tanks. The following are not batch process vents for the purposes of this subpart:

(1) Continuous process vents;

(2) Bottoms receivers;

(3) Surge control vessels;

(4) Gaseous streams routed to a fuel gas system(s);

(5) A gas stream routed to other processes for reaction or other use in another process (*i.e.,* for chemical value as a product, isolated intermediate, byproduct, or coproduct, or for heat value).

(6) Vents on storage tanks or wastewater systems;

(7) Drums, pails, and totes; and

(8) Emission streams from emission episodes that are undiluted and uncontrolled containing less than 50 ppmv HAP are not part of any batch process vent. The HAP concentration may be determined using any of the following: process knowledge, an engineering assessment, or test data.

Byproduct means a chemical (liquid, gas, or solid) that is produced coincidentally during the production of the product.

Chemical manufacturing process means all equipment which collectively functions to produce a product or isolated intermediate. A process includes, but is not limited to any, all, or a combination of reaction, recovery, separation, purification, or other

activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate. A process is also defined by the following:

(1) Routine cleaning operations conducted as part of batch operations are considered part of the process;

(2) Each nondedicated solvent recovery operation is considered a single process;

(3) Each nondedicated formulation operation is considered a single process;

(4) Quality assurance/quality control laboratories are not considered part of any process;

(5) Ancillary activities are not considered a process or part of any process; and

(6) The end of a process that produces a solid material is either up to and including the dryer or extruder, or for a polymer production process without a dryer or extruder, it is up to and including the die plate or solid-state reactor, except in two cases. If the dryer, extruder, die plate, or solid-state reactor is followed by an operation that is designed and operated to remove HAP solvent or residual monomer from the solid, then the solvent removal operation is the last step in the process. If the dried solid is diluted or mixed with a HAP-based solvent, then the solvent removal operation is the last step in the process.

Continuous process vent means a ''process vent'' as defined in § 63.101 in subpart F of this part, except:

(1) The reference in § 63.107(e) to a chemical manufacturing process unit that meets the criteria of § 63.100(b) means a CMPU that meets the criteria of § 63.11494(a) and (b);

(2) The reference in § 63.107(h)(2) to subpart H means § 63.11495(a) for the purposes of this subpart;

(3) The reference in § 63.107(h)(4) to § 63.113 means Tables 2 and 3 to this subpart;

(4) The reference in § 63.107(h)(7) to § 63.119 means Table 5 to this subpart, and the reference to § 63.126 does not apply for the purposes of this subpart;

(5) The second sentence in the definition of ''process vent'' in § 63.101 does not apply for the purposes of this subpart;

(6) The references to an ''air oxidation reactor, distillation unit, or reactor'' in § 63.107 means any continuous operation for the purposes of this subpart;

(7) Section § 63.107(h)(8) does not apply for the purposes of this subpart; and

(8) A separate determination is required for the emissions from each CMPU, even if emission streams from two or more CMPU are combined prior to discharge to the atmosphere or to a control device.

Co-Product means a chemical that is produced during the production of another chemical, both for their intended production.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source fails to meet any requirement or obligation established by this subpart, including, but not limited to any emissions limitation or management practice; or fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in or associated with a CMPU.

Feedstock means any raw material, reactant, solvent, additive, or other material introduced to a CMPU.

In metal HAP service means that a process vessel or piece of equipment either contains or contacts a feedstock, byproduct, or product that contains metal HAP.

In organic HAP service means that a process vessel or piece of equipment either contains or contacts a feedstock, byproduct, or product that contains an organic HAP.

Metal HAP means the compounds containing metals listed as HAP in section 112(b) of the CAA.

Metal HAP process vent means the point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any CMPU at an affected source.

Organic HAP means any organic HAP listed in section 112(b) of the CAA. For the purposes of requirements in this subpart VVVVVV, hydrazine is to be considered an organic HAP.

Process vessel means each vessel, except hand-held containers, used in the processing of raw materials to chemical products. Examples include, but are not limited to reactors, distillation units, centrifuges, mixing vessels, and process tanks.

Product means a compound or chemical which is manufactured as the intended product of the CMPU. Products include co-products. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Reactive material means energetics, organic peroxides, and unstable chemicals such as chemicals that react violently with water and chemicals that vigorously polymerize, decompose, or become self-reactive under conditions of pressure or temperature.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering organic chemicals or metal-containing chemicals for fuel value (*i.e.,* net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

Resinous material means a viscous, high-boiling point material resembling pitch or tar, such as plastic resin, that sticks to or hardens in the fill pipe under normal transfer conditions.

Shutdown, for a unit operation with a continuous process vent, means the cessation of the unit operation for any purpose. Shutdown begins with the initiation of steps as described in a written standard operating procedures (SOP) or shutdown plan to cease normal/stable operation (*e.g.,* reducing or immediately stopping feed).

Startup, for a unit operation with a continuous process vent, means the setting in operation of the unit for any purpose. The period of startup ends upon completion of the transient, non-equilibrium step at the time operating conditions reach steady state for operating parameters such as temperature, pressure, composition, feed rate, and production rate. Periods of startup described by SOP manuals at the affected source may be used to determine the period of startup.

Storage tank means a tank or other vessel that is used to store liquids that contain organic HAP and that are part of a CMPU subject to this subpart VVVVVV. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals (kPa) and without emissions to the atmosphere;

(3) Process tanks;

(4) Tanks storing organic liquids containing HAP only as impurities;

(5) Surge control vessels;

(6) Bottoms receivers; and

(7) Wastewater storage tanks.

Transfer operations means all product loading into tank trucks and rail cars of liquid containing organic HAP from a transfer rack. Transfer operations do not

include the loading to other types of containers such as cans, drums, and totes.

Transfer rack means the system used to load organic liquids into tank trucks and railcars at a single geographic site. It includes all loading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment that are physically separate (*i.e.,* do not share common piping, valves, and other equipment) are considered to be separate transfer racks.

Wastewater means water that is discarded from a CMPU or control device and that contains at least 5 ppmw of any HAP listed in Table 9 to 40 CFR part 63, subpart G and has an annual average flow rate of 0.02 liters per minute. Wastewater means both process wastewater and maintenance wastewater that is discarded from a CMPU or control device. The following are not considered wastewater for the purposes of this subpart:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems, including testing of such systems;

(3) Spills;

(4) Water from safety showers;

(5) Samples of a size not greater than reasonably necessary for the method of analysis that is used;

(6) Equipment leaks;

(7) Wastewater drips from procedures such as disconnecting hoses after cleaning lines; and

(8) Noncontact cooling water.

Wastewater stream means a single point discharge of wastewater from a CMPU or control device.

Wastewater treatment means chemical, biological, and mechanical procedures applied to wastewater to remove or reduce HAP or other chemical constituents.

§ 63.11503 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to a test method. A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

Tables to Subpart VVVVVV of Part 63

As required in § 63.11494(a), chemical manufacturing operations that process, use, or produce the HAP shown in the following table are subject to subpart VVVVVV.

TABLE 1 TO SUBPART VVVVVV OF PART 63—HAZARDOUS AIR POLLUTANTS USED TO DETERMINE APPLICABILITY OF CHEMICAL MANUFACTURING OPERATIONS

Type of HAP	Chemical name	CAS No.
1. Organic compounds	a. 1,3-butadiene	106990
	b. 1,3-dichloropropene	542756
	c. Acetaldehyde	75070
	d. Chloroform	67663
	e. Ethylene dichloride	107062
	f. Hexachlorobenzene	118741
	g. Methylene chloride	75092
	h. Quinoline	91225
2. Metal compounds	a. Arsenic compounds	
	b. Cadmium compounds	
	c. Chromium compounds	
	d. Lead compounds	
	e. Manganese compounds	
	f. Nickel compounds	
3. Others	a. Hydrazine	302012

As required in § 63.11496, you must comply with the requirements for batch process vents as shown in the following table.

TABLE 2 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR BATCH PROCESS VENTS

For * * *	You must * * *	Except * * *
1. Batch process vents in a CMPU at an existing source for which the total organic HAP emissions are equal to or greater than 10,000 lb/yr.	a. Reduce collective uncontrolled total organic HAP emissions from the sum of all batch process vents by ≥85 percent by weight or to ≤20 ppmv by routing emissions from a sufficient number of the batch process vents through a closed vent system to any combination of control devices (except a flare) in accordance with the requirements of § 63.982(c) and the requirements referenced therein; or	i. Compliance may be based on either total organic HAP or total organic carbon (TOC); and ii. As specified in § 63.11496(g).
	b. Route emissions from batch process vents containing at least 85 percent of the uncontrolled total organic HAP through a closed-vent system to a flare (except that a flare may not be used to control halogenated vent streams) in accordance with the requirements of § 63.982(b) and the requirements referenced therein; or	i. Not applicable.
	c. Comply with the alternative standard specified in § 63.2505 and the requirements referenced therein; or	i. As specified in § 63.11496(e) of this subpart.
	d. Comply with combinations of the requirements in Items a., b., and c. of this Table for different groups of batch process vents.	i. The information specified above for Items a., b., and c., as applicable.
2. Batch process vents in a CMPU at a new source for which the total organic HAP emissions are equal to or greater than 10,000 lb/yr.	a. Comply with any of the emission limits in Items 1.a through 1.d of this Table, except 90 percent reduction applies instead of 85 percent reduction in Item 1.a, and 90 percent of the emissions must be routed to a flare instead of 85 percent in Item 1.b.	i. The information specified above for Items 1.a., 1.b., 1.c., and 1.d, as applicable.
3. Halogenated batch process vent stream at a new or existing source that is controlled through combustion.	a. Comply with the requirements for halogen scrubbers in § 63.11496(d).	

As required in § 63.11496, you must comply with the requirements for continuous process vents as shown in the following table.

TABLE 3 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR CONTINUOUS PROCESS VENTS

For * * *	You must * * *	Except * * *
1. Each continuous process vent with a TRE ≤1.0.	a. Reduce emissions of total organic HAP by ≥95 percent by weight (≥85 percent by weight for periods of startup or shutdown) or to ≤20 ppmv by routing emissions through a closed vent system to any combination of control devices (except a flare) in accordance with the requirements of § 63.982(c)(2) and the requirements referenced therein; or	i. Compliance may be based on either total organic HAP or TOC; and ii. As specified in § 63.11496(g).
	b. Reduce emissions of total organic by HAP by routing all emissions through a closed-vent system to a flare (except that a flare may not be used to control halogenated vent streams) in accordance with the requirements of § 63.982(b) and the requirements referenced therein; or	i. Not applicable.
	c. Comply with the alternative standard specified in § 63.2505 and the requirements referenced therein.	i. As specified in § 63.11496(e).
2. Halogenated vent stream that is controlled through combustion.	a. Comply with the requirements for halogen scrubbers in § 63.11496(d).	

As required in § 63.11496(f), you must comply with the requirements for metal HAP process vents as shown in the following table.

TABLE 4 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR METAL HAP PROCESS VENTS

For * * *	You must * * *	Except * * *
Each CMPU with total metal HAP emissions ≥400 lb/yr.	Reduce collective uncontrolled emissions of total metal HAP emissions by ≥95 percent by weight by routing emissions from a sufficient number of the metal process vents through a closed-vent system to any combination of control devices, according to the requirements of § 63.11496(f)(3), (4), or (5).	Not applicable.

As required in § 63.11497, you must comply with the requirements for storage tanks as shown in the following table.

TABLE 5 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR STORAGE TANKS

For each * * *	You must * * *	Except * * *
1. Storage tank with a design capacity ≥40,000 gallons, storing liquid that contains organic HAP listed in Table 1 to this subpart, and for which the maximum true vapor pressure (MTVP) of total organic HAP at the storage temperature is ≥5.2 kPa and <76.6 kPa.	a. Comply with the requirements of subpart WW of this part;	i. All required seals must be installed by the compliance date in § 63.11494.
	b. Reduce total organic HAP emissions by ≥95 percent by weight by operating and maintaining a closed-vent system and control device (other than a flare) in accordance with § 63.982(c)(1); or	i. Compliance may be based on either total organic HAP or TOC; ii. Comply with the management practice inspection requirements in § 63.11495 for the closed-vent system; iii. When the term storage vessel is used in subpart SS of this part, the term storage tank, surge control vessel, or bottoms receiver, as defined in § 63.11502 of this subpart, applies; and iv. The requirements do not apply during periods of planned routine maintenance of the control device, as specified in § 63.11497(b).
	c. Reduce total HAP emissions by operating and maintaining a closed-vent system and a flare in accordance with § 63.982(b); or	i. The requirements do not apply during periods of planned routine maintenance of the flare, as specified in § 63.11497(b); and ii. When the term storage vessel is used in subpart SS of this part, it means storage tank, surge control vessel, or bottoms receiver, as defined in § 63.11502 of this subpart.
	d. Vapor balance in accordance with § 63.2470(e); or	i. Not applicable.
	e. Route emissions to a fuel gas system or process in accordance with the requirements in § 63.982(d) and the requirements referenced therein.	i. When the term storage vessel is used in subpart SS of this part, it means storage tank, surge control vessel, or bottoms receiver, as defined in § 63.11502.
2. Storage tank with a design capacity ≥20,000 gallons and <40,000 gallons, storing liquid that contains organic HAP listed in Table 1 to this subpart, and for which the MTVP of total organic HAP at the storage temperature is ≥27.6 kPa and <76.6 kPa.	a. Comply with one of the options in Item 1 of this table.	i. The information specified above for Items 1.a., 1.b., 1.c., 1.d, and 1.e, as applicable.
3. Storage tank with a design capacity ≥20,000 gallons, storing liquid that contains organic HAP listed in Table 1 to this subpart, and for which the MTVP of total organic HAP at the storage temperature is ≥76.6 kPa.	a. Comply with option b, c, d, or e in Item 1 of this table.	i. The information specified above for Items 1.b., 1.c., 1.d, and 1.e, as applicable.
4. Storage tank described by Item 1, 2, or 3 in this table and emitting a halogenated vent stream that is controlled with a combustion device.	a. Reduce emissions of hydrogen halide and halogen HAP by ≥95 percent by weight, or to ≤0.45 kg/hr, or to ≤20 ppmv by using a halogen reduction device after the combustion device according to the requirements in § 63.11496(d); or	

TABLE 5 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR STORAGE TANKS—Continued

For each * * *	You must * * *	Except * * *
	b. Reduce the halogen atom mass emission rate to ≤0.45 kg/hr or to ≤20 ppmv by using a halogen reduction device before the combustion device according to the requirements in § 63.11496(d).	

As required in § 63.11498, you must comply with the requirements for wastewater systems as shown in the following table.

TABLE 6 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR WASTEWATER SYSTEMS

For each * * *	You must * * *	And you must * * *
1. Wastewater stream	a. Discharge to onsite or offsite treatment	i. Maintain records identifying each wastewater stream and documenting the type of treatment that it receives. Multiple wastewater streams with similar characteristics and from the same type of activity in a CMPU may be grouped together for recordkeeping purposes.
2. Wastewater stream containing partially soluble HAP at a concentration ≥10,000 ppmw and separate organic and water phases.	a. Use a decanter, steam stripper, thin film evaporator, or distillation unit to separate the water phase from the organic phase(s); or	i. For the water phase, comply with the requirements in Item 1 of this table, and ii. For the organic phase(s), recycle to a process, use as fuel, or dispose as hazardous waste either onsite or offsite, and iii. Keep records of the wastewater streams subject to this requirement and the disposition of the organic phase(s).
	b. Hard pipe the entire wastewater stream to onsite treatment as a hazardous waste, or hard pipe the entire wastewater stream to a point of transfer for offsite treatment as a hazardous waste.	i. Keep records of the wastewater streams subject to this requirement and the disposition of the wastewater streams.

As required in § 63.11498(a), you must comply with emission limits for wastewater streams that contain the partially soluble HAP listed in the following table.

TABLE 7 TO SUBPART VVVVVV OF PART 63—PARTIALLY SOLUBLE HAP

Partially soluble HAP name	CAS No.
1. 1,1,1-Trichloroethane (methyl chloroform)	71556
2. 1,1,2,2-Tetrachloroethane	79345
3. 1,1,2-Trichloroethane	79005
4. 1,1-Dichloroethylene (vinylidene chloride)	75354
5. 1,2-Dibromoethane	106934
6. 1,2-Dichloroethane (ethylene dichloride)	107062
7. 1,2-Dichloropropane	78875
8. 1,3-Dichloropropene	542756
9. 2,4,5-Trichlorophenol	95954
10. 1,4-Dichlorobenzene	106467
11. 2-Nitropropane	79469
12. 4-Methyl-2-pentanone (MIBK)	108101
13. Acetaldehyde	75070
14. Acrolein	107028
15. Acrylonitrile	107131
16. Allyl chloride	107051
17. Benzene	71432

TABLE 7 TO SUBPART VVVVVV OF PART 63—PARTIALLY SOLUBLE HAP—Continued

Partially soluble HAP name	CAS No.
18. Benzyl chloride	100447
19. Biphenyl	92524
20. Bromoform (tribromomethane)	75252
21. Bromomethane	74839
22. Butadiene	106990
23. Carbon disulfide	75150
24. Chlorobenzene	108907
25. Chloroethane (ethyl chloride)	75003
26. Chloroform	67663
27. Chloromethane	74873
28. Chloroprene	126998
29. Cumene	98828
30. Dichloroethyl ether	111444
31. Dinitrophenol	51285
32. Epichlorohydrin	106898
33. Ethyl acrylate	140885
34. Ethylbenzene	100414
35. Ethylene oxide	75218
36. Ethylidene dichloride	75343
37. Hexachlorobenzene	118741
38. Hexachlorobutadiene	87683
39. Hexachloroethane	67721
40. Methyl methacrylate	80626
41. Methyl-t-butyl ether	1634044
42. Methylene chloride	75092

TABLE 7 TO SUBPART VVVVVV OF PART 63—PARTIALLY SOLUBLE HAP—Continued

Partially soluble HAP name	CAS No.
43. N-hexane	110543
44. N,N-dimethylaniline	121697
45. Naphthalene	91203
46. Phosgene	75445
47. Propionaldehyde	123386
48. Propylene oxide	75569
49. Styrene	100425
50. Tetrachloroethylene (perchloroethylene)	127184
51. Tetrachloromethane (carbon tetrachloride)	56235
52. Toluene	108883
53. Trichlorobenzene (1,2,4-)	120821
54. Trichloroethylene	79016
55. Trimethylpentane	540841
56. Vinyl acetate	108054
57. Vinyl chloride	75014
58. Xylene (m)	108383
59. Xylene (o)	95476
60. Xylene (p)	106423

As required in § 63.11499, you must comply with the requirements for heat exchange systems as shown in the following table.

TABLE 8 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR HEAT EXCHANGE SYSTEMS

For * * *	You must * * *	Except * * *
1. Each heat exchange system with a cooling water flow rate ≥8,000 gal/min and not meeting one or more of the conditions in § 63.104(a).	a. Comply with the monitoring requirements in § 63.104(c), the leak repair requirements in § 63.104(d) and (e), and the recordkeeping and reporting requirements in § 63.104(f); or	i. The reference to monthly monitoring for the first 6 months in § 63.104(c)(1)(iii) does not apply. Monitoring shall be no less frequent than quarterly; ii. The reference in § 63.104(f)(1) to record retention requirements in § 63.103(c)(1) does not apply. Records must be retained as specified in §§ 63.10(b)(1) and 63.11501(c); and iii. The reference in § 63.104(f)(2) to "the next semi-annual periodic report required by § 63.152(c)" means the next semi-annual compliance report required by § 63.11501(f).
	b. Comply with the heat exchange system requirements in § 63.104(b) and the requirements referenced therein.	i. Not applicable.

As required in § 63.11501(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 9 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV

Citation	Subject	Applies to Subpart VVVVVV?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12) (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)-(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	Yes.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1)(iii), (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6 (e)(1)(i) and (ii), (e)(3), and (f)(1)	SSM Requirements	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart VVVVVV does not include opacity or visible emissions (VE) standards or require a continuous opacity monitoring system (COMS).
63.7(a)(1), (a)(3), (a)(4), (c), (e)(4), and (f)–(h).	Performance Testing Requirements	Yes.	
63.7(a)(2), (b), (d), (e)(1)–(3)	Performance Testing Schedule, Notification of Performance Test, Performance Testing Facilities, and Conduct of Performance Tests.	Yes/No	Requirements apply if conducting test for metal HAP control; requirements in §§ 63.997(c)(1), (d), (e), and 63.999(a)(1) apply, as referenced in § 63.11496(g), if conducting test for organic HAP or hydrogen halide and halogen HAP control device.
63.8(a)(1), (a)(4), (b), (c)(1)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes	References to SSM in § 63.8(c) do not apply.
63.8(a)(2)	Monitoring Requirements	No.	
63.8(a)(3)	Reserved	No.	
63.8(c)(4)		No	Continuous parameter monitoring system (CPMS) requirements in 40 CFR part 63, subparts SS and FFFF are referenced from § 63.11496.
63.8(c)(5)		No	Subpart VVVVVV does not require COMS.

TABLE 9 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV—Continued

Citation	Subject	Applies to Subpart VVVVVV?	Explanation
63.8(c)(6)–(c)(8), (d), (e), (f)(6)		Yes	Requirements apply only if you use a continuous emission monitoring system (CEMS) to demonstrate compliance with the alternative standard in § 63.11496(e). References to SSM in § 63.8(d) do not apply.
63.8(g)(1)–(g)(4)		Yes	Data reduction requirements apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(e). COMS requirements do not apply. Requirement in § 63.8(g)(2) does not apply because data reduction for CEMS are specified in 40 CFR part 63, subpart FFFF.
63.8(g)(5)		No	Data reduction requirements for CEMS are specified in 40 CFR part 63, subpart FFFF, as referenced from § 63.11496. CPMS requirements are specified in 40 CFR part 63, subparts SS and FFFF, as referenced from § 63.11496.
63.9(a), (b)(1), (b)(2), (b)(4), (b)(5), (c), (d), (e), (i).	Notification Requirements	Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(f)		No	Subpart VVVVVV does not contain opacity or VE limits.
63.9(g)		Yes	Additional notification requirement applies only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(e).
63.9(h)(1)–(h)(3), (h)(5)–(h)(6)		Yes	Except subpart VVVVVV does not contain opacity or VE limits.
63.9(j)	Change in Information Already Provided.	No	Notification of process changes that affect a compliance determination are required in § 63.11501(d)(4).
63.10(a)	Recordkeeping Requirements	Yes.	
63.10(b)(1)		Yes.	
63.10(b)(2)(i)–(b)(2)(v)		Yes	Any references to SSM do not apply.
63.10(b)(2)(vi), (x), (xi), (xiii)		Yes	Apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(e).
63.10(b)(2)(vii)–(b)(2)(ix), (b)(2)(xii), (b)(2)(xiv).		Yes.	
63.10(b)(3)		Yes.	
63.10(c)(1), (c)(5)–(c)(6), (c)(13)–(c)(14)		Yes	Apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(e).
63.10(c)(7)–(c)(8), (c)(10)–(c)(12), (c)(15)		Yes	Any reference to SSM does not apply.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(1), (d)(2), (d)(4), (e)(1), (e)(2), (f).	Reporting Requirements	Yes.	
63.10(d)(3)		No	Subpart VVVVVV does not include opacity or VE limits.
63.10(d)(5)		No.	
63.10(e)(1)–(e)(2)		Yes	Apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(e).
63.10(e)(3)		Yes.	
63.10(e)(4)		No	Subpart VVVVVV does not include opacity or VE limits.
63.11	Control Device Requirements	Yes.	
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

[FR Doc. E9–25576 Filed 10–28–09; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Thursday,
October 29, 2009

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Polar Bear (*Ursus maritimus*) in the United States; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R7-ES-2009-0042]
[92210-1117-0000-FY09-B4]

RIN 1018-AW56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Polar Bear (*Ursus maritimus*) in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for polar bear (*Ursus maritimus*) populations in the United States under the Endangered Species Act of 1973, as amended (Act). In total, approximately 519,403 square kilometers (km^2) (200,541 square miles (mi^2)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Alaska and adjacent territorial and U.S. waters.

DATES: We will consider comments we receive on or before December 28, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 14, 2009. Due to the court-ordered deadline of June 30, 2010, to complete the final determination on this proposed designation of critical habitat for the polar bear, we request that you submit comments and information to us as soon as possible in order to allow us adequate time to take them into consideration for the final determination.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-ES-2009-0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

You can view detailed, colored maps of areas proposed as critical habitat in this proposed rule at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm*. You can obtain hard copies of maps by contacting the Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Thomas J. Evans, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786-3800; facsimile 907/786-3816. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and will be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of habitat used by polar bear populations in the United States, specifically in the southern Beaufort, Chukchi, and Bering Seas
- What areas occupied at the time of listing that contain features essential for the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing, within the jurisdiction of the United States, are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on features essential to the conservation of the species within proposed critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts. Such impacts could include any potential impacts on oil and gas development and exploration. For more information on the expected effects of oil and gas development and exploration on critical habitat, and thus potential impacts of the designation on these activities, please see (among other sections) the sections entitled ''Petroleum Hydrocarbons'', ''Summary of Anthropogenic Threats to Features Essential to the Conservation of the Polar Bear Which May Require Special Management Considerations or Protection'', ''Application of the 'Adverse Modification' Standard'', and ''Exclusions Based on Economic Impacts''.

(5) Potential effects on oil and gas development and exploration including those related to impacts referenced in (4).

(6) Potential effects on native cultures and villages.

(7) Potential effects on commercial shipping through the Northern Sea Route in anticipation of a longer navigable season.

(8) Special management considerations or protections that the proposed critical habitat may require.

(9) Specific information on the incremental effects of the designation of critical habitat for the polar bear, in particular, will any aspect of the proposed critical habitat designation result in consultations under section 7 of the Act with a different set of protections than those afforded by the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*)?

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

We are additionally asking the public for specific information concerning potential denning habitat for the polar bears along the west coast of Alaska from Barrow southward to the Seward Peninsula. These specific questions and discussion are found in the Criteria Used To Identify Critical Habitat section of this proposed rule under the discussion of terrestrial denning habitat criteria.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document

that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On May 15, 2008 (73 FR 28212), the final rule listing the polar bear as a threatened species under the Act was published in the **Federal Register**. In that final rule, we made our determination on the status of the species under the Act. On the basis of a review of the best available science and commercial information related to polar bear biology, ecology, and threats, including climate change, as discussed in the final listing rule, we determined the polar bear to meet the definition of a threatened species under the Act. Please refer to our final listing rule for a more detail discussion of the biology of the species, threats to it and its habitat, and a discussion of the effects of climate change on its habitat. When a species is listed as threatened or endangered, we are to propose critical habitat for the species to the maximum extent prudent and determinable based on the best available scientific data. In our final listing rule, we determined that the designation of critical habitat was prudent, but not determinable at that time. We have since determined that critical habitat is determinable and are proposing its designation in this rule. In this proposed rule, it is our intent to discuss only those topics directly relevant to the designation of critical habitat. Information on polar bear biology and ecology that is directly relevant to designation of critical habitat is discussed under the Primary Constituent Elements section below.

General Overview

Polar bears are distributed throughout the ice-covered waters of the circumpolar Arctic (Stirling 1988, p. 61). However, in accordance with the regulations at 50 CFR 424.12(h), we do not designate critical habitat within foreign countries or in other areas outside of United States jurisdiction. In the United States, polar bears occur in Alaska and adjacent State, Territorial, and U.S. waters. Therefore, these are the only areas we considered including in this proposed critical habitat designation.

Delineation of critical habitat requires, within the geographical area occupied by the polar bear, identification of the physical and biological features essential to the conservation of the species that may require special management or protection. In general terms, physical and biological features essential to the conservation of the polar bear include: (1) Annual and perennial marine sea-ice habitats that serve as a platform for hunting, feeding, traveling, resting, and (to a limited extent) denning; and (2) terrestrial habitats used by polar bears for denning and reproduction, as well as for seasonal use in traveling or resting. The most important polar bear life functions that occur in these habitats are feeding and reproduction. Adult female polar bears are the most important reproductive cohort in the population.

Polar bears live in an extremely dynamic sea-ice environment. Much of polar bear range in the United States includes two major categories of sea ice: land-fast ice and pack ice. When we refer to sea-ice habitat in this proposed rule, we are referring to both these types of ice. Land-fast ice is either frozen to land or to the benthos (bottom of the sea) and is relatively immobile throughout the winter. Shore-fast ice, a type of land-fast ice also known as ''fast ice,'' is defined by the *Arctic Climate Impact Assessment* (2005, p. 190) as ice that grows seaward from a coast and remains stationary throughout the winter and that is typically stabilized by grounded pressure ridges at its outer edge. Pack ice consists of annual and heavier multi-year ice that is in constant motion due to winds and currents. It is located in pelagic (open ocean) areas and, unlike land-fast ice, can be highly dynamic. The actions of winds, currents, and temperature result in the formation of leads (linear openings or cracks in the sea ice), pressure ridges, and ice floes of various sizes. While the composition of land-fast ice is uniform, regions of pack ice can consist of various ages and thicknesses, from new ice only days old that may be several centimeters (inches) thick, to multiyear ice that has survived several years and may be more than 2 meters (6.56 feet (ft)) thick. Polar bear use of these habitats may be influenced by several factors and the interaction among these factors, including: (1) Water depth; (2) atmospheric and oceanic currents or events; (3) climate phenomena such as temperature, winds, precipitation, and snowfall; (4) proximity to the continental shelf; (5) topographic relief (which influences accumulation of snow for denning); (6) presence of undisturbed habitats; (7) secure resting areas that provide refuge from extreme weather, other bears, or humans; and (8) prey availability.

Unlike some other marine mammal species, polar bears generally do not occur at high densities in specific areas such as rookeries and haulout sites. However, some denning areas, referred to as core denning areas, have a history of higher use by polar bears. In addition, terrestrial coastal areas are experiencing increasing use by polar bears for longer durations during the fall open-water period (the season when there is a minimum amount of ice present, which occurs during the period from when the sea ice melts and retreats during the summer, to the beginning of freeze-up during the fall) (Schliebe *et al.* 2008, p. 2).

As polar bears evolved from brown bears (*Ursus arctos*), they became increasingly specialized for hunting seals from the surface of the sea ice (Stirling 1974, p. 1,193; Smith 1980, p. 2,206; Stirling and Øritsland 1995, p. 2,595). Currently, little is known about the dynamics of ice seal populations (seals that rely on sea ice for their life history functions) in the Arctic or threats to these populations. However, the status of the populations of the primary species of ice seals in the Arctic is currently being investigated by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service. We do know, however, that polar bears require sea ice as a platform from which to search for and hunt these seals. Polar bear movements are influenced by the accessibility of seals, their primary prey. The formation and movement patterns of sea ice strongly influence the distribution and accessibility of ringed seals (*Phoca hispida*), the main prey for polar bears, and bearded seals (*Erignathus barbatus*), a less-used prey species. When the annual sea ice begins to form in the shallower water over the continental shelf, polar bears that had retreated north of the continental shelf during the summer return to the shallower shelf waters where seal densities are higher (Durner *et al.* 2009a, p. 55). During the winter period, when energetic demands are the greatest, nearshore lead systems and ephemeral (may close during the winter) or recurrent (open throughout the winter) polynyas (areas of open sea surrounded by sea ice) are important for seals, and are thus important foraging habitat for polar bears. During the spring period, nearshore lead systems continue to be important hunting and foraging habitat for polar bears. The shore-fast ice zone,

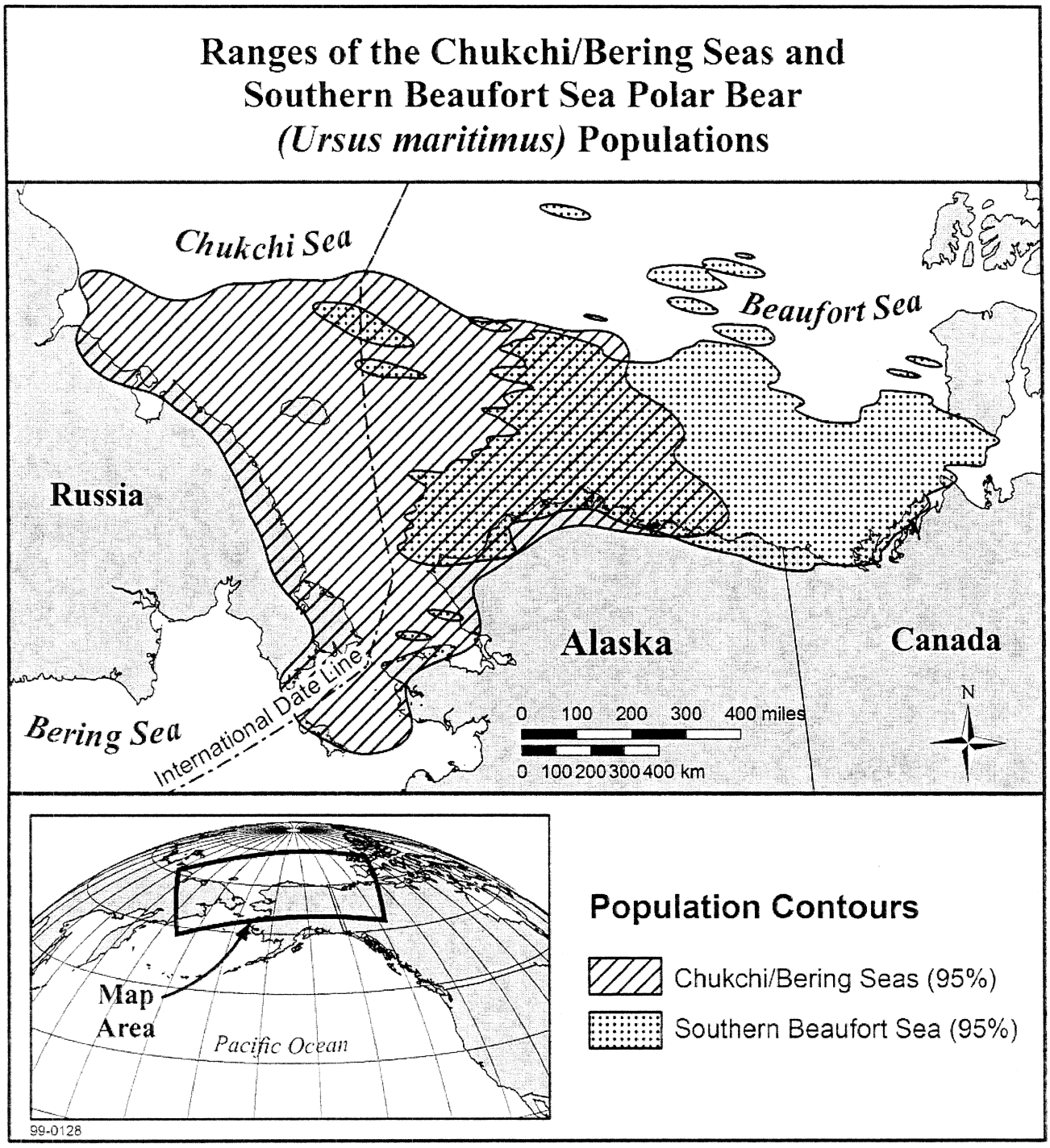
where ringed seals construct subnivean (in or under the snow) birth lairs for pupping, is also an important foraging habitat during the spring (Stirling *et al.* 1993, p. 20). Polar bears in the southern Beaufort Sea reach their peak weights during the fall and early winter period (Durner and Amstrup 1996, p. 483). Thus, availability and accessibility of prey during this time may be critical for survival through the winter.

In northern Alaska, denning habitat is more diffuse than in other areas where high-density denning by polar bears has been identified (Amstrup 2003, p. 595). In Alaska, certain areas, such as barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat, receive proportionally greater use for denning than other areas (Durner *et al.* 2003; Durner *et al.* 2006a). Snow cover, both on land and on sea ice, is an important component of polar bear habitat in that it provides insulation and cover for polar bear dens (Durner *et al.* 2003, p. 60). Geographic areas containing physical features suitable for snow accumulation and denning by polar bears have been delineated on the North Slope for an area from the Colville River Delta at Prudhoe Bay, Alaska, to the Canadian border (Durner *et al.* 2001, p. 119; Durner *et al.* 2003, p. 60).

Description and Taxonomy

Polar bears are the largest of the living bear species (Demaster and Stirling 1981, p. 1; Stirling and Derocher 1990, p. 190) and are the only bear species that is evolutionarily adapted to the arctic sea-ice and marine habitat. Using movement patterns, tag returns from harvested animals, and, to a lesser degree, genetic analysis, Aars *et al.* (2006, pp. 33–47) determined that polar bears occur in 19 relatively discrete populations. Genetic analyses have reinforced the observed boundaries between some designated populations (Paetkau *et al.* 1999, p. 1,571; Amstrup 2003, p. 590), while confirming overlap among others (Paetkau *et al.* 1999, p. 1,571; Amstrup *et al.* 2004a, p. 676; Amstrup *et al.* 2005, p. 252; Cronin *et al.* 2006, p. 656). Currently, there are two polar bear populations in the United States as defined under the Marine Mammal Protection Act (MMPA): the southern Beaufort Sea population, which extends into Canada; and the Chukchi and Bering Seas population, which extends into the Russian Federation (Russia) (Figure 1) (Amstrup *et al.* 2004a, p. 670). Although the two U.S. populations are not distinguishable genetically (Paetkau *et al.* 1999, p. 1576; Cronin *et al.* 2006, p. 658), the population boundaries are thought to be ecologically meaningful and distinct enough to be used for management. The Service listed the polar bear as a threatened species throughout the Arctic under the Act on May 15, 2008 (73 FR 28212; final rule available at *http://alaska.fws.gov/fisheries/mmm/polarbear/issues.htm*).

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

Figure 1. Approximate bounds (95 percent contour) for the southern Beaufort Sea and the Chukchi and Bering Seas populations based on satellite radio-telemetry locations from 1985-2003.

Polar bears are characterized by large body size, a stocky form, and fur color that varies from white to yellow. They are sexually dimorphic; females weigh 181 to 317 kilograms (kg) (400 to 700 pounds (lbs)), and males weigh up to 654 kg (1,440 lbs). Polar bears have a longer neck and a proportionally smaller head than other members of the bear family (Ursidae), and are missing the distinct shoulder hump common to brown bears. The nose, lips, and skin of polar bears are black (Demaster and Stirling 1981, p. 1; Amstrup 2003, p. 588).

Polar bears evolved in sea-ice habitats for over 200,000 years and as a result are evolutionarily adapted to this environment (Talbot and Shields, 1996, p. 490). Adaptations unique to polar bears include: (1) white pelage with water-repellent guard hairs and dense under-fur; (2) a short, furred snout; (3) small ears with reduced surface area; (4) teeth specialized for a carnivorous rather than an omnivorous diet; and (5) feet with tiny papillae on the underside, which increase traction on ice (Stirling 1988, p. 24). Additional adaptations include large, paddle-like feet (Stirling 1988, p. 24), and claws that are shorter

and more strongly curved than those of brown bears, and larger and heavier than those of black bears (*Ursus americanus*) (Amstrup 2003, p. 589).

Distribution and Habitat

Polar bears are distributed throughout the ice-covered waters of the circumpolar Arctic (Stirling 1988, p. 61), and rely on sea ice as their primary habitat (Lentfer 1972, p. 169; Stirling and Lunn 1997, pp. 169–170; Amstrup 2003, p. 587). The distribution and movements of polar bears in the United States are closely tied to the seasonal dynamics of sea ice extent as it retreats northward during summer melt and advances southward during autumn freeze. The southern Beaufort Sea population occurs south of Banks Island and east of the Baille Islands, Canada, and ranges west to Point Hope, Alaska, and includes the coastline of Northern Alaska and Canada up to approximately 40 km (25 mi) inland (Figure 1). The Chukchi and Bering Seas population is widely distributed on the sea ice in the Chukchi Sea and northern Bering Sea and adjacent coastal areas in Alaska and Russia. The eastern boundary of the Chukchi and Bering Seas population is near Colville Delta (Arthur *et al.* 1996, p. 219; Amstrup *et al.* 2004a, p. 254), and the western boundary is near Chauniskaya Bay in the Eastern Siberian Sea. The boundary between the Eastern Siberian Sea population and the Chukchi and Bering Seas population was determined from movements of adult female polar bears captured in the Bering and Chukchi Seas region (Garner *et al.* 1990, p. 222) (Figure 1). The Chukchi and Bering Seas population extends into the Bering Sea, and its southern boundary is determined by the annual extent of pack ice (Garner *et al.* 1990, p. 224; Garner *et al.* 1994, p. 113; Amstrup *et al.* 2004a, p. 670). Historically polar bears have ranged as far south as St. Matthew Island (Hanna 1920, pp. 121–122) and the Pribilof Islands (Ray 1971, p. 13) in the Bering Sea. Adult female polar bears captured in the Beaufort Sea may make seasonal movements into the Chukchi Sea in an area of overlap located between Point Hope and Colville Delta, centered near Point Lay (Amstrup *et al.* 2002, p. 114; Amstrup *et al.* 2005, p. 254). Distributions based on satellite radio-telemetry data show zones of overlap between the Chukchi and Bering Seas population and the southern Beaufort Sea population (Amstrup *et al.* 2004a, p. 670; Amstrup *et al.* 2005, p. 253). Telemetry data indicate that polar bears marked in the Beaufort Sea spend about 25 percent of their time in the northeastern Chukchi Sea, whereas females captured in the Chukchi Sea spend only 6 percent of their time in the Beaufort Sea (Amstrup 1995, pp. 72–73). Average activity areas of females in the Chukchi and Bering Seas population (244,463 km^2, range 144,659–351,369 km^2 (94,387 mi^2, range 55,852–135,664 mi^2)) (Garner *et al.* 1990, p. 222) were more extensive than those in the Beaufort Sea population (166,694 km^2, range 14,440–616,800 km^2 (64,360 mi^2, range 21,564–52,380 mi^2)) (Amstrup *et al.* 2000b, p. 960). Radio-collared adult females of the Chukchi and Bering Seas population (n = 20) spent 68 percent of their time in the Russian region and 32 percent in the American region (Garner *et al.* 1990, p. 224).

Sea-Ice Habitat

Polar bears depend on sea ice for a number of purposes, including as a platform from which to hunt and feed upon seals; as habitat on which to seek mates and breed; as a platform on which to travel to terrestrial maternity denning areas, and sometimes for maternity denning; and as a substrate on which to make long-distance movements (Stirling and Derocher 1993, p. 241). Mauritzen *et al.* (2003b, p. 123) indicated that habitat use by polar bears during certain seasons may involve a trade-off between selecting habitats with abundant prey availability versus the use of safer retreat habitats of higher ice concentrations with less prey. Their findings indicate that polar bear distribution may not be solely a reflection of prey availability, but that other factors such as energetic costs or risk may be involved.

Polar bears show a preference for certain sea-ice stages, concentrations, deformation, and forms (Stirling *et al.* 1993, pp. 18–22; Arthur *et al.* 1996, p. 223; Ferguson *et al.* 2000b, pp. 770–771; Mauritzen *et al.* 2001, p. 1,711; Durner *et al.* 2004, pp. 16-20; Durner *et al.* 2009a, pp. 51–53). Using visual observations of bears or bear tracks, Stirling *et al.* (1993, p. 15) defined seven types of sea-ice habitat and determined habitat preferences. They suggested that the following are features that influenced polar bear distribution: (1) Stable shore-fast ice with drifts; (2) stable shore-fast ice without drifts; (3) floe edge ice; (4) moving ice; (5) continuous stable pressure ridges; (6) coastal low level pressure ridges; and (7) fiords and bays. Polar bears preferred the floe ice edge, stable shore-fast ice with drifts, and moving ice (Stirling 1990 p. 226; Stirling *et al.* 1993, p. 18). In another assessment, categories of sea-ice habitat included pack ice, shore-fast ice, transition zone (also known as the shear zone – the active area consisting of openings between the shore-fast ice and drifting pack ice), polynyas, and leads (USFWS 1995, p. 9).

Pack ice is the primary summer habitat for polar bears in the United States (Durner *et al.* 2004, pp. 16-20). Shore-fast ice is used by polar bears for feeding on seal pups, for movement, and occasionally for maternity denning (Stirling *et al.* 1993, p. 20). In protected bays and lagoons, the shore-fast ice typically forms in the fall and remains stationary throughout the winter. Along the open-shorelines, the shore-fast ice consists of sea ice that freezes and eventually becomes grounded to the bottom, or develops from offshore ice that is pushed against the land by the wind and ocean currents (Lentfer 1972, p. 165). The shore-fast ice usually occurs in a narrow belt along the coast. Most shore-fast ice melts in the summer.

Open water at leads and polynyas attracts seals and other marine mammals and provides preferred hunting habitats during winter and spring. The shore system of leads and recurrent polynyas are productive areas and are kept at least partially open during the winter and spring by ocean currents and winds. The width of the leads ranges from several meters to tens of kilometers (Stirling *et al.* 1993, p. 17).

Polar bears must move throughout the year to adjust to the changing distribution of sea ice and seals (Stirling 1988, p. 63; USFWS 1995, p. 4). Although polar bears are generally limited to areas where the sea is ice-covered for much of the year, they are not evenly distributed throughout their range on sea ice. They show a preference for certain sea-ice stages and concentrations, and for specific sea-ice features (Stirling *et al.* 1993, pp. 18–22; Arthur *et al.* 1996, p. 223; Ferguson *et al.* 2000a, p. 1,125; Ferguson *et al.* 2000b, pp. 770–771; Mauritzen *et al.* 2001, p. 1,711; Durner *et al.* 2004, pp. 18–19; Durner *et al.* 2006a, pp. 34–35; Durner *et al.* 2009a, pp. 51–53). Sea-ice habitat quality varies temporally as well as geographically (Ferguson *et al.* 1997, p. 1,592; Ferguson *et al.* 1998, pp. 1,088–1,089; Ferguson *et al.* 2000a, p. 1,124; Ferguson *et al.* 2000b, pp. 770–771; Amstrup *et al.* 2000b, p. 962). Polar bears show a preference for sea ice located over and near the continental shelf (Derocher *et al.* 2004, p. 164; Durner *et al.* 2004, pp. 18–19; Durner *et al.* 2009a, p. 55). This is likely due to higher biological productivity in these areas (Dunton *et al.* 2005, pp. 3,467–3,468), and greater accessibility to prey in nearshore shear zones and polynyas compared to deep-water regions in the central polar basin (Stirling 1997, pp. 12–14). Bears are most abundant near

the shore in shallow-water areas, and also in other areas where currents and ocean upwelling increase marine productivity and serve to keep the ice cover from becoming too consolidated in winter (Stirling and Smith 1975, p. 132; Stirling *et al.* 1981, p. 49; Amstrup and DeMaster 1988, p. 44; Stirling 1990, pp. 226–227; Stirling and Øritsland 1995, p. 2,607; Amstrup *et al.* 2000b, p. 960). Durner *et al.* (2004, pp. 18–19; Durner *et al.* 2009a, pp. 51–52) found that polar bears in the Arctic Basin prefer sea ice concentrations (percent of ocean surface area covered by ice) greater than 50 percent, and located over continental shelf water, which in Alaska is at depths of 300 m (984.2 ft) or less.

Over most of their range, polar bears remain on the sea ice year-round or spend only short periods on land. In the Chukchi Sea and Beaufort Sea areas of Alaska and northwestern Canada, for example, less than 10 percent of the polar bear locations obtained via radio telemetry were on land (Amstrup 2000, p. 137; Amstrup, USGS, unpublished data); the majority of land locations were of polar bears occupying maternal dens during the winter. However, some polar bear populations occur in seasonally ice-free environments and use land habitats for varying portions of the year.

Polar bear distribution in most areas varies seasonally with the extent of sea-ice cover and availability of prey (Stirling and Lunn 1997, p. 178). The seasonal movement patterns of polar bears emphasize the role of sea ice in their life cycle. During the winter in Alaska, sea ice may extend 400 kilometers km (248 mi) south of the Bering Strait, and polar bears will extend their range to the southernmost proximity of the ice (Ray 1971, p. 13). Sea ice disappears from the Bering Sea and is greatly reduced in the Chukchi Sea in the summer, and polar bears occupying these areas move as much as 1,000 km (621 mi) to stay with the retreating pack ice (Garner *et al.* 1990, p. 222; Garner *et al.* 1994, pp. 407–408). Throughout the Polar Basin during the summer, polar bears generally concentrate along the edge of or into the adjacent persistent pack ice (Durner *et al.* 2004; Durner *et al.* 2006a). Major northerly and southerly movements of polar bears appear to depend on distribution of sea ice delimited by the seasonal melting and refreezing of sea ice (Amstrup 2000, p. 142).

In areas where sea-ice cover and character are seasonally dynamic, a large multi-year home range, of which only a portion may be used in any one season or year, is an important part of the polar bear life history strategy. In other regions, where ice is less dynamic, home ranges are smaller and less variable (Ferguson *et al.* 2001, pp. 51–52). Data from telemetry studies of adult female polar bears show that they do not wander aimlessly on the ice, nor are they carried passively with the ocean currents as previously thought (Pedersen 1945 cited in Amstrup 2003, p. 587; Amstrup *et al.* 2000b, p. 956; Mauritzen *et al.* 2001, p. 1704, Mauritzen *et al.* 2003a, p. 111; Mauritzen *et al.* 2003b, p. 123). Results show strong fidelity to activity areas that are used over multiple years (Ferguson *et al.* 1997, p. 1,589). Not all geographic areas within an individual polar bear's home range are used each year. The distribution patterns of some polar bear populations during the open water and early fall seasons have changed in recent years (Durner *et al.* 2006, p. 30; Durner *et al.* 2009a, pp. 49, 53). In the Beaufort Sea, for example, greater numbers of polar bears are being found on shore during the fall than recorded at any previous time (Schliebe *et al.* 2006, p. 559).

Terrestrial Denning Habitat

Unlike brown bears and black bears, which hibernate in winter when food is unavailable, polar bears are able to forage for seals throughout the winter (Amstrup 2003, p. 593). Generally, only pregnant polar bears routinely enter dens in the fall for extended periods (however, see Messier *et al.* 1994 and Ferguson *et al.* 2000a). Typically, pregnant female polar bears go into the dens in November, give birth in late December, and emerge from their dens after the cubs have reached 9.1–11.4 kg (20–25 lbs) in March and April (Ramsay and Stirling 1988, p. 602). In Alaska, cubs stay with their mother for 2 years after departing the den (Amstrup 2003, p. 599).

Polar bears are particularly vulnerable to anthropogenic and natural disturbances during denning compared to other times in their life cycle (Amstrup 2003, p. 606) because they are more limited in their ability to safely move away from the disturbance. The cubs, which are born in mid-winter, weigh only 600–700g (1.3–1.5 lbs), are blind, lightly furred, and helpless (Blix and Lentfer 1979, p. R67). The maternal den provides a relatively warm, protected, and stable environment until they are large enough (approximately 11.4 kg (25 lbs)) to survive conditions outside the den in March or April. The dens provide thermal insulation, and if the family group abandons the den early, the cubs will die (Blix and Lentfer 1979, p. R67; Amstrup and Gardner 1994, p. 7). Throughout the species' range, most pregnant female polar bears excavate dens in snow located on land in the fall and early winter period (Harington 1968, p. 6; Lentfer and Hensel 1980, p. 102; Ramsay and Stirling 1990, p. 233; Amstrup and Gardner 1994, p. 5). The only known exceptions are in western and southern Hudson Bay, where polar bears first excavate earthen dens and later reposition into adjacent snow drifts (Jonkel *et al.* 1972, p. 146; Ramsay and Stirling 1990, p. 233), and in the southern Beaufort Sea, where a portion of the population dens in snow caves located on the drifting pack ice and shore-fast ice (Amstrup and Gardner 1994, p. 5). Successful denning by polar bears requires accumulation of sufficient snow for den construction and maintenance and insulation for the female and cubs. Adequate and timely snowfall combined with winds that cause snow accumulation leeward of requisite topographic features create denning habitat (Harington 1968, p. 12). In addition, for bears moving from the sea ice to land, the timing of freeze-up and the distance from the pack ice are two factors that can affect when pregnant females enter dens.

A great amount of polar bear denning arctic-wide occurs in core areas, which show high use over time (Harington 1968, pp. 7–8). Examples include the west coast of Hudson Bay in Canada and Wrangel Island in Russia (Harrington 1968, p. 8; Ramsey and Stirling 1990, p. 233). In some portions of the species' range, polar bear dens are more dispersed, with dens scattered over larger areas at lower density (Lentfer and Hensel 1980, p. 102; Stirling and Andriashek 1992, p. 363; Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 5; Messier *et al.* 1994, p. 425; Born 1995, p. 84; Ferguson *et al.* 2000a, p. 1125; Durner *et al.* 2001, p. 117; Durner *et al.* 2003, p. 57). In northern Alaska, while denning habitat is more diffuse than in other areas, certain areas such as barrier islands, river banks, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat receive proportionally greater use for denning (Durner *et al.* 2004, entire; Durner *et al.* 2006a, entire).

The primary denning habitat for polar bears in the southern Beaufort Sea population is on the relatively flat topography of the coastal area on the North Slope of Alaska and the pack ice (Amstrup 1993, p. 247; Amstrup and Gardner 1994, p. 7; Durner *et al.* 2001, p. 119; Durner *et al.* 2003, p. 61; Fischbach *et al.* 2007, p. 1,400). Some of the habitat suitable for the accumulation

of snow and use for denning has been mapped on the North Slope (Durner *et al.* 2001, entire; Durner *et al.* 2006a, entire). The primary denning areas for the Chukchi and Bering Seas population occur on Wrangel Island, Russia, where up to 200 bears per year have denned annually, and the northeastern coast of the Chukotka Peninsula, Russia (Stishov 1991a, p. 107; Stishov 1991b, p. 91; Ovsyanikov 2006, p.169). The key characteristic of all denning habitat is topographic features that catch snow in the autumn and early winter (Durner *et al.* 2003, p. 61). As in the Canadian arctic, Russia, and Svalbard, Norway (Harington 1968, p. 12; Larsen 1985, p. 322; Stishov 1991b, p. 91; Stirling and Andriashek 1992, p. 364), most polar bear dens in Alaska occur relatively near the coast along the coastal bluffs and river banks of the mainland and barrier islands and on the drifting pack ice (Amstrup and Gardner 1994, p. 5; Amstrup 2003, p. 596).

Previous Federal Actions

We listed polar bears as a threatened species under the Act on May 15, 2008 (73 FR 28212). At the time of listing, we determined that critical habitat for the polar bear was prudent, but not determinable. We concluded that given the complexity of determining which specific areas in the United States might contain physical and biological features essential to the conservation of the polar bear under rapidly changing environmental conditions, we required additional time to conduct a thorough evaluation and coordinate with species experts. Thus, we did not propose critical habitat for the polar bear at that time. The Service then issued a special rule for the polar bear under section 4(d) of the Act on December 16, 2008 (73 FR 76249). The special rule provides measures that are necessary and advisable to provide for the conservation of the polar bear.

On July 16, 2008, the Center for Biological Diversity, Natural Resources Defense Council, and, Greenpeace, Inc., filed an amended complaint against the Service for, in part, failing to designate critical habitat for the polar bear concurrently with the final listing rule [*Center for Biological Diversity et al.* v. *Kempthorne et al.*, No. 08-2113- D.D.C. (transferred from N.D. Cal.)]. On October 7, 2008, the U.S. District Court for the Northern District of California entered an order approving a stipulated settlement of the parties. The stipulated settlement, in part, requires the Service, on or before June 30, 2010, to submit to the **Federal Register** a final critical habitat determination for the polar bear. Comments or information that we receive in response to this proposed rule will allow us to comply with the court order and section 4(b)(2) of the Act. For more information on previous Federal actions concerning the polar bear, refer to the final listing rule and final special rule published in the **Federal Register** on May 15, 2008 (73 FR 28212), and December 16, 2008 (73 FR 76249), respectively.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, nor does it allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7 of the Act would apply. However, even in the event of destruction or an adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection. Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that this critical habitat determination may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may

not be required for the conservation or survival of the species.

Areas that support polar bear populations in the United States, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act and our other wildlife authorities. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCP), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific data available to determine the specific geographical areas occupied at the time of listing that contain features essential to the conservation of the polar bear in the United States that may require special management or protection, and specific areas outside the geographical area occupied by the polar bear at the time of listing that are essential to the conservation of the polar bears in the United States. In proposing critical habitat for polar bears in the United States, we reviewed the relevant information available, including peer-reviewed journal articles, the final listing rule, and unpublished reports and materials (such as survey results and expert opinions). In general, polar bears occupy the vast majority of their historic range. Exceptions include St. Matthew Island (Hanna 1920, pp. 121–122) and the Pribilof Islands (Ray 1971, p. 13) in the Bering Sea. As described in detail below, we have proposed to designate as critical habitat only those areas currently occupied by the polar bear and have determined that designating only occupied areas as critical habitat for polar bears is sufficient for the conservation of the species in the United States. As such, we are not proposing to designate as critical habitat any areas outside the geographical area occupied by polar bears in the United States.

While the amount of information regarding important polar bear life functions and habitats associated with these functions has expanded greatly in Alaska during the past 20 years, the identification of specific physical and biological features essential to the conservation of the polar bear is complex. (see the polar bear final listing rule (May 15, 2008 (73 FR 28212) for a review of polar bear biology, ecology, and threats). Moreover, the future values of these essential features to the conservation of the species may change in a rapidly changing environment. Most notably, arctic sea ice provides a platform for critical life-history functions, including hunting, feeding, travel, and nurturing cubs. Sea ice is projected to be significantly reduced within the next 45 years, and some predictive climate models project complete absence of sea ice during summer months in shorter timeframes (Amstrup *et al.* 2008, p. 239; Durner *et al.* 2009a, p. 45). (see the polar bear final listing rule (May 15, 2008 (73 FR 28212)) for a more detailed discussion of climate change in the Arctic and the threat of this change to polar bears).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which specific geographical areas occupied at the time of listing to propose as critical habitat, we considered areas containing the physical and biological features essential to the conservation of the species which may require special management considerations or protection. These features include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements (PCEs) for the polar bear in the United States based on its physical and biological needs, as described in the Background section of this proposed rule and the following information.

Space for Individual and Population Growth and for Normal Behavior

Although home ranges can vary greatly among individuals (Garner *et al.* 1990, p. 224; Amstrup *et al.* 2000b, p. 956), the overall home range size for polar bears from the two U.S. populations is relatively large. The movement patterns and home ranges of polar bears are directly related to the seasonal, highly dynamic, redistributions of sea ice (Garner *et al.* 1990, p. 224; Garner *et al.* 1994, pp. 112–113; Ferguson *et al.* 2001, pp. 51–52; Mauritzen *et al.* 2001, p. 1709; Durner *et al.* 2004, pp. 16-20; Durner *et al.* 2006a, pp. 27-30). The movement patterns of the sea ice strongly influence the availability and accessibility of the preferred prey for polar bears, ringed and bearded seals (Stirling *et al.* 1993, p. 21).

Polar bears require sea ice as a platform for hunting and feeding on seals, seasonal and long-distance movements, travel to terrestrial maternal denning areas, resting, and mating (Stirling and Derocher 1993, p. 241). Moore and Huntington (2009, p. S159) classified polar bears as an ice-obligate (ice restricted) species due to this dependence on sea ice as a platform for resting, breeding, and foraging. A majority of the polar bears in the U.S. populations remain with the sea ice year-round and prefer the annual sea ice located over the continental shelf, and areas near the southern ice edge, for foraging (Laidre *et al.* 2008, p. S105; Durner *et al.* 2009a, p. 39). Open water is not considered an essential feature for polar bears, because life functions such as feeding, reproduction, or resting do not occur in open water. However, open water is a fundamental part of the marine system that supports seal species, the principal prey of polar bears, and seasonally refreezes to form the ice needed by the bears. The interface of open water and sea ice is an important habitat used by polar bears (Stirling *et al.* 1993, pp.18, 20–22; Stirling 1997, pp. 11, 15, 16; Durner *et al.* 2009a, p. 52). In addition, the extent of open water may play an integral role in the behavior patterns of polar bears because vast areas of open water may limit a bear's ability to access sea ice or land (Monnett and Gleason 2006, p. 5).

The optimal sea-ice habitat for polar bears varies both geographically and temporally, and the use of this area varies seasonally, with the greatest movements occurring during the advance of the sea ice in fall and early winter and retreat of the sea ice during spring and early summer. The dynamic nature of the sea ice in the Beaufort and Chukchi Seas, which changes continually within and among years, makes it difficult to predict the specific time or area where the optimal habitat occurs. However, the Resource Selection Function (RSF) models (Durner *et al.*

2004, pp. 16–19; Durner *et al.* 2006a, pp. 26–29; Durner *et al.* 2009a, p. 39) show that polar bears will select areas of sea-ice habitat with the following characteristics: sea ice concentrations approximately 50 percent or greater that are adjacent to open water areas, flaw zones, leads, and polynyas, and that are over the shallower, more productive waters over the continental shelf (waters 300 m (984.2 ft) or less in depth).

Information on the seasonal movements of polar bears suggests that they select for ice conditions that maximize their foraging opportunities. Water depth, sea ice concentration (as described below), and proximity to the ice edge, where flaw zones, polynyas, leads, or open water occur, appear to be the important characteristics of the preferred polar bear feeding and movement habitat (Durner *et al.* 2004, p. 16). Preferred polar bear foraging habitat occurs primarily on the annual sea ice over the shallower (300 m (984.2 ft) or less) waters of the continental shelf (Durner *et al.* 2004a, p. 19; Durner *et al.* 2009a, p. 52). This is consistent with the distribution of their preferred prey species, ringed and bearded seals, which are also generally found over the continental shelf. Stirling *et al.* (1982, p. 14) found that ringed seal densities were greatest in ocean waters at depths between 50–100 m (164-328 ft) and with greater than 80 percent ice cover, whereas bearded seals were generally found in shallower waters (25–50 m (82-164 ft) deep) with relatively low ice cover.

Mauritzen *et al.* (2003b, p. 123) suggested that polar bears select habitat with sea ice concentrations that are optimal for hunting seals, provide safety from ocean storms, and prevent them from becoming separated from the main pack ice. Polar bears are most often found where sea ice concentrations exceed 50 percent (Stirling *et al.* 1999, p. 295; Durner *et al.* 2004, pp. 18–19; Durner *et al.* 2006a, p. 24; Durner *et al.* 2009a, p. 51). However, they will use lower sea ice concentrations if this is the only ice that is available over the shallower, more productive waters of the continental shelf. This was evident during the late-summer to early-fall open water period in August and September of 2008. During this time, most of the sea ice in the Beaufort Sea had receded beyond the edge of the continental shelf, except for a narrow tongue of sparse ice that extended over shelf waters in the eastern Beaufort Sea. Polar bears were documented using this marginal sea-ice habitat with sea ice concentrations between 15 percent and 30 percent, presumably in an attempt to remain in the more productive feeding areas over the continental shelf (Steve Amstrup, U.S. Geological Survey, pers. comm.; USFWS, unpublished data).

Ice in proximity to the ice edge (near open water), polynyas, or leads provide polar bears access to ringed and bearded seals. In winter, polar bears select areas of high sea-ice concentrations along the Alaska coast (Durner *et al.* 2009a, p. 52), with their preferred habitat being sea-ice habitat near the flaw zones, polynyas, and shore leads that run parallel to the mainland coast of Alaska. During other times of the year, the marginal sea ice zone near the sea ice edge is the optimal feeding habitat for polar bears because access and availability of ringed seals is greatest in this zone (Durner *et al.* 2004, pp. 18-19). This is presumably because seals are available and accessible in the adjacent flaw zones and polynyas (USFWS 1995, p. 14; Stirling 1997, p. 14) that are in the shallower, more productive waters over the continental shelf.

Reductions in sea ice negatively impact polar bears by increasing the energetic demands of movement in seeking prey, causing seasonal redistribution of substantial portions of polar bear populations into marginal ice or terrestrial habitats with fewer opportunities for feeding, and increasing the susceptibility of bears to other stressors. As the summer sea ice edge retracts to deeper, less productive Polar Basin waters, polar bears will face increasing competition for limited food resources, increasing distances to swim with increased risk of drowning, increasing interaction with humans in terrestrial or nearshore areas with negative consequences, and declining population (Amstrup *et al.* 2008).

Reductions in sea ice will likely reduce productivity of most ice seal species as well, result in changes in composition of seal species indigenous to some areas, and eventually result in a decrease in seal abundance (Derocher *et al.* 2004. pp. 167–169). These changes will likely decrease availability, or the timing of availability, of seals as food for polar bears. Ringed seals will likely remain distributed in shallower, more productive southerly areas that are losing their seasonal sea ice and becoming characterized by vast expanses of open water in the spring—summer and fall periods (Harwood and Stirling 1992, pp. 897-898). As a result, the seals will remain unavailable as prey to polar bears during critical times of the year. These factors may, in turn, result in a steady decline in the physical condition of polar bears, which precedes population-level demographic declines in reproduction and survival (Stirling and Parkinson 2006, pp. 266–267; Regehr *et al.* 2007a, pp. 2679–2681).

One of the expected outcomes from climate change in the Arctic is that the distance between the southern edge of the pack ice and coastal denning areas will increase during the summer. This is likely to result in an increase in use of terrestrial areas during the summer and early fall (Schliebe *et al.* 2008, p. 2). Should the distance become too great, it could reduce polar bears' access to, and hence the availability of, optimal feeding habitat and preferred terrestrial denning locations during critical times of the year (Bergen *et al.* 2007, p. 6).

Based on the best information available, the dynamic nature of sea-ice habitat in the Arctic, and the preference of polar bears for sea-ice habitat located over the continental shelf, we have determined that sea ice over the shallower waters of the continental shelf (waters of 300 m or less (984.2 ft or less)) is an essential physical feature for polar bears in the southern Beaufort and Chukchi and Bering Seas for feeding, rearing of offspring, and normal behavior, i.e., space for individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Polar bears are carnivores that feed primarily on ice-dependent seals (frequently referred to as ''ice seals'') throughout their range. Their main species of prey is the ringed seal; polar bears also hunt, to a lesser extent, bearded seals (Stirling and Archibald 1977, p. 1,127; Smith 1980, p. 2, 201). In some locales, other seal species are taken. On average, an adult polar bear needs approximately 2 kg (4.4 lbs) of seal fat per day to survive (Best 1985, p. 1,035). Sufficient nutrition is critical for survival in the arctic environment and may be obtained and stored as fat when prey is abundant.

Although seals are their primary prey, polar bears occasionally take much larger animals, such as walruses (*Odobenus rosmarus*), narwhal (*Monodon monoceros*), and beluga whales (*Delphinapterus leucas*) (Kiliaan and Stirling 1978, p. 199; Smith 1980, p. 2,206; Smith 1985, pp. 72–73; Lowry *et al.* 1987, p. 141; Calvert and Stirling 1990, p. 352; Smith and Sjare 1990, p. 99). In some areas and under some conditions, prey other than seals, such as carrion or remains of subsistence harvested bowhead whales, may be important to polar bear sustenance as short-term supplemental forms of nutrition. Stirling and Øritsland (1995, p. 2,609) suggested that in areas where

ringed seal populations were reduced, other prey species were being substituted. For example, harp seals (*Pagophilus groenlandicus*) are the predominant prey species for polar bears from the Davis Strait population in Canada (Iverson *et al.* 2006, p. 110). Changes in the distribution of harp seals may continue to support large numbers of polar bears from the Davis Strait population even if ringed seals become less available (Stirling and Parkinson 2006, p. 270; Iverson *et al.* 2006, p. 110). However, the increased take of other species, such as bearded seals, walrus, and harbor seals, in the United States, if those species were available, would likely not compensate for reduced availability of ringed seals (Derocher *et al.* 2004, p. 168).

Polar bears are very sensitive to changes in sea ice due to climate change because of their reliance on sea ice and their specialized feeding requirements (Laidre *et al.* 2008, p. S112). The importance of availability of prey to polar bear reproduction was evident in the mid-1970s when a decline in ringed and bearded seals resulted in a decline in the weights of adult female polar bears and a decline in reproduction (Stirling *et al.* 1982, p. 19; Amstrup *et al.* 1986, p. 249). Changes in the distribution and abundance of optimal sea ice feeding habitat due to climate change could also affect polar bear denning success. For example, the availability and accessibility of seals to polar bears, which often hunt at the seals' breathing hole, are likely to decrease with increasing amounts of open water or fragmented ice (Derocher *et al.* 2004, p. 167). Pregnant polar bear females with insufficient fat stores prior to denning, or in poor hunting condition in the early spring after den emergence, may lead to increased cub mortality (Atkinson and Ramsay 1995, pp. 565–566; Derocher *et al.* 2004, p. 170). Regehr *et al.* (2007b, pp. 17–18) suggested that the increase in the duration of the open water period in fall was a contributing factor to the decrease in the productivity of polar bears in the southern Beaufort Sea population and to the population decline in the Western Hudson Bay population (Stirling *et al.* 1999, p. 304; Regehr *et al.* 2007a, p. 2,673). In the southern Beaufort Sea, the decline in the survival rate of cubs may be directly linked to the ability of females to obtain sufficient nutrition prior to denning (Regehr *et al.* 2006, p. 11, Amstrup *et al.* 2008, p. 236). The inability to obtain sufficient food resources may be due to increases in the length of the fall open water period, which reduces the amount of time available for feeding prior to denning. Polar bears in the southern Beaufort Sea typically reach their maximum weight in fall. Fall, therefore, may be a critical period for winter survival for this population (Garner *et al.* 1994, p. 117; Durner and Amstrup 1996, p. 483). In Alaska, it is not unusual for females in poor condition after den emergence to lose their cubs (Amstrup 2003, p. 601). Thus, the availability of seal pups to adult females with cubs-of-the-year in the spring following den emergence may also be critical (Garner *et al.* 1994, p. 117; Stirling and Lunn 1997, p. 177). Atkinson and Ramsay (1995, p. 565), and Derocher and Stirling (1996, p. 1,249; 1998, pp. 255–256), found that heavier cubs have a higher survival rate, and that declines in fat reserves in females during critical periods can negatively affect denning success and cub survival.

Based on the information presented above, we conclude that the accessibility and availability of sufficient food resources is dependent upon availability of suitable sea-ice habitat over the shallower waters of the Chukchi and Bering Seas and southern Beaufort Sea. Therefore, we have determined that sea ice that moves over the shallower waters of the continental shelf (300 m (984.2 ft) or less) is an essential physical feature for polar bears in the southern Beaufort and Chukchi and Bering Seas for feeding, rearing of offspring, and normal behavior.

Cover or Shelter

Polar bears from the U.S. populations generally remain with the sea ice for most of the year, and, except for maternal denning, only spend short periods of time on land. This may be due to the availability of the sea ice year-round and less severe weather conditions compared to more northerly latitudes. Polar bears from U.S. populations take advantage of logs, ocean bluffs, and stream and river drainages to seek shelter from the wind (Lentfer 1976, p. 9). Messier *et al.* (1994, p. 425), Ferguson *et al.* (2000a, p. 1,122) and Omi *et al.* (2003, p. 195) found that polar bears of all ages and both sexes from more northerly populations in Canada may remain in temporary shelter dens in snow drifts on the ice for up to 2 months, presumably to avoid storms, periods of intense cold, and food shortages. Occasionally polar bears in the United States, particularly females with small cubs, will dig temporary shelter dens to avoid severe winter storms (Lentfer 1976, p. 9; Amstrup, unpublished data). Information from native hunters in Alaska suggests that, except for parturient (bearing or about to bear young) females and females with young cubs, polar bears do not require additional cover or shelter for survival throughout the year (Lentfer 1976, p. 9). However, the importance of these shelter dens may increase in the future if polar bears, experiencing nutritional stress as a result of loss of optimal sea-ice habitat and access to prey, need to minimize nonessential activities to conserve energy.

Currently, cover and shelter are not considered to be limiting factors for the conservation of polar bears in the United States, except for the importance of maternal dens. The needs of parturient females and cubs for cover and shelter are satisfied through denning behavior and discussed below.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

One of the most critical periods for polar bears occurs during denning because the newborn cubs are completely helpless and must remain in the maternal den for protection and growth until they are able, at approximately 3 months of age, to survive the outside climate (Blix and Lentfer 1979, p. R70; Amstrup 2003, p. 596; Durner *et al.* 2006b, p. 31). Den disturbances from human activities have caused den abandonment in the past (Amstrup 1993, p. 249).

The majority of polar bears that den in the United States are from the southern Beaufort Sea population. Unlike the high density of dens that occur on Wrangel Island, Russia (one of the principal denning areas of the Chukchi and Bering Seas population), the individual polar bear dens in the United States are widely dispersed over large areas of denning habitat in northern Alaska. Even though this denning habitat is expansive, barrier islands, river bank drainages, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat receive proportionally greater use for denning than other areas (Amstrup 2003, pp. 596-597; Durner *et al.* 2006b, p. 34).

Polar bears from the southern Beaufort Sea population den on drifting pack ice, shore-fast ice, and land (Amstrup and Gardner 1994, pp. 4–5), while most other polar bear populations den only on land or shore-fast ice (Amstrup 2003, p. 596). The distribution of maternal denning in the southern Beaufort Sea appears to have changed in recent years. While Amstrup and Gardner (1994) observed that approximately 50 percent of maternal dens occurred on the pack ice, Fischbach *et al.* (2007, p. 1,399)

documented a decrease in pack ice denning over 2 decades, from 62 percent (1985–1994) to 37 percent (1998–2004). Fischbach *et al.* (2007, p. 1,403) concluded that the changes in the den distribution were in response to delays in the autumn freeze-up and a reduction in availability and quality of the more stable pack ice suitable for denning, due to increasingly thinner and less stable ice in fall. Amstrup and Gardner (1994, p. 4) noted that, in the U.S. southern Beaufort Sea population, only a small proportion (4 percent) of polar bears den on the shore-fast ice adjacent to the mainland coast of Alaska. The overall occurrence of dens on sea ice in the Arctic is thought to be relatively low based on current studies using radio-telemetry (Amstrup 2003, p. 596). Protection of the few pelagic dens on drifting sea ice in the Beaufort Sea is impracticable because of the large area involved, the difficulty in locating dens, and the dynamic nature of the sea ice (Garner *et al.* 1994, p. 116).

Polar bears in the Beaufort Sea exhibit fidelity to denning areas but not specific den sites (Amstrup and Gardner 1994, p. 7). The location of terrestrial maternal dens is dependent upon a variety of factors, such as sea ice conditions, prey availability, and weather, all of which vary seasonally and annually. Stirling and Andriashek (1992, p. 364) found that dens often occurred on land adjacent to areas that developed sea ice early in the autumn. It is expected that the number of polar bears denning on land in northern Alaska will increase, if the predictions of the continued loss of arctic sea ice due to climate change occur (Schliebe *et al.* 2008, p. 2).

Polar bears typically choose terrestrial den sites that are near the coast. Amstrup *et al.* (2003, p. 596) determined that 80 percent of all the terrestrial maternal dens located by radio telemetry were found within 10 km (6.2 mi) of the coast, and over 60 percent were on the coast or on barrier islands. Polar bears frequently use the larger tundra-covered barrier islands that have sufficient relief to accumulate enough snow for denning (Amstrup and Gardner 1994, p. 7). Specific topographic features, such as coastal bluffs and river banks, with suitable macrohabitat characteristics are used as den sites. Suitable macrohabitat characteristics include: (a) Steep, stable slopes (mean = 40°, SD = 13.5°, range 15.5–50.0°), with heights ranging from 1.3 to 34 m (mean = 5.4 m, SD = 7.4) (4.3 to 111.6 ft, mean = 17.7 ft, SD = 24.3), and with water or relatively level ground below the slope and relatively flat terrain above the slope; (b) unobstructed, undisturbed access between den sites and the coast; and (c) the absence of disturbance from humans and adult male polar bears.

Using high resolution photographs, Durner *et al.* (2001, p. 119; 2006b, p. 33) mapped suitable denning habitat for polar bears from the Coville Delta to the Canadian border. They determined there were 1,782 km (1,107 mi) of suitable bank habitat for denning by polar bears between the Colville River and the Tamayariak River (Durner *et al.* 2001, p. 119) and an additional 3,621 km (2,250 mi) between the Canning River and the Canadian border in northern Alaska (Durner *et al.* 2006b, p. 33). It should be noted that the areas included in these calculations only include those areas from the Colville River to the Canadian border and do not include denning habitat from the Colville River to Barrow or denning habitat located farther inland. Although suitable denning habitat exists on land in western Alaska along the Chukchi Sea coast (USFWS 1995, pp. A19-A33), most of the polar bears from the Chukchi and Bering Seas population den on Wrangel Island and the Chukotka Peninsula, Russia (Stishov 1991b, pp. 90-92).

Sea-ice conditions after den emergence can also be important for cub survival (Stirling *et al.* 1993, pp. 20–21; Stirling and Lunn 1997, p. 177), as females typically take their cubs out on the sea ice as soon as the cubs can travel. Small size, limited mobility, and susceptibility to hypothermia from swimming in the cold arctic waters limit the ability of cubs-of-the-year to traverse extensive areas of broken ice and open water immediately following den emergence. If sea ice conditions become increasingly unstable and fragmented, and large areas of open water develop between the shore-fast ice and the drifting pack ice, females with cubs-of-the-year may have to rely more heavily on shore-fast ice to prevent cub mortality from hypothermia (Larsen 1985, p. 325; Blix and Lentfer 1979, p. R70). Norwegian polar bear researchers (Aars, unpublished data) found that females with small cubs swim much less than lone females in the spring. In the southern Beaufort Sea, females with cubs-of-the-year show a strong preference, following den emergence, for stable, shore-fast ice that has drifts suitable for seal birth lairs, presumably to protect the cubs from adverse sea and ice conditions and adult male polar bears (Stirling *et al.* 1993, pp. 20–21; Stirling and Lunn 1997, p. 177; Amstrup *et al.* 2006b, p. 1,000). Adult females with cubs-of-the-year overall have smaller annual activity areas than do single females (Amstrup *et al.* 2000b, p. 960; Mauritzen *et al.* 2001, p. 1.710).

Pregnant females need to balance their nutritional demands before and after denning, and select den locations that will provide a safe environment from adult males, human disturbance, and adverse weather conditions for their cubs. We have determined that terrestrial denning habitat, including on the coastal barrier islands in northern Alaska, that includes the following topographic features is a physical feature essential to the conservation of the species: Coastal bluffs and river banks with (a) Steep, stable slopes (range 15.5–50.0°), with heights ranging from 1.3 to 34 m (4.3 to 111.6 ft), and with water or relatively level ground below the slope and relatively flat terrain above the slope; (b) unobstructed, undisturbed access between den sites and the coast; and (c) the absence of disturbance from humans and human activities that may attract other bears.

Habitats Protected from Disturbance or Representative of the Historic, Geographical, and Ecological Distributions of the Species

Coastal barrier islands and spits off the Alaska coast provide areas free from human disturbance and are important for denning, resting, and migration along the coast. During fall surveys along the northern coast of Alaska from Barrow to the Canadian border (2000–2007), 82 percent of the bears detected have occurred on the barrier islands, 11 percent on the mainland, 6 percent on the shore-fast ice, and 1 percent in the water (USFWS, unpublished data). Polar bears regularly use barrier islands to move along the Alaska coast as they move easily across the open water, ice, and shallow sand bars between the islands. Barrier islands that have been used multiple times for denning include Flaxman Island, Pingok Island, Cottle Island, Thetis Island, and Cross Island (Amstrup, unpublished data; USFWS 1995, p. 27). Historically, except for denning, polar bears in the United States spend almost the entire year on the sea ice and very little time on land. However, in recent years the number of bears using the coastal areas, particularly during the summer and fall, has increased (Schliebe *et al.* 2008, p. 2). This may reflect the increase of the open water period during the summer and early fall in addition to the retreat of the sea ice beyond the continental shelf (Zhang and Walsh 2006, pp. 1,745–1,746; Serreze *et al.* 2007, pp. 1,533–1,536; Stroeve *et al.* 2007, pp. 1–5). Thus, the importance of barrier island habitat, particularly during the summer and fall, is likely to increase.

Typically, polar bears tend to avoid humans. This is demonstrated by the areas where they choose to rest, their den site locations, and their avoidance of snow machines (Anderson and Aars 2008, p. 503). For example, polar bears attracted to subsistence-harvested bowhead whale (*Balaena mysticetus*) carcasses on Barter Island, Alaska, swim across the lagoon and rest on Bernard and Jago spits during the day (Miller *et al.* 2006, p. 9) rather than resting on Barter Island closer to the food resource. Also, polar bears tend to avoid denning in areas where active oil and gas exploration, development, and production activities are occurring. In addition, Anderson and Aars (2008, p. 503) report that polar bear females and cubs at Svalbard react to snowmobiles at a mean distance of 1,534 m (5,033 ft).

Within the range of the polar bear population, barrier islands are currently used for denning by parturient females, as a place to avoid human disturbance, and to move along the coast to access den sites or preferred feeding locations. We define barrier island habitat as the barrier islands off the coast of Alaska, their associated spits, and the area extending out 1.6 km (1 mi) from the barrier island mean high tide line. A 1.6-km (1-mi) distance was chosen because this distance is slightly more than the mean distance females and cubs reacted to snowmobiles at Svalbard (Andersen and Aars 2008, p. 503), and because adult females are the most important age and sex class in the population. We conclude that barrier island habitat, as undisturbed areas for resting, denning, and movement along the coast, is a physical feature essential to the conservation of polar bears in the United States.

Primary Constituent Elements for Polar Bear in the United States

Based on the needs identified above and our current knowledge of the life history, biology, and ecology of the species, we have determined that the primary constituent elements (PCEs) for the polar bear in the United States are:

(1) Sea-ice habitat used for feeding, breeding, denning, and movements, which is sea ice over marine waters that occur over the continental shelf at depths 300 m (984.2 ft) or less.

(2) Terrestrial denning habitat, which includes topographic features, such as coastal bluffs and river banks, with suitable macrohabitat characteristics. Suitable macrohabitat characteristics are: (a) Steep, stable slopes (range 15.5–50.0°), with heights ranging from 1.3 to 34 m (4.3 to 111.6 ft), and with water or relatively level ground below the slope and relatively flat terrain above the slope; (b) unobstructed, undisturbed access between den sites and the coast; and (c) the absence of disturbance from humans and human activities that might attract other bears.

(3) Barrier island habitat used for denning, refuge from human disturbance, and movements along the coast to access maternal den and optimal feeding habitat. This includes all barrier islands and their associated spits, within the range of the polar bear in the United States, and the water, ice, and terrestrial habitat within 1.6 km (1 mi) of these islands.

For purposes of this proposed rule, we are proposing three critical habitat units based on the three PCEs described above. We propose these units for designation based on sufficient PCEs being present to support at least one of the species' essential life history functions. Each unit contains at least one of the three PCEs.

Special Management Considerations or Protection

When designating critical habitat within the geographical area occupied by the species, we assess whether the physical and biological features essential to the conservation of the species may require special management considerations or protection. Potential impacts that could harm the identified essential physical and biological features include reductions in the extent of arctic sea ice due to climate change; oil and gas exploration, development, and production; human disturbance from the use of aircraft, boats, snow machines, vehicles, and other equipment; and commercial shipping. We discuss each of these threats to the essential features below.

Reduction in Sea Ice Due to Climate Change

Sea ice is rapidly diminishing throughout the Arctic, and declines in optimal polar bear sea-ice habitat have already been documented in the southern Beaufort and Chukchi Seas between 1985–1995 and 1996–2006 (Durner *et al.* 2009a, p. 45). In addition, it is predicted that some of the largest declines in optimal polar bear sea-ice habitat in the 21st century will occur in the Chukchi and southern Beaufort Seas (Durner *et al.* 2009a, p. 45). Patterns of increased temperatures, earlier onset of and longer melting periods, later onset of freeze-up, increased rain-on-snow events (rain in late winter which may cause snow dens to collapse resulting in mortality of the denning bears), and potential reductions in snowfall are occurring. Further, positive feedback systems (i.e., the sea-ice albedo feedback mechanism, described below) and changing ocean and atmospheric circulation patterns can operate to amplify the warming trend. The sea-ice albedo feedback effect is the result of a reduction in the extent of brighter, more reflective sea ice or snow, which reflects solar energy back into the atmosphere, and a corresponding increase in the extent of darker, more heat-absorbing water or land that absorbs more of the sun's energy. This greater absorption of energy causes faster melting of ice and snow, which in turn causes more warming, and thus creates a self-reinforcing cycle or feedback loop that becomes amplified and accelerates with time. Lindsay and Zhang (2005, p. 4,892) suggest that the sea-ice albedo feedback mechanism caused a tipping point in arctic sea ice thinning in the late 1980s, sustaining a continual decline in sea-ice cover that cannot easily be reversed. As a result of changes to the sea-ice habitat due to climate change, there is fragmentation of sea ice, a dramatic increase in the extent of open water areas seasonally, reduction in the extent and area of sea ice in all seasons, retraction of sea ice away from productive continental shelf areas throughout the Polar Basin, reduction of the amount of thicker and more stable multi-year ice, and declining thickness and quality of shore-fast ice (Parkinson *et al.* 1999, pp. 20,840, 20,849; Rothrock *et al.* 1999, p. 3,469; Comiso 2003, p. 3,506; Fowler *et al.* 2004, pp. 71–74; Lindsay and Zhang 2005, p. 4,892; Holland *et al.* 2006, pp. 1–5; Comiso 2006, p. 72; Serreze *et al.* 2007, pp. 1,533–1,536; Stroeve *et al.* 2008, p. 13). These events are interrelated and combine to decrease the extent and quality of sea ice as polar bear habitat during all seasons, and particularly during the spring—summer period. Lastly, it is predicted that arctic sea ice will likely continue to be affected by climate change for the foreseeable future (IPCC 2007, p. 49; J. Overland, NOAA, in comments to the USFWS, 2007; 73 FR 28239).

Polar bear populations in the Chukchi Sea, Barents Sea, southern Beaufort Sea, Kara Sea, and Laptev Sea (the Divergent Ice Ecoregion) will, or are currently, experiencing the initial effects of changes in sea ice (Rode *et al.* 2007, p. 12; Regehr *et al.* 2007b, pp. 18–19; Hunter *et al.* 2007, p. 19; Amstrup *et al.* 2008, pp. 239–240). These populations are vulnerable to large-scale dramatic seasonal fluctuations in ice movements, decreased access to abundant prey, and increased energetic costs of hunting. These concerns were punctuated by the

record minimum summer ice conditions in September 2007, when vast ice-free areas encroached into the central Arctic Basin, and the Northwest Passage was open for the first time in recorded history. The record low sea-ice conditions of 2007 extend an accelerating trend in habitat loss, and further support a concern that current sea ice models may be conservative and underestimate the rate and level of sea ice loss in the future (Stroeve *et al.* 2007).

While we recognize that climate change will negatively affect optimal sea-ice habitat for polar bears, the underlying causes of climate change are complex global issues that are beyond the scope of the Act. However, we will continue to evaluate any special management considerations or protection that may be needed for polar bears and their habitat.

Petroleum Hydrocarbons

Pollution from various potential sources, including oil spills from vessels, or discharges from oil and gas drilling and production, could render areas containing the identified physical and biological features unsuitable for use by polar bears, effectively negating the conservation value of these features. Because of the vulnerabilities to pollution sources, these features may require special management considerations or protection through such measures as placing conditions on Federal permits or authorizations to stimulate special operational restraints, mitigative measures, or technological changes.

Petroleum hydrocarbons come from both natural and anthropogenic sources. The primary natural source is oil seeps. Arctic Monitoring and Assessment Programme (AMAP) (2007, p. 18) notes that ''natural seeps are the major source of petroleum hydrocarbon contamination in the arctic environment.'' Anthropogenic sources include activities associated with exploration, development, and production of oil (well blowouts, operational discharges), ship- and land-based transportation of oil (oil spills from pipelines, accidents, leaks, and ballast washings), discharges from refineries and municipal waste water, and combustion of fossil fuels.

Polar bears' range overlaps with many active and planned oil and gas operations within 40 km (25 mi) of the coast. In the past, no large-volume major oil spills of more than 3,000 barrels have occurred in the marine environment within the range of polar bears. Oil spills associated with terrestrial pipelines have occurred in the vicinity of polar bear habitat, including denning areas (e.g., Russian Federation, Komi Republic, 1994 oil spill, *http://www.american.edu/ted/KOMI.HTM*). Despite numerous safeguards to prevent spills, they do occur. An average of 70 oil and 234 waste product spills per year occurred between 1977 and 1999 in the North Slope oil fields (71 FR 14456; March 22, 2006). Many spills are small (less than 50 barrels) by oil and gas industry standards, but larger spills (greater than or equal to 500 barrels) account for much of the annual volume. The largest oil spill to date on the North Slope oil fields in Alaska (estimated volume of approximately 4,786 barrels [one barrel = approx. 42 gallons]) occurred on land in March 2006, and resulted from an undetected leak in a corroded pipeline (see State of Alaska Prevention and Emergency Response web site at *http://www.dec.state.ak.us/spar/perp/response/sum_fy06/060302301/060302301_index.htm*.

The Minerals Management Service (MMS) (2004, pp. 10, 127) estimated an 11 percent chance of a marine spill greater than 1,000 barrels in the Beaufort Sea from the Beaufort Sea Multiple Lease Sale in Alaska. The MMS prepared an Environmental Impact Statement (EIS) on the *Chukchi Sea Planning Area; Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea,* and MMS determined that polar bears and their habitat could be affected by both routine activities and a large oil spill (MMS 2007, pp. ES 1–10). Regarding routine activities, the EIS determined that small numbers of polar bears could be affected by ''noise and other disturbance caused by exploration, development, and production activities'' (MMS 2007, p. ES-4). In addition, the EIS evaluated events that would be possible over the life of the hypothetical development and production that could follow the lease sale, and estimated that ''the chance of a large spill greater than or equal to 1,000 barrels occurring and entering offshore waters is within a range of 33 to 51 percent.'' If a large spill were to occur, the analysis conducted as part of the EIS process identified potentially significant impacts to polar bears occurring in the area affected by the spill; the evaluation was done without regard to the effect of mitigating measures (MMS 2007, p. ES-4). Data provided by monitoring and reporting programs in the Beaufort Sea and in the Chukchi Sea, as required under the MMPA incidental take authorizations for oil and gas activities, have shown that mitigation measures have successfully minimized impacts to polar bears. For example, since the incidental take regulations became effective in the Chukchi and Beaufort Seas (in 1991 and 1993, respectively), there has been no known instance of a polar bear being killed. In addition, a polar bear oil spill response plan has been developed to minimize the chance that a spill would have negative effects on polar bears and their critical habitat (USFWS 1999).

Oil spills in the fall or spring during the formation or break-up of sea ice present a greater risk because of difficulties associated with clean up during these periods, and the presence of bears in the prime feeding areas over the continental shelf. Amstrup *et al.* (2000a, p. 5) concluded that the release of oil trapped under the ice from an underwater spill during the winter could be catastrophic during spring break-up if bears were present. During the autumn freeze-up and spring break-up periods, any oil spilled in the marine environment would likely concentrate and accumulate in open leads and polynyas, areas of high activity for both polar bears and seals (Neff 1990, p. 23). This would result in an oiling of both polar bears and seals (Neff 1990, pp. 23–24; Amstrup *et al.* 2000a, p. 3; Amstrup *et al.* 2006a, p. 9).

Historically, oil and gas activities have resulted in little direct mortality to polar bears, and the mortality that has occurred has been associated with human-bear interactions rather than spill events. However, oil and gas activities are increasing as development continues to expand throughout the U.S. Arctic and internationally, including in polar bear terrestrial and marine habitats. Offshore oil and gas exploration, development, and production activities in Alaska and adjacent territorial and U.S. waters increase the potential for disturbance of polar bears and their nearshore sea-ice habitat and the relatively pristine barrier islands used for refuge, denning, and movements. The greatest threat of future oil and gas development is the potential effect of an oil spill or discharges in the marine environment on polar bears or their habitat. In addition, disturbance from activities associated with oil and gas activities can result in direct or indirect effects on polar bear use of habitat. Direct disturbances include displacement of bears or their primary prey (ringed and bearded seals) due to the movement of equipment, personnel, and ships through polar bear habitat. Direct disturbance may cause abandonment of established dens before cubs are able to survive outside the den. Female polar bears tend to select

secluded areas for denning, presumably to minimize disturbance during the critical period of cub development. Expansion of the network of roads, pipelines, well pads, and infrastructure associated with oil and gas activities may force pregnant females into marginal denning locations (Lentfer and Hensel 1980, p. 106; Amstrup *et al.* 1986, p. 242). The potential effects of human activities are much greater in areas where there is a high concentration of dens such as Wrangel Island, one of the principal denning areas for the Chukchi and Bering Seas population (Kochnev 2006, p. 163). Oil spills, however, are a concern for polar bears throughout their range.

The National Research Council (NRC 2003, p. 169) evaluated the cumulative effects of oil and gas development in Alaska and concluded the following related to polar bears and ringed seals:

- Industrial activity in the marine waters of the Beaufort Sea has been limited and sporadic and likely has not caused serious cumulative effects to ringed seals or polar bears.
- Careful mitigation can help to reduce the negative effects of oil and gas development, especially if there are no major oil spills. However, full-scale industrial development of waters off the North Slope would increase the negative effects to polar bears through the displacement of polar bears and ringed seals from their habitats, increased mortality, and decreased reproductive success.
- A major Beaufort Sea oil spill would have major effects on polar bears and ringed seals.
- Climatic warming at predicted rates in the Beaufort Sea region is likely to have serious consequences for ringed seals and polar bears, and those effects will increase with the effects of oil and gas activities in the region.
- Unless studies to address the potential increase and cumulative effects on North Slope oil and gas activities on polar bears or ringed seals are designed, funded, and conducted over long periods of time, it will be impossible to verify whether such effects occur, to measure them, or to explain their causes.

Some alteration of polar bear habitat has occurred from oil and gas development, seismic exploration, or other activities in denning areas. Potential oil spills in the marine environment and expanded activities increase the potential for additional changes to polar bear habitat (Amstrup 2000, pp. 153–154). Any such impacts would be additive to other factors already or potentially affecting polar bears and their habitat.

Special management considerations and protection may be needed to minimize the risk of crude oil spills and human disturbance associated with oil and gas development and production, oil and gas tankers, and potential commercial shipping along the Northern Sea Route to polar bears and the habitat features essential to their conservation.

Shipping and Transportation

Observations over the past 50 years show a decline in arctic sea ice extent in all seasons, with the most prominent retreat in the summer (Stroeve *et al.* 2007, p. 1). Climate models project an acceleration of this trend with periods of extensive melting in spring and autumn, which would open new shipping routes and extend the period that shipping is feasible (ACIA 2005, p. 1,002). Notably, the navigation season for the Northern Sea Route (across northern Eurasia) is projected to increase from 20–30 days per year to 90–100 days per year. Russian scientists cite increasing use of a Northern Sea Route for transit and regional development as a major source of disturbance to polar bears in the Russian Arctic (Wiig *et al.* 1996, pp. 23–24; Belikov and Boltunov 1998, p. 113; Ovsyanikov 2005, p. 171). Commercial shipping using the Northern Sea Route, especially if it required the use of ice breakers to maintain open shipping lanes, could disturb polar bear feeding and other behaviors, increase the risk of oil spills (Belikov *et al.* 2002, p. 87), and potentially alter optimal polar bear sea-ice habitat.

Increased shipping activity may disturb polar bears in the marine environment, adding additional energetic stresses. If ice-breaking activities occur, these activities may alter essential features used by polar bears, possibly creating ephemeral lead systems and concentrating ringed seals within the refreezing leads. This, in turn, may allow for easier access to ringed seals and may have some beneficial values to polar bears. Conversely, this may cause polar bears to use areas that may have a higher likelihood of human encounters as well as increased likelihood of exposure to oil, or waste products, that are intentionally or accidentally released into the marine environment. If shipping involved the tanker transport of crude oil or oil products, there would be some increased likelihood of small to large volume spills and corresponding oiling of essential sea-ice and terrestrial habitat features, polar bears, and seal prey species (AMAP 2005, pp. 91, 127).

The Polar Bear Specialist Group (PBSG) (Aars *et al.* 2006, pp. 22, 58, 171) recognized the potential for increased shipping and marine transportation in the Arctic with declining seasonal sea-ice conditions. The PBSG recommended that the parties to the 1973 *Agreement on the Conservation of Polar Bears* take appropriate measures to monitor, regulate, and mitigate shipping traffic impacts on polar bear populations and habitats (Aars *et al.* 2006, p. 58).

Summary of Anthropogenic Threats to Features Essential to the Conservation of the Polar Bear Which May Require Special Management Considerations or Protection

Although it is expected that the effects of climate change will have the greatest impact on polar bear sea-ice habitat, we have also evaluated changes to habitat in the Arctic and, as a result, increased stress from human activities. Increased human activities include an expansion of the level of oil and gas exploration, development, and production onshore and offshore, and potential increases in shipping. Individually as well as cumulatively, these activities may result in alteration of polar bear habitat and features essential to their conservation. Any potential impact from these activities would be additive to other factors already or potentially affecting polar bears and their habitat. We acknowledge that the sum total of documented direct impacts from these activities in the past have been minimal. We also acknowledge that national and local concerns for these activities have resulted in the development and implementation of regulatory programs to monitor and reduce potential effects. For example, the MMPA allows for incidental, non-intentional take (harassment) of small numbers of polar bears during specific oil and gas activities. The Service administers an incidental take program under the MMPA that allows polar bear managers to work cooperatively with oil and gas operators to minimize impacts of their activities on polar bears. The Service evaluates each request for a letter letter of authorization (LOA) under the MMPA incidental take program with special attention to mitigating impacts to polar bears, such as limiting industrial activities around barrier island habitat, which is important for polar bear denning, feeding, resting, and seasonal movements. Specifically, section 101(a)(5) of the MMPA gives the Service the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than

commercial fishing) in a specified geographic region. Incidental take cannot be authorized unless the Service finds that the total of such taking will have no more than a negligible impact on the species and, for species found in Alaska, will not have an unmitigable adverse impact on the availability of the species for taking for subsistence use by Alaska Natives.

If any take that is likely to occur will be limited to nonlethal harassment of the species, the Service may issue an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA. IHAs cannot be issued for a period longer than one year. If the taking may result in more than harassment, regulations under section 101(a)(5)(A) of the MMPA must be issued, which may be in place for no longer than 5 years. Once regulations making the required findings are in place, we issue letters of authorization (LOAs) that authorize the incidental take consistent with the provisions in the regulations. In either case, the IHA or the regulations must set forth: (1) permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

These incidental take programs under the MMPA currently provide a greater level of protection for the polar bear than equivalent procedures under the Act. Negligible impact, as defined at 50 CFR 18.27(c), is an impact resulting from a specific activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species through effects on annual rates of recruitment or survival. This is a more protective standard than that afforded by the Act. In addition, the authorizations under the MMPA are limited to one year for IHAs and 5 years for regulations, thus ensuring that activities that are likely to cause incidental take are periodically reviewed and mitigation measures that ensure that take remains at the negligible level can be updated.

In the consideration of IHAs or the development of incidental take regulations, the Service conducts an intra-Service consultation under section 7(a)(2) of the Act to ensure that providing an MMPA incidental take authorization is not likely to jeopardize the continued existence of the polar bear. Since the standard for approval of an IHA or the development of incidental take regulations under the MMPA is no more than ''negligible impact'' to the affected marine mammal species, we believe that any MMPA-compliant authorization or regulation would, in most circumstances, meet the Act's section 7(a)(2) standards of ensuring that the action is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of designated critical habitat. In addition, we anticipate that any proposed action(s) would augment protection and enhance agency management of the polar bear through the application of site-specific mitigation measures contained in authorization issued under the MMPA.

An example of application of the MMPA incidental take standards to the polar bear is associated with onshore and offshore oil and gas exploration, development, and production activities in Alaska. Since 1991, affiliates of the oil and gas industry have requested, and we have issued regulations for, incidental take authorization for activities in areas of polar bear habitat. This includes regulations issued for incidental take in the Chukchi Sea for the period 1991–1996, and regulations issued for incidental take in the Beaufort Sea from 1993 to the present. A detailed history of our past regulations for the Beaufort Sea region can be found in our final rules published on November 28, 2003 (68 FR 66744) and August 2, 2006 (71 FR 43926).

The mitigation measures that we have required for all oil and gas projects include a site-specific plan of operation and a site-specific polar bear interaction plan. Site-specific plans outline the steps the applicant will take to minimize impacts on polar bears, such as garbage disposal and snow management procedures to reduce the attraction of polar bears, an outlined chain-of-command for responding to any polar bear sighting, and polar bear awareness training for employees. The training program is designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Most often, the appropriate response involves merely monitoring the animal's activities until they move out of the area. However, personnel may be instructed to leave an area where bears are seen. If it is not possible to leave, the bears can be displaced by using forms of deterrents, such as a vehicle, vehicle horn, vehicle siren, vehicle lights, spot lights, or, if necessary, pyrotechnics (e.g., cracker shells). The intent of the interaction plan and training activities is to allow for the early detection and appropriate response to polar bears that may be encountered during operations, which eliminates the potential for injury or lethal take of bears in defense of human life. By requiring such steps be taken, we ensure any impacts to polar bears will be minimized and will remain negligible.

Additional mitigation measures are also required on a case-by-case basis depending on the location, timing, and specific activity. For example, we may require trained marine mammal observers for offshore activities; pre-activity surveys (e.g., aerial surveys, infra-red thermal aerial surveys, polar bear scent-trained dogs) to determine the presence or absence of dens or denning activity; measures to protect pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs), including incorporation of a 1-mi (1.6-km) buffer surrounding known dens; and enhanced monitoring or flight restrictions. Detailed denning habitat maps, combined with information on denning chronology and remote den detection methods such as forward-looking infrared (FLIR) imagery, should facilitate managing human activities associated with oil and gas operations to minimize disturbances during this critical denning period for female polar bears (Durner *et al.* 2001, p. 19; Amstrup *et al.* 2004b, p. 343; Durner *et al.* 2006b, p. 34). These mitigation measures are implemented to limit human–bear interactions and disturbances to bears and have ensured that industry effects on polar bears have remained at the negligible level.

Data provided by monitoring and reporting programs in the Beaufort Sea and in the Chukchi Sea, as required under the incidental take authorizations for oil and gas activities, have shown that the mitigation measures have successfully minimized impacts to polar bears. For example, since the incidental take regulations became effective in the Chukchi and Beaufort Seas (in 1991 and 1993, respectively), there has been no known instance of a polar bear being killed or of personnel being injured by a bear as a result of oil and gas industry activities. Incidental take regulations under the MMPA have been issued since 1993 in the Beaufort Sea. The regulations typically extend for a 5–year period and the current regulatory period for the Beaufort Sea is August 2, 2006, to August 2, 2011. The 5–year regulatory duration is to allow the Service (with public review) to periodically assess whether the level of activity continues to have a negligible impact on polar bears, their habitat, and their availability for subsistence uses.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of polar bears in the United States, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of polar bears. Information sources included articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion. We are not currently proposing any areas outside the geographical area presently occupied by the species because occupied areas are sufficient for the conservation of polar bears in the United States.

We have also reviewed available information that pertains to the habitat requirements of this species. In proposing critical habitat for polar bears in the United States, we reviewed the relevant information available, including peer-reviewed journal articles, the final listing rule, unpublished reports and materials (such as survey results and expert opinions), and regional Geographic Information System (GIS) coverages.

We are proposing to designate critical habitat for polar bears in the United States in areas occupied at the time of listing which are defined by physical and biological features essential to the conservation of polar bears in the United States which may require special management considerations or protection. In addition, we have also considered qualitative criteria in the selection of specific areas for polar bear critical habitat in the United States. These criteria focused on: (1) Identifying specific areas where polar bears consistently occur, such as the ice edge near flaw zones, leads, or polynyas, or denning areas near the coast; and (2) identifying specific areas where polar bears are especially vulnerable to disturbance during denning and the open water period.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the features essential for polar bear conservation. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the essential features in the adjacent critical habitat.

Sea-ice Habitat Criteria

Mapping specific sea-ice habitat is impracticable because it is dynamic and highly variable on both temporal and spatial scales. Sea-ice distribution and composition vary within and among years. For example, sea-ice conditions that are characteristic of polar bear optimal feeding habitat vary depending on the wind, currents, weather, location, and season. Therefore, sea ice that was optimal at one time may not be at another, nor will it necessarily be the same from year-to-year during the same month.

The sea-ice habitat considered essential for polar bear conservation is that which is located over the continental shelf at depths of 300 m (984.2 ft) or less. The location of this sea-ice habitat varies geographically, depending foremost on the time of year (season) and secondarily on regional or local weather and oceanographic conditions. During spring and summer, the essential sea-ice habitat follows the northward progression of the ice edge as it retreats northward. Conversely, during autumn, the essential sea-ice habitat follows the southward progression of the ice edge as it advances southward. Use by polar bears of specific areas of sea-ice habitat varies daily and seasonally with the advance and retreat of the sea ice over the continental shelf (Durner *et al.* 2004, pp. 16-20; Durner *et al.* 2006a, pp. 27–30). The duration that any given location maintains the sea-ice PCE varies annually, depending on the rate of ice melt (or freeze), as well as local wind and ocean current patterns that dictate the directions and rates of ice drift.

We used the area occupied by the polar bear in the United States, and, within that area, the extent of the continental shelf, as criteria to identify proposed critical habitat containing essential sea-ice features. Because we are limited to designating critical habitat to lands and waters within the jurisdiction of the United States, in some areas we also used the outer extent of the Exclusive Economic Zone of the United States and the International Date Line (the United States-Russia boundary) as the boundary of proposed critical habitat.

Terrestrial Denning Habitat Criteria

Polar bears in the United States create maternal dens in snowdrifts. The northern coastal plain in Alaska is relatively flat, and thus any areas with sufficient relief, such as coastal bluffs, river banks, and even small cut banks and streams that catch the drifting snow, may provide suitable denning habitat. The most frequently used denning habitat on the coastal plain of Alaska is along coastal bluffs and river banks. Macrohabitat characteristics of the sites chosen for snow dens were steep, stable slopes (mean = 40°, SD = 13.5°, range 15.5–50.0°), with heights ranging from 1.3 to 34 m (mean = 5.4 m, SD = 7.4) (4.3 to 111.6 ft, mean = 17.7 ft, SD = 24.3), with water or relatively level ground below the slope and relatively flat terrain above the slope (Durner *et al.* 2001, p. 118; Durner *et al.* 2003, p. 60). Although the river banks and coastal bluffs were most frequently used as denning habitat, more subtle microhabitat features such as deep narrow gullies, dry stream channels (usually some distance from an active stream channel), and broad vegetated seeps that occurred in relatively flat tundra are also used (Durner *et al.* 2001, p. 118; Durner *et al.* 2003, p. 61). Remarkably, banks with as little as 1.3 m (4.3 ft) of relief contained dens. The common feature in all these areas was the ability of the terrain to catch enough drifting snow to be suitable for den construction. Potential den sites in western Alaska are similar (USFWS 1995, pp. A-12).

In northern Alaska from the Canadian border to Barrow, high-density terrestrial denning habitat up to about 40 km (25 mi) from the mainland coast has been identified (Durner *et al.* 2001; Durner *et al.* 2003; Durner *et al.* 2006b; Durner *et al.* 2009b). Detailed den habitat data from the Canadian border to about 28.5 km (17.4 mi) southeast of Barrow, Alaska, has been mapped, but only data for the area from the Canadian border to the Colville River Delta has been field verified and peer reviewed. Denning habitat data on the barrier islands is also available for this section of the coastline. The detailed denning habitat information in area between the Colville River Delta to approximately 28.5 km (17.4 mi) southeast of Barrow, Alaska, will be available following field verification and peer review. Based on the habitat characteristics of the den sites (which we describe above) the

North Slope contains large potential areas of denning habitat.

Based on historical use and the preference by pregnant females to select den sites that were relatively free of disturbance and relatively near the coast, we have established selection criteria of only high-use coastal denning habitat. We defined the maximum inland extent of critical denning habitat to be the distance from the coast, measured in 8 km (5 mi) increments, in which 95 percent of all historical confirmed and probable dens have occurred east of Barrow, Alaska (Durner *et al.* 2009b). We determined the inland extent of the terrestrial denning habitat from an analysis of confirmed and probable polar bear maternal dens by radio-telemetry between 1982 and 2009 (Durner *et al.* 2009b, p. 3). We did not include potential terrestrial or barrier island denning habitat in western Alaska in this proposed critical habitat for the polar bear. While we recognize that the coastal areas from Barrow southward to the Seward Peninsula have characteristics that appear to allow for the formation of denning habitat, radio-telemetry data indicate that, historically, few bears have denned there. Although incidental sightings of female polar bears with offspring have been reported near the west coast of Alaska, there are few documented reports of denning in this area. Core denning areas for the Chukchi and Bering Seas population appears to occur along the Russian Chukotka coast and Wrangel Island, Russia rather than the west coast of Alaska. Therefore, we determined that coastal mainland and barrier island terrestrial habitat in western Alaska from Barrow southward to the Seward Peninsula does not contain high-use denning habitat, a primary filter that we have applied as a criteria for the inclusion of denning habitat in our proposed critical habitat. However, recognizing that sparse denning by polar bears has occurred in these areas historically, we are considering whether it may be appropriate to include all or portions of these specific areas in the final designation and specifically asking the public:

(1) Whether the specific coastal mainland and barrier island terrestrial areas along the west coast of Alaska from Barrow southward to the Seward Peninsula contain physical and biological features essential for denning habitat for polar bears;

(2) Whether there may be a physical or biological feature essential to the conservation of the polar bear for denning habitat along the west coast of Alaska that we have not identified in this proposal;

(3) If these areas contain physical and biological features essential for denning habitat for polar bear, do these features require special management considerations or protections: and

(4) Whether the specific areas defined by these features should be included in a final designation of critical habitat for the polar bear.

Barrier Island Habitat Criteria

Barrier islands range from small sandy islands just above sea level to larger tundra-covered islands that can support polar bear dens. The distance between the barrier islands and the mainland can vary from 100 m to 50 km (328 ft (ft) to 31 mi). Although less dynamic than sea-ice habitat, barrier islands are constantly shifting due to erosion and deposition from wave action during storms, ice scouring, currents, and winds. The location of the barrier islands generally parallels the mainland coast of Alaska. However, the barrier islands are not evenly distributed along the coast. They often occur in relatively discrete island groups such as Jones Islands between Olitkok Point and Prudhoe Bay or the Plover Islands east of Point Barrow. Polar bears use barrier islands as migration corridors and move freely between the islands by swimming or walking on the ice or shallow sand bars. Since they also use barrier islands to avoid human disturbance, we have included the ice, marine waters, and terrestrial habitat within 1.6 km (1 mi) of the mean high tide line of the barrier islands as part of the barrier island habitat.

We included spits of land in the barrier island habitat category. Spits are attached to the mainland but extend out into the ocean and often are an extension of the barrier islands themselves. These spits were included because they have the same characteristics of the main barrier islands with which they are associated.

Proposed Critical Habitat Designation

We are proposing three critical habitat units for polar bear populations in the United States. You can view detailed, colored maps of areas proposed as critical habitat in this proposed rule at *http://alaska.fws.gov/fisheries/mmm/polarbear/criticalhabitat.htm*. You can obtain hard copies of maps by contacting the Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

The critical habitat units we describe below constitute our current assessment, based on the best available science, of areas that meet the definition of critical habitat for polar bears in the United States. Table 1 shows the occupied units. The three units we propose as critical habitat are: (1) Sea-ice Habitat; (2) Terrestrial Denning Habitat; and (3) Barrier Island Habitat.

TABLE 1. OCCUPANCY OF PROPOSED CRITICAL HABITAT UNITS BY POLAR BEARS.

Unit	Occupied at Time of Listing	Currently Occupied	Estimated Size of Area in km^2 (mi^2)	State/Federal/Native OwnershipRatio (percent)
1. Sea-ice habitat	Yes	Yes	499,552 (192,928)	7/93/0
2. Terrestrial Denning Habitat	Yes	Yes	14,678 (5,668)	20/74/6
3. Barrier Island Habitat	Yes	Yes	10,588 (4,089)	65/9/27[2]
TOTAL			**519,403[1] (200,541) [1]**	**9/90/1**

[1] The total acreage reported is less than the sum of the three units because Unit 3 slightly overlaps Units 1 and 2.
[2] Due to rounding errors, the ratios given for some units do not add up to 100.

Below, we present brief descriptions of all proposed critical habitat units, and reasons why they meet the definition of critical habitat and are included in this proposal. Calculations of sea-ice habitat are from GIS data layers of hydrographic survey data compiled by the National Oceanic and Atmospheric Administration (NOAA), the U.S. Geological Survey, and the U.S. Fish and Wildlife Service.

With regard to ownership of the marine area covered by the sea-ice habitat, the waters of the State of Alaska extend seaward from the mean high tide line for 5.6 nautical-kilometers (3 nautical-miles (nm)) and have been mapped by NOAA (*http://www.nauticalcharts.noaa.gov/csdl/mbound.htm*). Federal waters extend from the 5.6 nautical-km (3 nm) State boundary out to the U.S. 370.7 nautical-km (200 nm) Exclusive Economic Zone (EEZ) (Table 2), and include the territorial waters of the United States (a subset of the EEZ, which extends from the State boundary to 22.2 nautical-km (12 nm) out).

TABLE 2. OWNERSHIP STATUS OF PROPOSED CRITICAL HABITAT UNITS FOR POLAR BEARS IN THE UNITED STATES.

Area	Federal(percent)	State(percent)	Private(percent)	Alaska Native(percent)
1. Sea-ice Habitat	92.7	7.3	0.0	0.0
2. Terrestrial Denning Habitat	73.6	20.0	0.0	6.4
3. Barrier Islands	8.5	64.5	0.0	27.0
TOTAL	**90.5**	**8.8**	**0.0**	**0.7**

Unit 1: Sea-ice Habitat

Unit 1 consists of approximately 499,552 km² (192,928 mi²) of the sea-ice habitat ranging from the mean high tide line to the 300-m (984.2-ft) depth contour. Because we are limited by 50 CFR 424.12(h) to designating critical habitat only on lands and waters under U.S. jurisdiction, Unit 1 does not extend beyond the U.S. 370.7 nautical-km (200 nm) EEZ to the north, the International Date Line to the west, or the United States–Canada border to the east. To delineate the southern boundary, we used the southern extent of the Chukchi and Bering Seas population as determined by telemetry data (Garner *et al.* 1990, p. 223), since the 300-m (984.2-ft) depth contour extends beyond the southern extent of the polar bear population. The vast majority (93 percent) of Unit 1 is located within Federal waters.

Unit 1 contains PCE number 1, which is required for feeding, breeding, denning, and movements that are essential for the conservation of polar bear populations in the United States. Special management considerations and protection may be needed to minimize the risk of crude oil spills associated with oil and gas development and production, oil and gas tankers, and the risk associated with commercial shipping within this region and along the Northern Sea Route.

Unit 2: Terrestrial Denning Habitat

Unit 2 consists of an estimated 14,678 km² (5,668 mi²) of land, located along the northern coast of Alaska, with the appropriate denning macrohabitat and microhabitat characteristics (Durner *et al.* 2001, p. 118), as described under ''Terrestrial Denning Habitat Criteria'' above. The area proposed as critical habitat contains approximately 95 percent of the known historical den sites from the southern Beaufort Sea population (Durner *et al.* 2009b, p. 3). The inland extent of denning distinctly varied between two longitudinal zones, with 95 percent of the polar bear dens between the Kavik River and the Canadian border occurring within 32 km (20 mi) of the mainland coast, and 95 percent of the dens between the Kavik River and Barrow occurring within 8 km (5 mi) of the mainland coast. We did not identify critical terrestrial denning habitat for the Chukchi and Bering Seas population because most of the denning for this population occurs on Wrangel Island and Chukotka Peninsula, Russia.

Twenty percent, 74 percent, and 6 percent of Unit 2 is located within State of Alaska land, Federal lands, and Native lands, respectively. In addition, 52.4 percent of the land included within Unit 2 occurs within the boundaries of Arctic National Wildlife Refuge.

Unit 2 contains the necessary topographic and macrohabitat and microhabitat features identified in PCE 2 essential for the conservation of polar bears in the United States. Special management considerations and protection may be needed to minimize the risk of human disturbances and crude oil spills associated with oil and gas development and production, and the risk associated with commercial shipping.

Unit 3: Barrier Island Habitat

Unit 3 consists of an estimated 10,588 km² (4,089 mi²) of barrier island habitat. Barrier island habitat includes the barrier islands themselves and associated spits, and the water, ice, and terrestrial habitat within 1.6 km (1 mi) of the islands. Sixty-four percent of Unit 3 is located within State of Alaska waters. The remaining 36 percent is within Federal waters. The area within Federal jurisdiction is comprised of 28.0 percent, 21.3 percent, 4.0 percent, and 46.7 percent of the offshore marine waters included within the boundaries of Arctic National Wildlife Refuge, Alaska Maritime National Wildlife Refuge, Selawik National Wildlife Refuge, and Yukon Delta National Wildlife Refuge, respectively.

Unit 3 contains PCE number 3, which is essential for the conservation of polar bear populations in the United States. Special management considerations and protection may be needed to minimize the risk of human disturbances, shipping, and crude oil spills associated with oil and gas development and production, oil and gas tankers, and other marine vessels.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

In addition, under section 7(a)(4) of the Act, Federal agencies must confer

with the Service on any agency action that is likely to result in destruction or adverse modification of proposed critical habitat.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with the U.S. Fish and Wildlife Service. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Following the listing of the polar bear as a threatened species on May 15, 2008, the Service conducted an intra-Service consultation under section 7(a)(2) of the Act to ensure that the issuance of Incidental Take regulations under the MMPA are not likely to jeopardize the continued existence of the polar bear. The Service issued its Programmatic Biological Opinion For Polar Bears (*Ursus maritimus*) On Chukchi Sea Incidental Take Regulations, on June 3, 2008, concluding that regulations under the MMPA will not appreciably reduce the likelihood of survival and recovery of the polar bear, and therefore are not likely to jeopardize the continued existence of the polar bear. On June 23, 2008, the Service issued its Programmatic Biological Opinion For Polar Bears (*Ursus maritimus*) On the Beaufort Sea Incidental Take Regulations, similarly concluding again that regulations under the MMPA will not appreciably reduce the likelihood of survival and recovery of the polar bear, and therefore are not likely to jeopardize the continued existence of the polar bear.

In issuing these opinions, the Service provided notice that re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if, among other things, a new species is listed or critical habitat designated that may be affected by the action. Thus, any future designation of critical habitat for the polar bear would require the Service to re-initiate consultation on these Incidental Take Regulations. Further, with this proposal to designate critical habitat, the Service intends to conduct an informal conference, as provided under the Act, to ensure that the existing regulations do not adversely modify proposed critical habitat.

Federal activities that may affect the polar bear in the United States or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for polar bear populations in the United States.

Section 4(b)(8) of the Act requires us to summarize the data relied upon in developing this rule and how the data relates to the rule. In addition, the summary shall, to the maximum extent practicable, include a brief description and evaluation of activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the southern Beaufort Sea and the Chukchi and Bering Seas polar bear populations in the United States include, but are not limited to:

(1) Actions that would reduce the availability or accessibility of polar bear prey species. Such activities could include, but are not limited to, human disturbance when polar bears are foraging at the ice edge, and displacement of polar bears from optimal sea-ice habitat, particularly during critical feeding periods in the fall or following den emergence in the spring. Activities that reduce availability or accessibility of prey may cause polar bears to forage outside of optimal foraging areas, thus potentially reducing their fitness.

(2) Actions that would directly impact the PCEs. Such activities could include, but are not limited to: seismic activity; construction of ice and gravel roads; construction of drilling pads; development of new onshore and offshore production sites; use of

helicopters, fixed wing aircraft, boats, snow machines, and vehicles by industry and local inhabitants to access sites such as work sites, hunting areas, and fish camps; and increased year-round shipping.

(3) Actions that would render critical habitat areas unsuitable for use by polar bears. Such activities could include, but are not limited to, human disturbance or pollution from a variety of sources, including discharges from oil and gas drilling and production, or spills of crude oil, fuels, or other hazardous materials from vessels, primarily in harbors or other ports. While it is illegal to discharge fuel or other hazardous materials, it happens more often in ports and harbors than in other areas. Additionally, increased vessel traffic and associated ice-breaker activity could negatively affect optimal sea-ice habitat for polar bears. These activities could result in direct mortality or displace polar bears from, or adversely modify, essential sea-ice and denning habitat and habitat free from disturbance (such as barrier islands). Parturient polar bears must be free from disturbance during critical feeding periods prior to denning in the fall and following den emergence in the spring. Disturbance during the critical denning periods or destruction of the denning habitat could result in lower cub survival and recruitment into the population. Declines in recruitment and survival of polar bears, a K-selected species (long-lived species with low reproductive rates), could result in population declines and slow recovery, and could potentially affect the perpetuation of polar bears in the United States.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a *et seq.*) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The Department of Defense has lands with a completed INRMP within the geographical areas included in the proposed critical habitat designation. These include: Wainwright Short Range Radar Site (SRRS), Point Barrow Long Range Radar Site (LRRS), Oliktok LRRS, Bullen Point SRRS, Barter Island LRRS, Cape Lisburne LRRS, Kotzebue LRRS, Tin City LRRS, Point Lonely Former SRRS, Point Lay Former LRRS, and West Nome Tank Farm. The Service is considering excluding these lands from the proposed critical habitat for the polar bear if the INRMPs provide a benefit to the species for which critical habitat is proposed, as described above.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the potential economic impacts of the proposed critical habitat designation and related factors. Potential land use sectors that may be affected by polar bear critical habitat designation include lands owned or managed by the Department of Defense (DOD) where a national security impact might exist and land owned or managed by Federal or State government, or a local jurisdiction, where there are oil and gas developments. We also consider whether landowners have developed any habitat conservation plans (HCPs) for the area, or whether there are conservation partnerships that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Tribal lands or Tribal Trust resources that might be affected, and consider the government-to-government relationship of the United States with the Tribal entities. We also consider any social impacts that might occur because of the designation.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or by contacting the Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where an impact on national security from the designation of critical habitat for the polar bear might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for polar bears in the United States that are owned or managed by the DOD have existing INRMP plans in

place under the provisions of the Sikes Act as noted above. Therefore, we will first consider whether these lands may be excluded under the Sikes Act before considering any possible impacts or exclusions resulting from national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we evaluate any additional impacts to tribes, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the polar bear populations that occur in the United States or on United States territory. Since the proposed designation includes Alaska Native-owned lands or trust resources which might be affected, we will consider the government-to-government relationship of the United States with the Native entities. However, we anticipate no impact to Native-owned lands, partnerships, or HCPs from this proposed critical habitat designation. There are no areas proposed for exclusion from this proposed designation based on other relevant impacts.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days of the publication of this proposal (see the DATES section). Send your request to the person named in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is significant and has reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must 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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the specific information necessary to provide an adequate factual basis for determining the potential incremental regulatory effects of the designation of critical habitat for the polar bear to either develop the required RFA finding or provide the necessary certification statement that the designation will not have a significant impact on a substantial number of small business entities. On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for the polar bear. These sectors include oil and gas exploration, development, production and distribution, oil spill response, commercial shipping, coastal Alaska Native villages and land development including roads and airport improvements. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) which of these sectors or activities are or involve small business entities and (2) what extent the effects are related to the polar bear being listed as a threatened species under the Act and protected under the MMPA (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). As indicated earlier in this proposal, the Service conducted an intra-Service consultation under section 7(a)(2) of the Act to ensure that the issuance of Incidental Take regulations under the MMPA are not likely to jeopardize the continued existence of the polar bear and concluded that the issuance of the regulations under the MMPA will not appreciably reduce the likelihood of survival and recovery of the polar bear and therefore, are not likely to jeopardize the continued existence of the polar bear. Based on our findings through the completed intra-Service consultation and the conservation management program that is currently in place of the polar bear, we believe that the potential incremental effects resulting from a designation will be small. As a consequence, following an initial evaluation of the information available to us, we do not believe that there will be a significant impact on a substantial number of small business entities resulting from this designation of critical habitat for the polar bear. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are

requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact their business. Therefore, we defer our RFA finding on this proposal designation until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. As discussed above,this draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The vast majority (99 percent) of the proposed critical habitat designation falls within Federal or State of Alaska jurisdiction. The State of Alaska does not fit the definition of ''small governmental jurisdiction.'' Waters adjacent to Native-owned lands are still owned and managed by the State of Alaska. In most cases, development around Native villages, or in the North Slope Borough, occurs with funding from Federal or State sources (or both). Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the polar bear in the United States in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the polar bear in the United States does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alaska and Tribal governments. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where state and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule identifies the primary constituent elements within the

designated areas to assist the public in understanding the habitat needs of the polar bear in the United States, and defines the specific geographic areas proposed as critical habitat for the polar bear in the United States.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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 (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)], Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy) and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we readily acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Indian culture, and to make information available to Tribes.

Since 1997, the Service has worked closely with the Alaska Nanuuq Commission (Commission) on polar bear management and conservation for subsistence purposes. The Commission, established in 1994, is a Tribally Authorized Organization created to represent the interests of subsistence users and Alaska Native polar bear hunters when working with the Federal Government on the conservation of polar bears in Alaska. Not only was the Commission kept fully informed throughout the rulemaking process for the listing of the polar bear as a threatened species, but that organization was asked to serve as a peer reviewer of the Status Review (Schliebe *et al.* 2006a) and the proposed listing rule (72 FR 1064). Following publication of the proposed listing rule, the Service actively solicited comments from Alaska Natives living within the range of the polar bear. We held a public hearing in Barrow, Alaska, to enable Alaska Natives to provide oral comment. We invited the 15 villages in the Commission to participate in the hearing, and we offered the opportunity to provide oral comment via teleconference.

For the proposed critical habitat areas that occur seaward from the mean high tide line, we have determined that there are no Alaska Native-owned lands occupied at the time of listing that contain the features essential for the conservation, and no Alaska Native-owned lands essential for the conservation of polar bears in the United States. With regard to the areas of proposed designation of critical habitat on Alaska Native owned lands in Alaska, we reported to the Alaska Nanuuq Commission in August 2009 that we are in the process of evaluating critical habitat for polar bears in Alaska. During this meeting we explained what critical habitat is and that if designated, special management considerations may be needed. We noted our appreciation of their past participation and comments in our evaluation through the listing determination, and noted our intention to hold public hearings in Barrow and Anchorage, Alaska, in conjunction with any proposed designation. Additionally, we do not anticipate that the proposed designation of critical habitat will have an effect on Alaska native activities especially as they may pertain to subsistence activities.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the proposed critical habitat designation to significantly affect energy supply, distribution, or use. Oil and gas activities have been conducted in the Beaufort and Chukchi Seas since the late 1960s. A majority of the oil and gas development has occurred on land adjacent to the Beaufort Sea, although offshore development is expanding. In February 2008, 1,116,315 hectares (2,758,377 acres) located offshore of Alaska from Point Barrow to northwest of Cape Lisburne were leased as part of Chukchi Sea Lease Sale 193. This lease sale area starts approximately 40.2–80.5 km (25–50 mi) from shore and extends out to 321.9 km (200 mi) offshore. Most of the onshore and offshore areas currently associated with active or proposed oil and gas activities overlap with the proposed critical habitat areas. Any proposed development project likely would have to undergo section 7 consultation, to ensure that the actions are not likely to destroy or adversely modify designated critical habitat. Consultations may result in modifications to the project to minimize the potential adverse effects to polar bear critical habitat. A polar bear oil spill response plan has been developed

to minimize the chance that a spill would have negative effects on polar bears and their critical habitat (USFWS 1999). The Service has been working with the oil and gas industry for many years in order to accommodate both project and species' needs under the authorities of the MMPA. Because of the more restrictive provisions associated with incidental take regulations under the MMPA (see our detailed discussion under Special Management Considerations or Protection), which have been developed for both the Chukchi and Beaufort Sea and have, for example, provided a framework to minimize any adverse bear–human interactions associated with the oil and gas industry, we do not believe that the proposed critical habitat will provide any new and significant effect on energy supply, distribution, or use. Although the future will have many challenges, we expect to be able to work cooperatively with oil and gas operators to minimize any adverse anthropogenic effects to polar bears and their habitat. Therefore, we do not believe this action is a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this proposed rulemaking is available upon request from the Field Supervisor, Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are the staff members of the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Bear, polar'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* * * * * * *							
Bear, polar	*Ursus maritimus*	U.S.A. (AK), Canada, Russia, Denmark, (Greenland), Norway	Entire	T	May 15, 2008	17.95(a)	17.40(q)
* * * * * * *							

3. In § 17.95, amend paragraph (a) by adding an entry for ''Polar Bear (*Ursus maritimus*) in the United States'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Polar Bear (Ursus maritimus) in the United States

(1) Critical habitat areas are in the State of Alaska, and adjacent territorial and U.S. waters, as described below.

(2) The primary constituent elements of critical habitat for the polar bear in the United States are:

(i) Sea-ice habitat, which is sea ice over marine waters 300 m (984.2 ft) or less in depth that occur over the continental shelf.

(ii) Terrestrial denning habitat, which is topographic features, such as coastal bluffs and river banks, with the following suitable macrohabitat characteristics:

(A) Steep, stable slopes (range 15.5–50.0°), with heights ranging from 1.3 to 34 m (4.3 to 111.6 ft), and with water or relatively level ground below the slope and relatively flat terrain above the slope;

(B) Unobstructed, undisturbed access between den sites and the coast; and

(C) The absence of disturbance from humans and human activities that might attract other bears.

(iii) Barrier island habitat, which consists of the barrier islands along the Alaska coast and their associated spits, and water, ice, and terrestrial habitat within 1.6 km (1 mi) of these islands.

(3) Critical habitat does not include manmade structures (e.g., docks, seawalls, pipelines) and the land on which they are located existing within the boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Boundaries were derived from GIS data layers of the 1:63,360 scale digital coastline of the State of Alaska, created by the Alaska Department of Natural Resources from U.S.Geological Survey inch-to-the-mile topographic quadrangles. The International Bathymetric Chart of the Arctic Ocean (IBCAO), version 2.3 was used for the bathymetric data. The maritime boundaries to generate the 3-mile nautical line, U.S. territorial boundary, and Exclusive Economic Zone (EEZ) were from the National Oceanic and Atmospheric Administration's Office of Coast Survey (OCS) website. The land status and ownership information at the section level scale was from the Alaska Department of Natural Resources, and was obtained from the Alaska State Office of the Bureau of Land Management. The detailed parcel-level

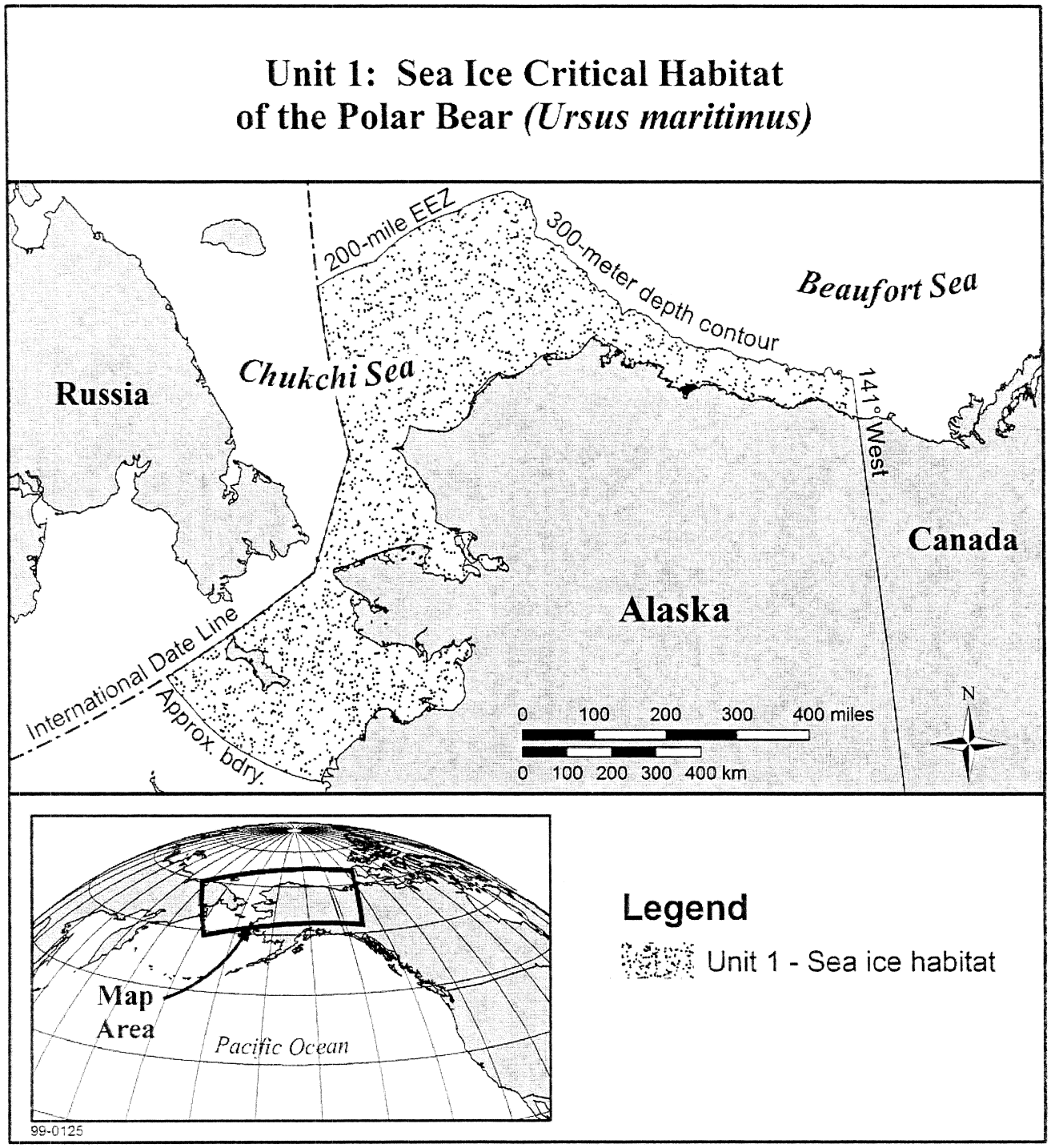
land status was created by the U.S. Fish and Wildlife Service, Division of the Realty, by digitizing U.S. Bureau of Land Management Master Title Plots. The detailed denning habitat maps and the internal boundaries for the terrestrial denning habitat were provided by the U.S. Geological Survey, Alaska Science Center. The data were projected into Alaska Standard Albers Conical Equal Area using the North American Datum of 1983 to estimate the area of each critical habitat unit and determine overlap with land and water ownership.

(5) Unit 1: Sea-ice habitat.

(i) The critical sea-ice habitat area includes all the contiguous waters from the mean high tide line of the mainland coast of Alaska to the 300 m (984.2 ft) bathymetry contour. The critical sea-ice habitat is bounded on the east by the United States–Canada border (69.64892°N, 141.00533°W) and extends along the coastline to a point southwest of Hooper Bay (61.52859°N, 166.15476°W) on the western coast of Alaska. The eastern boundary extends offshore approximately 85 km (136 mi) from the coast (70.41526°N, 141.0076°W) at the United States–Canada border and then follows the 300 m (984.2 ft) bathymetry contour northwest until it intersects with the U.S. 200-nautical-mile EEZ (74.01403°N, 163.52341°W). The boundary then follows the EEZ boundary southwest to the intersection with the International Date Line (70.98176°N, 173.68023°W), which is the border between the United States and Russia. From this point, the boundary follows the International Date Line south and southwest to the intersection with the southern boundary of the Chukchi and Bering Seas population southwest of Gambell, St Lawrence Island (62.55482°N, 173.68023°W). From this point, the boundary extends southeast to the coast of Alaska (61.52859°N, 166.15476°W).

(ii) The map of Unit 1, sea-ice habitat, follows:

BILLING CODE 4310–55–S



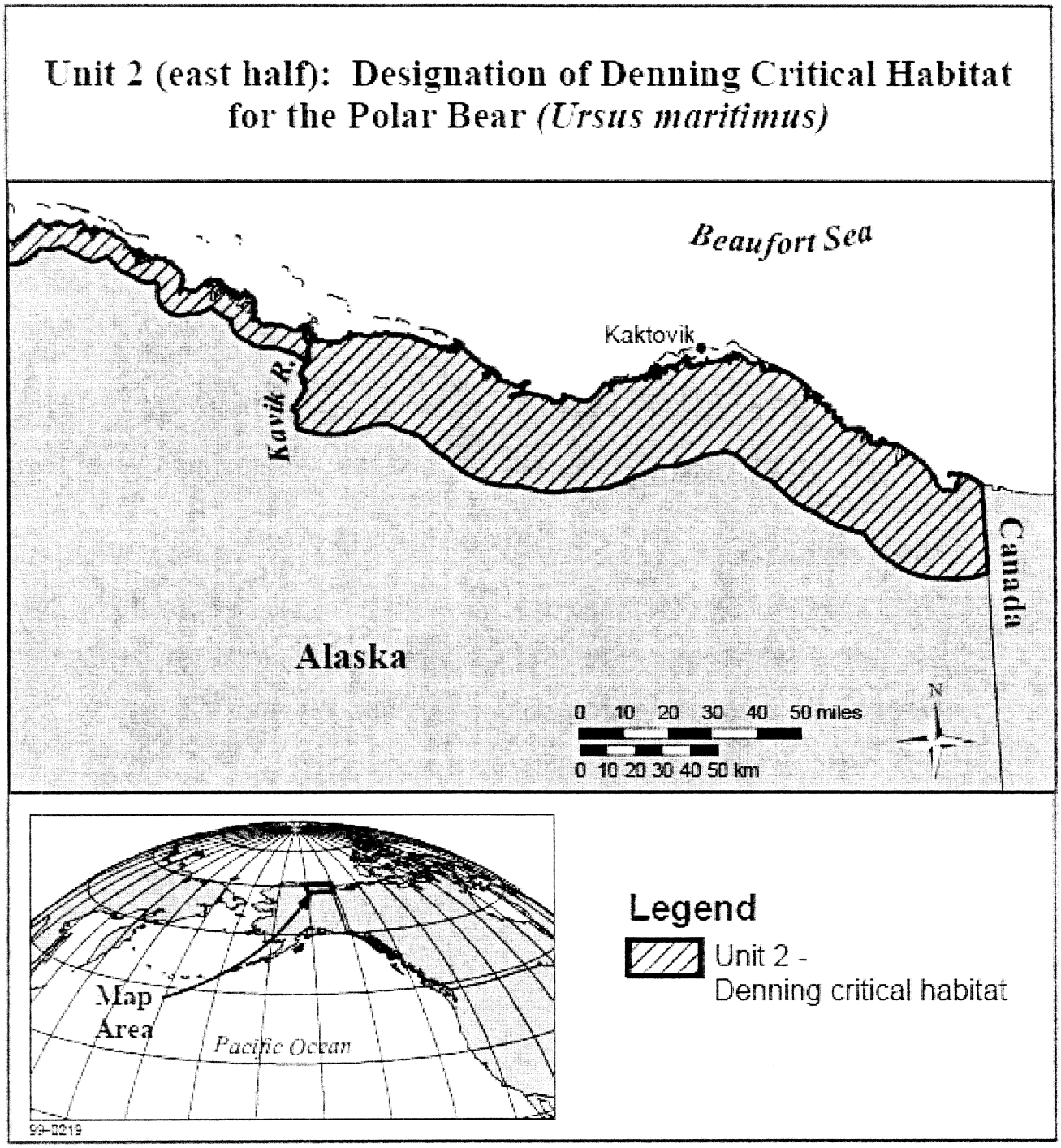
BILLING CODE 4310–55–C

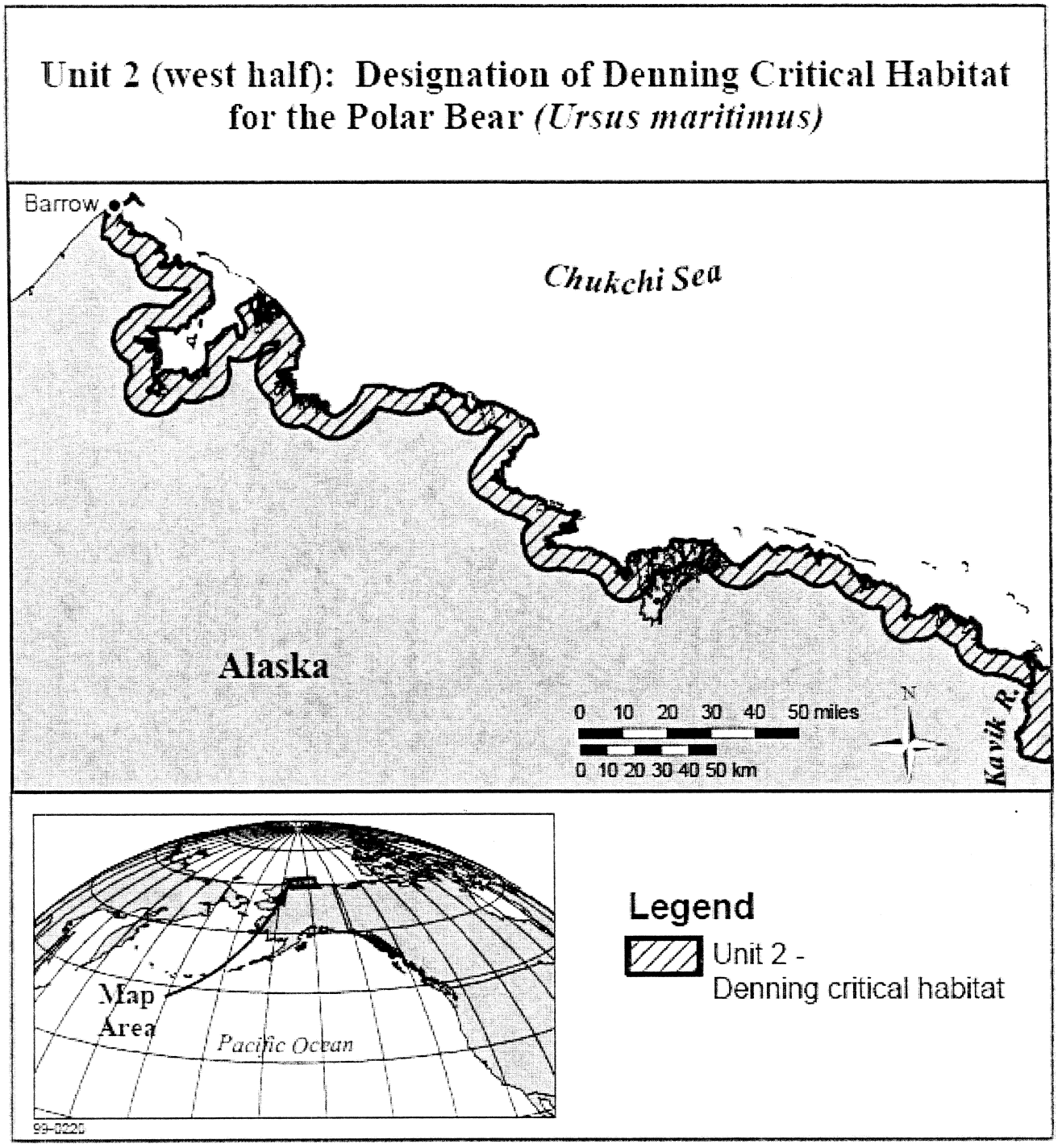
(6) Unit 2: Terrestrial denning habitat.

(i) The critical terrestrial denning habitat area extends from the mainland coast of Alaska 32 kilometers (20 mi) landward (primarily south) from the United States–Canada border to the Kavik River to the west. From the Kavik River to Barrow, the critical terrestrial denning habitat extends landward 8 kilometers (5 mi) south from the mainland coast of Alaska.

(ii) The maps of Unit 2 (east and west), terrestrial denning habitat, follow:

BILLING CODE 4310–55–S


Unit 2 (east half): Designation of Denning Critical Habitat for the Polar Bear (Ursus maritimus)
Beaufort Sea
Kaktovik
Kavik R.
Canada
Alaska
0 10 20 30 40 50 miles
0 10 20 30 40 50 km
N
Map Area
Pacific Ocean
Legend
Unit 2 - Denning critical habitat
99-0219



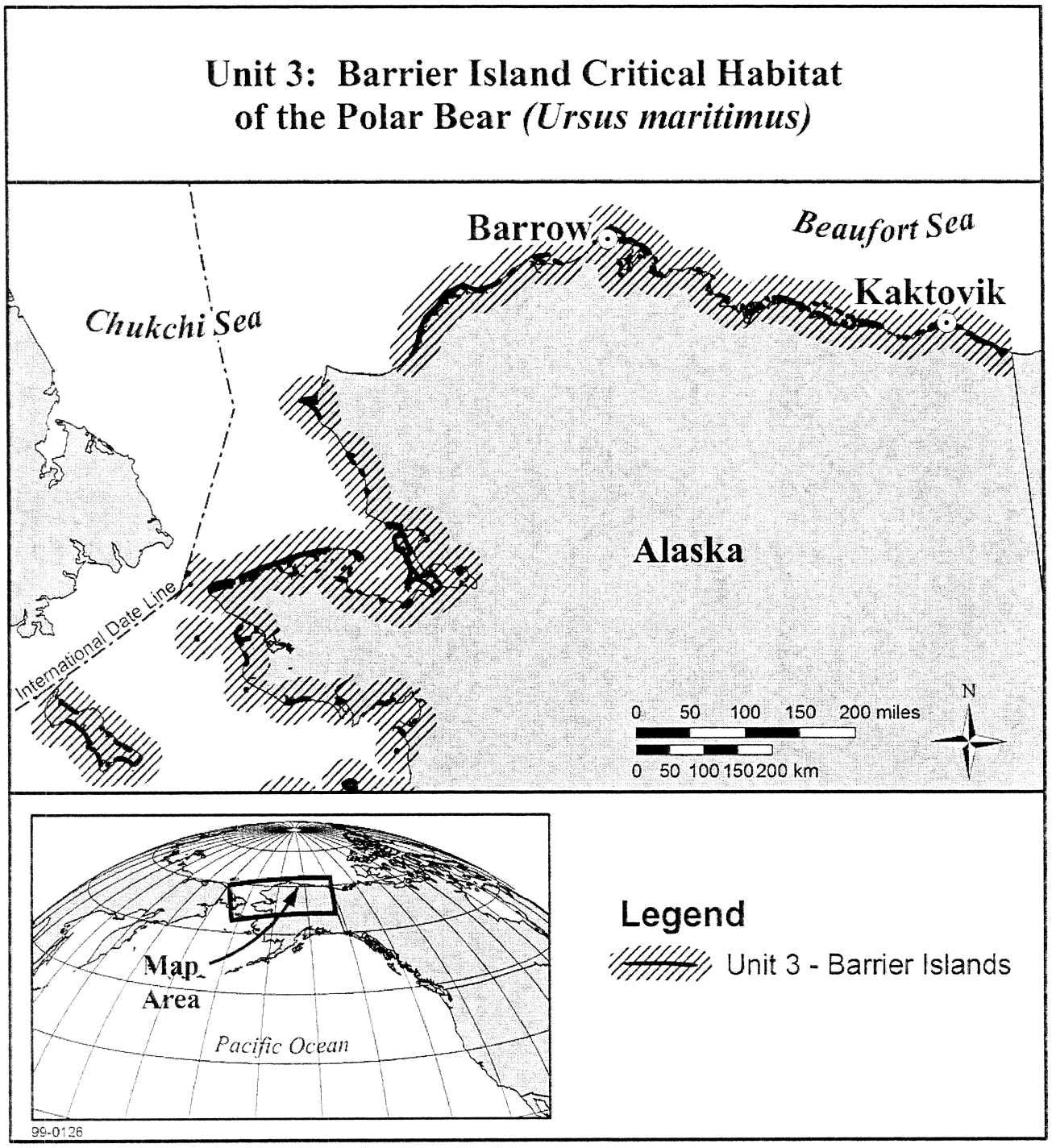
BILLING CODE 4310–55–C

(7) Unit 3: Barrier island habitat.

(i) The critical barrier island habitat includes off-shore islands offset from the mainland coast of Alaska starting at the United States–Canada border westward to Barrow, southwest to Cape Lisburne, south to Point Hope, southwest to Wales, south to Wales, southeast to Nome, and ending at Hooper Bay, AK, and water and ice habitat within 1.6 kilometers (1 mi) of the barrier islands.

(ii) The map of Unit 3, barrier island habitat, follows:

BILLING CODE 4310–55–S



BILLING CODE 4310–55–C

* * * * *

Dated: October 20, 2009.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E9–25876 Filed 10–28–09; 8:45 am]

BILLING CODE 4310–55–C

Reader Aids

Federal Register

Vol. 74, No. 208

Thursday, October 29, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000410 vc**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, OCTOBER

50671–50910 1
50911–51068 2
51069–51220 5
51221–51440 6
51441–51732 7
51733–52128 8
52129–52382 9
52383–52664 13
52665–52862 14
52863–53144 15
53145–53396 16
53397–53638 19
53639–53880 20
53881–54428 21
54429–54742 22
54743–54894 23
54895–55088 26
55089–55436 27
55437–55744 28
55745–56086 29

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8424 50671
8425 51221
8426 51223
8427 51441
8428 51443
8429 51445
8430 51733
8431 51735
8432 51737
8433 51739
8434 52383
8435 52863
8436 53145
8437 53147
8438 53149
8439 53877
8440 54891
8441 54893
8442 55437
8443 55439

Executive Orders:
13511 50909
13512 50911
13513 51225
13514 52117
13515 53635

Administrative Orders:
Notices:
Notice of October 16, 2009 53879
Notice of October 20, 2009 54741
Notice of October 27, 2009 55745
Presidential Determinations:
No. 2010–01 of October 8, 2009 52865
PD 2010–02 of October 16, 2009 54429
Presidential Determinations:
No. 2009–31 of September 29, 2009 50913
No. 2009–32 of September 30, 2009 52385

5 CFR

2411 50673
2415 51741
2416 51741
2424 51741
2429 51741

Proposed Rules:
1604 54491
1651 54491
1653 54491
1690 54491

6 CFR

5 50902

Proposed Rules:
5 ..... 55482, 55484

7 CFR

246 51745
301 54431
354 50915
360 53397
361 53397
868 55441
922 53400
927 52665
981 50681
1205 51069
1209 50915
2902 55089

Proposed Rules:
91 54920
305 53424
330 53673
354 54758
984 52154
1000 54384
1001 54384
1005 54384
1006 54384
1007 54384
1030 54384
1032 54384
1033 54384
1126 54384
1131 54384
1205 51094
4280 51714

8 CFR

1 55726
103 55094
208 55726
209 55726
212 55726
214 ..... 55094, 55726
217 55726
235 55726
245 55726
274 55726
274a 51447, 55094
286 55726
299 ..... 55094, 55726
1001 55726
1208 55726
1209 55726
1212 55726
1235 55726
1245 55726

9 CFR

201 53639

Proposed Rules:
2 50738

206 54928
321 54493
332 54493
381 54493
391 51800
590 51800
592 51800

10 CFR

50 53402
72 52387
73 52667
430 ....53640, 54445
452 52867
1021 52129
Proposed Rules:
51 51522
72 52430
851 53190

11 CFR

111 55443
Proposed Rules:
100 ....53674, 53893
109 53893

12 CFR

204 52873
229 52875
370 54743
604 55112
740 55747
745 55747
915 51452
1212 51073
1261 51452
Proposed Rules:
Ch. VI 54935
201 51806
226 54124
327 ....51062, 51063, 52697
918 54758
985 50926
989 50926
1261 54758
1273 50926
1274 50926

13 CFR

120 51229
124 51229
Proposed Rules:
121 ....53913, 53924, 53940, 53941, 55694
124 55694

14 CFR

1 53368
21 53368
25 ....51759, 54457, 55443
39 ....50683, 50686, 50688, 50690, 50692, 51464, 52391, 52393, 52395, 52877, 53151, 53153, 53154, 53156, 53159, 54895, 55112, 55116, 55118, 55121, 55123, 55126, 55130, 55447, 55755, 55757, 55759, 55761, 55763, 55765, 55767
43 53368
45 53368
61 53643
71 ....52130, 52131, 52398, 52399, 53160, 53161, 53162, 53163, 53402, 53403,53404, 53405, 53406, 53407, 53408, 53648, 54896, 54897, 55449
73 ....51076, 53649
91 53643
93 ....52132, 52134
95 50920
97 ....50696, 50698, 54457, 54460, 55451, 55453
141 53643
Proposed Rules:
25 ....50926, 51813, 52698, 54762
39 ....52156, 52431, 53430, 53433, 53436, 53438, 53440, 53442, 54495, 54498, 54501, 54940, 55485, 55488, 55491, 55493
71 ....50928, 51098, 51523, 51524, 52702, 52703, 52704, 52705, 53681, 54763, 54765, 54766, 54993, 55791

15 CFR

730 52880
734 52880
736 52880
738 52880
740 52880
742 52880
744 52880
772 52880
774 52880
902 50699
Proposed Rules:
90 51526
922 50740

16 CFR

255 53124
Proposed Rules:
310 52914
610 52915
1422 55495

17 CFR

210 53628
229 53628
240 52358
242 52358
249 ....52358, 53628
270 52358
Proposed Rules:
1 52434
220 ....53114, 55162
229 ....52374, 53086, 55162
230 ....52374, 53954
232 54767
239 ....52374, 53086, 55162
240 ....52374, 53086, 53954, 55162
242 52374
249 ....52374, 53086, 55162
270 52374
274 ....53086, 55162
275 52374

18 CFR

35 ....54462, 55770
358 54463
Proposed Rules:
131 54503
292 54503

19 CFR

4 ....52675, 53651
111 52400
122 ....52675, 53881, 53882
123 52675
192 52675
Proposed Rules:
113 52928
162 53964
163 53964
191 52928

20 CFR

404 54482
Proposed Rules:
404 ....51229, 52706
416 52706
655 50929

21 CFR

312 55770
510 53164
514 54749
522 53164
558 52885
862 53883
866 52136
878 53165
1308 51234
Proposed Rules:
4 ....50744, 51099
514 54771
1301 55499
1308 55502

22 CFR

41 51236
226 51762

23 CFR

950 51762

24 CFR

Proposed Rules:
5 52931
200 ....52354, 54944
908 52931
1003 54886

25 CFR

542 52138
543 52138

26 CFR

1 ....50705, 53004
20 53652
54 ....51237, 51664
301 ....52677, 55136
602 ....50705, 53004
Proposed Rules:
1 ....50758, 55162
54 51710
301 ....51527, 52708

27 CFR

9 51772
Proposed Rules:
28 52937
44 52937

29 CFR

403 52401
408 52401
2590 51664
4022 52886
Proposed Rules:
501 50929
780 50929
788 50929
1910 54334

30 CFR

950 52677
Proposed Rules:
70 52708
71 52708
90 52708
948 53972

31 CFR

1 51777

32 CFR

199 ....55771, 55776
279 54751
311 55778
322 ....55779, 55780
323 ....55781, 55782
326 55783
806b 55784, 55785, 55787
Proposed Rules:
199 ....55792, 55794, 55796
806b 55796

33 CFR

100 ....51778, 52139
110 51779
117 ....50706, 51077, 52139, 52143, 52887, 52888, 52890, 53409, 54754
147 ....52139, 55162
155 52413
157 52413
165 ....50706, 50922, 51465, 52139, 52686, 53410, 53885, 54483
Proposed Rules:
100 51243
117 52158
151 ....51245, 52941, 54533, 54944
155 51245
160 51245

34 CFR

600 ....55414, 55902
601 55626
602 55414
668 ....55626, 55902
673 55972
674 ....55626, 55972
675 55902
682 ....55626, 55972
685 ....55626, 55972
686 55902
690 55902
692 55902

36 CFR

Ch. XII 51004
7 51237
Proposed Rules:
7 51099
242 52712

37 CFR

1 52686
2 54898
11 54898
201 55138
370 52418

38 CFR

Proposed Rules:
36 51103

39 CFR

20 .....52144, 54485, 55139
111.....52147, 55140
3020 .....50708, 51078, 51467
3030.....54754

Proposed Rules:

3001.....51815
3005.....51815
3050.....52942, 55504

40 CFR

9.....55504
52 .....51240, 51783, 51792, 51795, 52427, 52691, 52693, 52891, 52894, 53167, 53888, 54485, 54755, 55142
60 .....51368, 51950, 55142
61.....55142
63.....55505, 56008
70.....51418
71.....51418
141.....53590
180 .....51470, 51474, 51481, 51485, 51490, 52148, 53174, 55454, 55458, 55463

Proposed Rules:

9.....55670
51.....55292
52 .....50930, 50936, 51246, 51249, 51535, 51823, 51824, 52441, 52716, 52717, 52942, 53193, 53198, 54534, 55292
55.....50939
60.....52723
61.....52723
63.....52723, 55670
70.....55292
71.....55292
81.....53198
82.....53445
86.....51252
97.....52717
261.....55163
271.....52161
600.....51252
745.....55506

41 CFR

300–70.....55145
Ch. 301 55145
301–2.....55145
301–10.....55145
301–11.....54912
301–13.....55145
301–50.....55145
301–70.....55145
301–71.....55145
304–3.....55145
304–5.....55145

Proposed Rules:

300.....53979
301.....53979
302.....53979
303.....53979
304.....53979
305.....53979
306.....53979
307.....53979
308.....53979
309.....53979
310.....53979
311.....53979
312.....53979
313.....53979
314.....53979
315.....53979
316.....53979
317.....53979
318.....53979
319.....53979
320.....53979
321.....53979
322.....53979
323.....53979
324.....53979
325.....53979
326.....53979
327.....53979
328.....53979
329.....53979
330.....53979
331.....53979
332.....53979
333.....53979
334.....53979
335.....53979
336.....53979
337.....53979
338.....53979
339.....53979
340.....53979
341.....53979
342.....53979
343.....53979
344.....53979
345.....53979
346.....53979
347.....53979
348.....53979
349.....53979
350.....53979
351.....53979
352.....53979
353.....53979
354.....53979
355.....53979
356.....53979
357.....53979
358.....53979
359.....53979
360.....53979
361.....53979
362.....53979
363.....53979
364.....53979
365.....53979
366.....53979
367.....53979
368.....53979
369.....53979
370.....53979

42 CFR

412.....50712, 51496
413.....51496
415.....51496
485.....51496
489.....51496

Proposed Rules:

417.....54634
422.....54634
423.....54634
480.....54634

44 CFR

64 .....51082, 53179, 55151, 55789
65.....55154, 55156

Proposed Rules:

67.....55168

45 CFR

144.....51664
146.....51664
148.....51664

Proposed Rules:

160.....51698
164.....51698

46 CFR

162.....52413
501.....50713, 54913
502.....50713
503.....50713
504.....50713
506.....50713
508.....50713
515.....50713
520.....50713
525.....50713
530.....50713
531.....50713
535.....50713
540.....50713
545.....50713
550.....50713
551.....50713
555.....50713
560.....50713
565.....50713

Proposed Rules:

162 .....52941, 54533, 54944

47 CFR

64.....54913
73 .....50735, 52151, 53181, 53665, 54488
74.....53181

Proposed Rules:

73.....53682

48 CFR

Ch. 1.....52846, 52861
2.....52847
4.....52847
5.....52860
6.....52849
7.....52847
10.....52847
12.....52851
13.....52847
15.....52852, 52853
16.....52856
18.....52847, 52859
26.....52847
31.....52853
52 .....52847, 52851, 52853, 52860
203.....53412
204.....52895
205.....52895
209.....52895
225.....52895, 53413
241.....52895
244.....52895
252.....53413
503.....51510
532.....54915
552.....51510, 54915

Proposed Rules:

Ch. 13.....52542
9.....51112
12.....51112
52.....51112

49 CFR

107.....53182
171.....53182
172 .....52896, 53182, 53413, 54489
173.....53182
174 .....53182, 53413, 54489
180.....53182
213.....53889
665.....51083
1001.....52900
1002.....52900
1003.....52900
1007.....52900
1011.....52900
1012.....52900
1016.....52900
1100.....52900
1102.....52900
1103.....52900
1104.....52900
1105.....52900
1109.....52900
1110.....52900
1113.....52900
1114.....52900
1116.....52900
1118.....52900
1132.....52900
1139.....52900
1150.....52900
1152.....52900
1177.....52900
1180.....52900
1240.....52900
1241.....52900
1242.....52900
1243.....52900
1245.....52900
1246.....52900
1248.....52900
1253.....52900
1260.....52900
1261.....52900
1262.....52900
1263.....52900
1264.....52900
1265.....52900
1266.....52900
1267.....52900
1268.....52900
1269.....52900

Proposed Rules:

171.....53982
172.....53982
173.....53982
174.....53982
175.....53982
176.....53982
177.....53982
178.....53982
179.....53982
180.....53982
190.....55797
192.....55797
195.....55797
198.....55797
531.....51252
533.....51252
537.....51252
538.....51252
572.....53987

50 CFR

17.....51988, 52014
20.....53665, 55467
32.....50736
223.....53889

226 52300
622 ....50699, 53889, 54489, 54490
635 ....51241, 53671
648 ....51092, 51512, 54757, 55158
660 55468
679 ....50737, 51242, 51512, 51514, 51515, 51798, 52152, 52912, 55159, 55160, 55161
680 51515

Proposed Rules:

17 ....51825, 52066, 52612, 53999, 55177, 55524, 55525, 56058
36 52110
100 52712
218 53796
223 53683
224 53454
300 53455
635 55526
648 ....50759, 54773, 54945, 54947
665 50944

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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.

S. 1717/P.L. 111–82
To authorize major medical facility leases for the Department of Veterans Affairs for fiscal year 2010, and for other purposes. (Oct. 26, 2009; 123 Stat. 2140)
Last List October 26, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.