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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 208, 209, 212, 214, 217, 235, 245, 274a, 286, and 299

[CIS No. 2460–08; DHS Docket No. USCIS–2008–0039]

RIN 1615–AB77

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1208, 1209, 1212, 1235, and 1245 and 1274a

[EOIR Docket No. 169 AG Order No. 3120–2009]

RIN 1125–AA67

Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Citizenship and Immigration Services, DHS; Executive Office for Immigration Review, DOJ.

ACTION: Interim final rule; Correction.

SUMMARY: This document contains corrections to the interim final rule published in the **Federal Register** on October 28, 2009. The interim final rule implemented conforming amendments to the Department of Homeland Security and the Department of Justice regulations to comply with the Consolidated Natural Resources Act of 2008. A review after publication identified one inadvertent omission and three errors in the interim final rule.

DATES: This correction will be effective on November 28, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Ongcapin, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2211, telephone (202) 272–8221 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need for Correction

On October 28, 2009, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) jointly published an interim final rule in the **Federal Register** at 74 FR 55726 implementing conforming amendments to DHS and DOJ regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). Among the amendments made, the rule designated certain employment authorization/identity documents that are used only in the CNMI as acceptable for completing the Employment Eligibility Verification Form (Form I–9). The rule also introduced a new version of the Form I–9 to be used only in the CNMI. This document corrects one inadvertent omission and three errors.

(1) DHS is correcting an omission to the regulatory text in the interim final rule. In the middle of the second column on page 55732 of that rule, the preamble announces that DHS is creating a new Form I–9 for use by CNMI employers that contains new acceptable documents specific to the CNMI. However, DHS inadvertently omitted revising the regulatory text at 8 CFR 274a.2(a)(2) to provide for the new CNMI-only Form I–9. This rule corrects this omission by amending 8 CFR 274a.2(a)(2) to require CNMI employers to use the CNMI-specific Form I–9 to satisfy the Form I–9 requirements. Use of the CNMI-only Form I–9 is limited to the 2-year transition period, November 28, 2009, through November 27, 2011. This correction clarifies that use of the CNMI Form I–9 is limited to the CNMI and that CNMI employers may not use the regular Form I–9 during the 2-year transition period.

(2) DHS is correcting an error in the regulatory text and a related error in the Supplementary Information of the interim final rule. The regulatory text that added new 8 CFR 274a.2(b)(1)(v)(D)(*1*)(*i*) on page 55739 erroneously states that the issuing authority for the Alien Entry Permit with red band is the Department of Labor of the CNMI. The correct issuing authority is the CNMI Office of the Attorney General, Division of Immigration. Likewise, on page 55732, the Supplementary Information erroneously states that the Department of Labor of the CNMI issues all three of the CNMI-issued documents listed in the rule at 8 CFR 274a.2(b)(1)(v)(D)(*1*), including the Alien Entry Permit.

(3) DOJ is correcting an error in the regulatory text of the interim final rule. The regulatory text that added new 8 CFR 1212.1(q) on page 55742 erroneously cross-references 8 CFR 212.1(l) with respect to admissibility under the Guam-CNMI Visa Waiver Program. The correct cross-reference should be to 8 CFR 212.1(q). Through this rule, DHS and DOJ are correcting these errors.

Correction of Publication

■ Accordingly, the publication on October 28, 2009 (74 FR 55726) of the interim final rule that was the subject of FR Doc. E9–26094 is corrected as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 1. On page 55732, first column, under the heading ''2. Employment Authorization Documentation'' second paragraph, seventh sentence, remove the phrase ''Department of Labor of''.

■ 2. On page 55739, third column, add amendment 24a, with regulatory text, immediately before amendment 25 to read:

■ 24a. Section 274a.2(a)(2) is amended by adding two new sentences immediately after the first sentence to read as follows:

§ 274a.2 Verification of employment eligibility.

(a) * * *

(2) *Verification form.* * * * In the Commonwealth of the Northern Mariana Islands (CNMI) only, for a 2-year period starting from the transition program effective date (as defined in 8 CFR 1.1), the Form I–9 CNMI Employment Eligibility Verification Form must be used in lieu of Form I–9 in complying with the requirements of 8 CFR 274a.1 through 274a.11. Whenever ''Form I–9'' is mentioned in this title 8, ''Form I–9'' means Form I–9 or, when used in the CNMI for a 2-year period starting from the transition program effective date (as defined in 8 CFR 1.1), Form I–9 CNMI. * * *

* * * * *

■ 3. On page 55739, in the third column under § 274a.2 (b)(1)(v)(D)(*1*)(*i*), revise the phrase ''Department of Labor'' to read ''Office of the Attorney General, Division of Immigration''.

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 4. On page 55742, in the third column, in paragraph 1212.1(q)(1) introductory text, the citation ''8 CFR 212(1)'' is revised to read ''8 CFR 212(q)''.

Rosemary Hart,

Federal Register Liaison Officer, Department of Justice.

Christina E. McDonald,

Deputy Associate General Counsel for Regulatory Affairs, Department of Homeland Security.

[FR Doc. E9–28417 Filed 11–25–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1092; Directorate Identifier 2009–NM–219–AD; Amendment 39–16068; AD 2009–24–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and -300 Series Airplanes; and Model A340–200 and -300 Series 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:

An A330 operator experienced a low level of the Yellow hydraulic circuit due to a loose[ning] of check valve part number (P/N) CAR401. During the inspection on the other two hydraulic systems, the other three CAR401 check valves were also found to be loose with their lock wire broken in two instances.

A340 aeroplanes are also equipped with the same high pressure manifold check valves.

Investigations are on-going to determine the root cause of this event.

Additional cases of CAR401 check valve loosening have been experienced in service on aeroplanes having accumulated more than 1000 flight cycles (FC). The check valve fitted on the Yellow hydraulic system is more affected, probably due to additional system cycles induced by cargo door operation.

The loss of torque due to pressure cycles could contribute to check valve loosening, resulting in a leak and finally the loss of the associated hydraulic system and, in the worst case, of the three hydraulic systems of the aeroplane.

* * * * *

The unsafe condition is the possible loss of all three hydraulic systems, which could result in loss of control of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 14, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 14, 2009.

We must receive comments on this AD by January 11, 2010.

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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2009–0223–E, dated October 13, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An A330 operator experienced a low level of the Yellow hydraulic circuit due to a loose[ning] of check valve part number (P/N) CAR401. During the inspection on the other two hydraulic systems, the other three CAR401 check valves were also found to be loose with their lock wire broken in two instances.

A340 aeroplanes are also equipped with the same high pressure manifold check valves.

Investigations are on-going to determine the root cause of this event.

Additional cases of CAR401 check valve loosening have been experienced in service on aeroplanes having accumulated more than 1000 flight cycles (FC). The check valve fitted on the Yellow hydraulic system is more affected, probably due to additional system cycles induced by cargo door operation.

The loss of torque due to pressure cycles could contribute to check valve loosening, resulting in a leak and finally the loss of the associated hydraulic system and, in the worst case, of the three hydraulic systems of the aeroplane.

This AD requires to perform the following inspection programme to detect any check valve loosening and, if necessary, apply the associated corrective actions:

1st Step: On yellow and blue hydraulic circuits: lock wire inspection, inspection for traces of seepage or black deposit, check valve torque and red marking application.

2nd Step: On green hydraulic circuit: same inspections as required in 1st Step and on yellow and blue hydraulic circuits: inspection of check valves for condition.

Finally: On green, yellow and blue hydraulic circuits: repetitive inspection of check valves for condition.

The unsafe condition is the possible loss of all three hydraulic systems, which could result in loss of control of the airplane. The inspection program involves a detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, an inspection for proper torque, and a detailed inspection to determine alignment of the check valve and manifold. The corrective actions include replacing seal assemblies, replacing the check valve, removing the lock wire, and re-torquing the check valve. The required actions also include installing a new lock wire. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operators Telexes A330–29A3111 and A340–29A4086, both Revision 1, both dated October 8, 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 compliance time defined in the MCAI is 28 days for initial inspection. Loss of torque could lead to loosening of the check valve. Loosening of the check valve can lead to a hydraulic leak with possible loss of the associated hydraulic system, and in the case of the loss of all three hydraulic systems of the airplane. Loss of a hydraulic system could result in reduced controllability and increased workload for the flightcrew. Loss of all three hydraulic systems could result in loss of control 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 less 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–2009–1092; Directorate Identifier 2009–NM–219–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:

2009–24–09 AIRBUS: Amendment 39–16068. Docket No. FAA–2009–1092; Directorate Identifier 2009–NM–219–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330–201, −202, −203, −223, −243, −301, −302, −303, −321, −322, −323, −341, −342, and −343 series airplanes, all manufacturer serial numbers; and Model A340–211, −212, −213, −311, −312, and −313 series airplanes, all manufacturer serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic Power.

Reason

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

An A330 operator experienced a low level of the Yellow hydraulic circuit due to a loose[ning] of check valve part number (P/N) CAR401. During the inspection on the other two hydraulic systems, the other three CAR401 check valves were also found to be loose with their lock wire broken in two instances.

A340 aeroplanes are also equipped with the same high pressure manifold check valves.

Investigations are on-going to determine the root cause of this event.

Additional cases of CAR401 check valve loosening have been experienced in service on aeroplanes having accumulated more than 1000 flight cycles (FC). The check valve fitted on the Yellow hydraulic system is more affected, probably due to additional system cycles induced by cargo door operation.

The loss of torque due to pressure cycles could contribute to check valve loosening, resulting in a leak and finally the loss of the associated hydraulic system and, in the worst case, of the three hydraulic systems of the aeroplane.

This AD requires to perform the following inspection programme to detect any check valve loosening and, if necessary, apply the associated corrective actions:

1st Step: On yellow and blue hydraulic circuits: lock wire inspection, inspection for traces of seepage or black deposit, check valve torque and red marking application.

2nd Step: On green hydraulic circuit: same inspections as required in 1st Step and on yellow and blue hydraulic circuits: inspection of check valves for condition.

Finally: On green, yellow and blue hydraulic circuits: repetitive inspection of check valves for condition.

The unsafe condition is the possible loss of all three hydraulic systems, which could result in loss of control of the airplane. The inspection program involves a detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, an inspection for proper torque, and a detailed inspection to determine alignment of the check valve and manifold. The corrective actions include replacing seal assemblies, replacing the check valve, removing the lock wire, and re-torquing the check valve. The required actions also include installing a new lock wire.

Compliance

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

Actions

(g) Do the actions required by paragraphs (g)(1) through (g)(3) of this AD.

(1) For airplanes that do not have Airbus Modification 54491 embodied in production, or Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078 embodied in service: Within 100 flight cycles or 28 days after the effective date of this AD, whichever occurs first, inspect the check valves on the blue, green, and yellow hydraulic systems to identify their P/Ns, in accordance with the instructions of Airbus All Operators Telex (AOT) A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and −300 series airplanes).

(i) If check valves having P/N CAR401 are installed on all three hydraulic systems, before further flight, do the actions specified in paragraph (g)(2)(i) of this AD. After accomplishing the actions required by paragraph (g)(2)(i) of this AD, do the actions specified in paragraphs (g)(2)(ii) and (g)(2)(iii) of this AD at the applicable compliance times specified in those paragraphs.

(ii) If check valves having P/N CAR401 are not installed on all three hydraulic systems, no further action is required until any check valve having P/N CAR400 is replaced with a check valve having P/N CAR401. If any check valve having P/N CAR400 is replaced by a check valve having P/N CAR401, before further flight, do the inspection specified in paragraph (g)(1) of this AD to determine if all three hydraulic systems are equipped with check valve having P/N CAR401.

(2) For airplanes on which Airbus Modification 54491 was embodied in production, or Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078 was embodied in service, do the actions specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Except as required by paragraph (g)(1)(i) of this AD, at the applicable times specified in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this AD, as applicable: Do the inspection program (detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on yellow and blue high pressure manifolds, install new lock wires, and do all applicable corrective actions, in accordance with the instructions of paragraph 4.1.1 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and −300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and −300 series airplanes). Do all applicable corrective actions before further flight.

(A) For airplanes on which Airbus Modification 54491 has been embodied in production: At the later of the times specified in paragraphs (g)(2)(i)(A)(*1*) and (g)(2)(i)(A)(*2*) of this AD.

(*1*) Before the accumulation of 1,000 total flight cycles since first flight but no earlier than the accumulation of 700 total flight cycles since first flight.

(*2*) Within 100 flight cycles or 28 days after the effective date of this AD, whichever occurs first.

(B) For airplanes on which Airbus Service Bulletin A330–29–3101 or A340–29–4078 was embodied in service: At the later of the times specified in paragraphs (g)(2)(i)(B)(*1*) and (g)(2)(i)(B)(*2*) of this AD.

(*1*) Within 1,000 flight cycles since the embodiment of Airbus Service Bulletin A330–29–3101 or A340–29–4078 but no earlier than 700 flight cycles after the embodiment of Airbus Service Bulletin A330–29–3101 or A340–29–4078.

(*2*) Within 100 flight cycles or 28 days after the effective date of this AD, whichever occurs first.

(ii) Within 900 flight hours after accomplishment of paragraph (g)(2)(i) of this AD, do the inspection program (detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) and install a new lock wire on the green high pressure manifold; and do an inspection (detailed inspection for traces of seepage or black deposits, and detailed inspection to determine alignment of the check valve and manifold) on the yellow and blue high pressure manifolds, and do all applicable corrective actions; in accordance with the instructions of paragraph 4.1.2 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and −300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and −300 series airplanes). Do all applicable corrective actions before further flight.

(iii) Within 900 flight hours after accomplishment of paragraph (g)(2)(ii) of this AD, and thereafter at intervals not to exceed 900 flight hours, do the inspection program (detailed inspection for traces of seepage or black deposits, and detailed inspection to determine alignment of the check valve and manifold) on the green, yellow, and blue high pressure manifolds, and do all applicable corrective actions, in accordance with the instructions of paragraph 4.1.3 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and −300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and −300 series airplanes). Do all applicable corrective actions before further flight.

(iv) Actions accomplished before the effective date of this AD, according to Airbus AOT A330–29A3111, dated September 2, 2009 (for Model A330–200 and −300 series airplanes); or AOT A340–29A4086, dated September 2, 2009 (for Model A340–200 and −300 series airplanes); are considered acceptable for compliance with the corresponding actions specified in paragraph (g)(2)(i) of this AD.

(3) Within 10 days after accomplishment of the inspections specified in paragraphs (g)(1) and (g)(2) of this AD, or within 10 days after the effective date of this AD, whichever occurs later, report all inspection results to Airbus in accordance with Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes).

FAA AD Differences

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

Other FAA AD Provisions

(h) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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. 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

(i) Refer to MCAI European Aviation Safety Agency Emergency Airworthiness Directive 2009–0223–E, dated October 13, 2009; and Airbus AOTs A330–29A3111 and A340–29A4086, both Revision 1, both dated October 8, 2009; for related information.

Material Incorporated by Reference

(j) You must use Airbus All Operators Telex A330–29A3111, Revision 1, dated October 8, 2009; or Airbus All Operators Telex A340–29A4086, Revision 1, dated October 8, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (Only the first page of these documents contains the document number, revision level, and date; no other page of these documents contain this information.)

(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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.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 November 16, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28069 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0869; Directorate Identifier 2009–CE–043–AD; Amendment 39–16090; AD 2009–24–03]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C–TC, and P 68 ''OBSERVER'' Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 85–08–04, which applies to certain Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C–TC, and P 68 ''OBSERVER'' airplanes. AD 85–08–04 currently requires you to repetitively visually inspect the front and rear wing spars for cracks. If cracks are found, AD 85–08–04 requires you to modify the wing spars. The wing spar modification terminates the repetitive inspection AD action and may be installed before cracks develop. Since we issued AD 85–08–04, the manufacturer revised the modification kit and identified additional airplane serial numbers that require the inspection and/or modification. Consequently, this AD would retain the actions of AD 85–08–04, allow you to install the revised modification kit, and add additional serial numbers to the Applicability section. We are issuing this AD to detect and correct cracks in the front and rear wing spar, which could result in the wing separating from the airplane. This failure could lead to loss of control.

DATES: This AD becomes effective on January 4, 2010.

On January 4, 2010, 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 Vulcanair S.p.A, Via G. Pascoli, 7, Casoria (Naples) 80026 Italy; telephone: (+39)081.5918111; fax: (+39)081.5918172; e-mail: *customerservice@vulcanair.com;* Internet: *http://www.vulcanair.com.*

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–2009–0869; Directorate Identifier 2009–CE–043–AD.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On September 15, 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 certain Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C–TC, and P 68 ''OBSERVER'' airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 21, 2009 (74 FR 48016). The NPRM proposed to supersede AD 85–08–04 (50 FR 14370, April 12, 1985) with a new AD that would retain the actions of AD 85–08–04, allow you to install the revised modification kit, and add additional serial numbers to the Applicability section.

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 81 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
24 work-hours × $80 per hour = $1,920	Not applicable	$1,920	$155,520

We estimate the following costs to do any necessary repair and modification 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 repair/replacement:

Labor cost	Parts cost	Total cost per airplane
100 work-hours × $80 per hour = $8,000	$700	$8,700

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–2009–0869; Directorate Identifier 2009–CE–043–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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 85–08–04, Amendment 39–5037 (50 FR 14370, April 12, 1985), and adding the following new AD:

2009–24–03 Vulcanair S.p.A.: Amendment 39–16090; Docket No. FAA–2009–0869; Directorate Identifier 2009–CE–043–AD.

Effective Date

(a) This AD becomes effective on January 4, 2010.

Affected ADs

(b) This AD supersedes AD 85–08–04, Amendment 39–5037.

Applicability

(c) This AD applies to Models P 68, P 68B, P 68C, P 68C–TC, and P 68 ''OBSERVER'' airplanes, serial numbers 001 through 356, that are certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracks in the front and rear wing spars. We are issuing this AD to detect and correct cracks in the front and rear wing spars, which could result in the wing separating from the airplane. This failure could lead to loss of control.

Compliance

(e) For airplane serial numbers 001 through 328, to address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the front and rear wing spars for cracks.	Initially inspect within the next 100 hours time-in-service (TIS) after May 17, 1985 (the effective date of AD 85-08-04), or upon reaching 2,100 hours total TIS, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours TIS.	Follow Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 1, dated September 27, 1984.
(2) Repair all cracks found and modify the front and rear wing spars.	Before further flight after any inspection specified in paragraph (e)(1) of this AD where cracks are found. Modification of the front and rear wing spar terminates the repetitive inspection requirements of this AD.	Follow Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 1, dated September 27, 1984.

Actions	Compliance	Procedures
(3) To terminate the repetitive inspection requirements of this AD, you may modify the front and rear wing spar.	Before further flight after any inspection specified in paragraph (e)(1) of this AD where cracks are not found.	Follow Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 1, dated September 27, 1984.

(f) For airplane serial numbers 329 through 356, to address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the front and rear wing spars for cracks.	Initially within the next 100 hours TIS after January 4, 2010 (the effective date of this AD), or upon reaching 2,100 total hours TIS, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours TIS.	Follow Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985.
(2) Repair all cracks found and modify the front and rear wing spars.	Before further flight after any inspection specified in paragraph (f)(1) of this AD where cracks are found. Modification of the front and rear wing spar terminates the repetitive inspection requirements of this AD.	Follow Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985.
(3) To terminate the repetitive inspection requirements of this AD, you may modify the front and rear wing spar.	Before further flight after any inspection specified in paragraph (e)(1) of this AD where cracks are not found.	Follow Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Small 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: Sarjapur Nagarajan, Aerospace Engineer, ACE–112, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. 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.

(h) AMOCs approved for AD 85–08–04 are approved for this AD.

Related Information

(i) To get copies of the service information referenced in this AD, contact Vulcanair S.p.A, Via G. Pascoli, 7, Casoria (Naples) 80026 Italy; telephone: (+39)081.5918111; fax: (+39)081.5918172; e-mail: *customerservice@vulcanair.com;* Internet: *http://www.vulcanair.com.* 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.*

Material Incorporated by Reference

(j) You must use Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 3, dated September 30, 1985; or Partenavia Costruzioni Aeronautiche S.p.A Service Bulletin No. 65 Rev. 1, dated September 27, 1984, 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 Vulcanair S.p.A, Via G. Pascoli, 7, Casoria (Naples) 80026 Italy; telephone: (+39)081.5918111; fax: (+39)081.5918172; e-mail: *customerservice@vulcanair.com;* Internet: *http://www.vulcanair.com.*

(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 November 13, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28074 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0753; Directorate Identifier 2009–NE–31–AD; Amendment 39–16102; AD 2009–24–10]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125–01 Reciprocating 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:

In-flight engine shutdown incidents were reported on aircraft equipped with TAE–125–01 engines. This was found to be mainly the result of operation over a long time period with broken piston cooling oil nozzles which caused thermal overload of the piston.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: This AD becomes effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 4, 2010.

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.

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 September 17, 2009 (74 FR 47760). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> In-flight engine shutdown incidents were reported on aircraft equipped with TAE–125–01 engines. This was found to be mainly the result of operation over a long time period with broken piston cooling oil nozzles which caused thermal overload of the piston.

Comments

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

Request for Changes to Paragraph (e)(4)

One commenter, Thielert Engine Owners Group, requests that we delete the requirement to remove the engine, and modify the proposed AD paragraph (e)(4) to state that if any evidence of a failed cooling nozzle is found, repair or replace the cooling nozzle before further flight.

We partially agree. We do not agree that a broken cooling nozzle is repairable. We agree that the engine does not need to be replaced, and that a broken cooling nozzle must be replaced before further flight. We changed paragraph (e)(4) in the AD from ''If any evidence of a failed cooling nozzle is found, remove the engine from service before further flight'' to ''If any evidence of a failed cooling nozzle is found, replace the failed cooling nozzle before further flight.''

Request for Reference to the Thielert Repair Manual

Two commenters, Thielert Engine Owners Group and Alpine Aviation, request that we modify proposed AD paragraph (e)(4) to state that if any evidence of a failed cooling nozzle is found, replace the cooling nozzle in accordance with Thielert Repair Manual, Document No. RM–02–01, latest revision.

We partially agree. We agree that failed cooling nozzles must be replaced. We do not agree that the Thielert Repair Manual must be referenced in the AD. Part 43 of the Federal Aviation Regulations (14 CFR part 43) already requires that corrective actions specified in ADs be performed using the appropriate manuals and or service bulletins that were previously FAA-approved. We changed the AD to require replacing failed cooling nozzles.

Request To Leave in the Ferry Flight Permit Option Paragraph

Alpine Aviation requests that we leave the ''standard'' paragraph in the AD regarding the option to ferry the aircraft to a location to where the AD can be accomplished.

We do not agree. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now issue ADs, we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23. We did not change the AD.

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 changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 250 engines of U.S. registry. We also estimate that it will take about 2 work-hours per engine to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $30 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $47,500.

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, 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:

2009–24–10 Thielert Aircraft Engines GmbH: Amendment 39–16102. Docket No. FAA–2009–0753; Directorate Identifier 2009–NE–31–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) model TAE 125–01 reciprocating engines, excluding engines that have been modified to TAE Design Modification No. 2007–001. These engines are installed in, but not limited to, Diamond Aircraft Industries Model DA42, Piper PA–28–61 (Supplemental Type Certificate (STC) No. SA03303AT), Cessna 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172R, 172S, F172F, F172G, F172H, F172K, F172L, F172M, F172N, and F172P (STC No. SA01303WI) airplanes.

Reason

(d) 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:

In-flight engine shutdown incidents were reported on aircraft equipped with TAE–125–01 engines. This was found to be mainly the result of operation over a long time period with broken piston cooling oil nozzles which caused thermal overload of the piston.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

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

(1) Within the next 110 flight hours, or during the next scheduled maintenance, whichever occurs first after the effective date of this AD, inspect the engine and engine oil for any evidence or pieces of broken piston cooling nozzles.

(2) Use the inspection instructions in Thielert Service Bulletin No. TM TAE 125–0017, Revision 2, dated February 22, 2008, to perform the inspection.

(3) Thereafter, repetitively inspect the engine and engine oil for any evidence or pieces of broken piston cooling nozzles, within every additional 100 flight hours.

(4) If any evidence of a failed cooling nozzle is found, replace the failed cooling nozzle before further flight.

Alternative Methods of Compliance (AMOCs)

(f) 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 European Aviation Safety Agency AD 2008–0016 R1, dated February 22, 2008, and Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com,* for related 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.

Material Incorporated by Reference

(i) You must use Thielert Service Bulletin No. TM TAE 125–0017, Revision 2, dated February 22, 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 Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on November 18, 2009.

Peter A. White,

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

[FR Doc. E9–28166 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24171; Directorate Identifier 2006–NE–08–AD; Amendment 39–16093; AD 2007–11–18R1]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–50C Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for General Electric Company (GE) CF6–50C series turbofan engines. That AD currently requires reworking certain forward fan stator cases and installing a fan module secondary containment shield. This AD requires the same actions but eliminates a certain service bulletin from the compliance method. This AD results from a review that shows that only one of the service bulletins referenced in the original AD is applicable as a compliance method. We are issuing this AD revision to eliminate a certain service bulletin from the compliance method and to prevent uncontained fan blade failures, which can result in separation of airplane hydraulic lines, damage to critical airplane systems, and possible loss of airplane control.

DATES: This AD becomes effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010.

ADDRESSES: You can get the service information identified in this AD from General Electric Company, GE–Aviation, Room 285, 1 Newmann Way, Cincinnati, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com.*

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: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.rosa@faa.gov;* telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–50C series turbofan engines. We published the proposed AD in the **Federal Register** on June 24, 2009 (74 FR 30018). That action proposed to require reworking certain forward fan stator cases, installing a fan module secondary containment shield on Airbus A300 series airplanes, and eliminating GE Service Bulletin (SB) No. CF6–50 S/B 72–0986, Revision 2, dated March 21, 2007, as an acceptable compliance method.

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.

Comments

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

Request To Change Service Bulletin References

One commenter, Airbus, requests that we reference the latest revision of GE SB No. CF6–50 S/B 72–0985 in the AD, which is Revision 3, dated August 22, 2007.

We agree. We changed the SB references in the AD to Revision 3.

Request To Remove European Aviation Safety Agency (EASA) AD Reference

Airbus requests that we remove the reference to EASA AD 2004–0007 from the AD, as it has been cancelled by EASA.

We agree and have removed the EASA AD reference.

Request To Include GE SB No. CF6–50 S/B 72–0986

One commenter, Tradewinds Airlines, requests that we include GE SB No. CF6–50 S/B 72–0986 in the AD, as this will give credit for previous installation of required shields.

We agree. If shields have been previously installed per GE SB No. CF6–50 S/B 72–0986, CF6–50 S/B 72–0986, Revision 01, or CF6–50 S/B 72–0986, Revision 02, credit will be allowed for that previous installation.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 40 CF6–50C series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 2.5 work hours per engine to perform the actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $9,451 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $386,040.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 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 removing Amendment 39–15075 (72 FR 30249, May 31, 2007), and by adding a new airworthiness directive, Amendment 39–16093, to read as follows:

2007–11–18R1 General Electric Company: Amendment 39–16093. Docket No. FAA–2006–24171; Directorate Identifier 2006–NE–08–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) This AD revises AD 2007–11–18, Amendment 39–15075.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–50C, CF6–50C1, CF6–50C2, and CF6–50C2R turbofan engines, with a forward fan stator case, part number (P/N) 9064M53G04, G05, G06, G07, G08, G09, G10, G12, or G13, or P/N 9173M37G01, G02, G03, G04, G05, or G06 installed. These engines are installed on, but not limited to, Airbus A300, McDonnell Douglas DC–10 series, and DC–10–30F (KC–10A, KDC–10) airplanes.

Unsafe Condition

(d) This AD revision results from a review that shows that only one of the service bulletins referenced in the original AD is applicable as a compliance method. We are issuing this AD to eliminate a certain service bulletin from the compliance method and to prevent uncontained fan blade failures, which can result in separation of airplane hydraulic lines, damage to critical airplane systems, and possible loss of airplane control.

Compliance

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

(f) At the next engine shop visit after the effective date of this AD, but no later than June 30, 2010, rework the forward fan stator case and install the fan module secondary containment shield.

(1) For engines on Airbus 300 series airplanes, use paragraph 3, Accomplishment Instructions, of GE Service Bulletin (SB) No. CF6–50 S/B 72–0985, Revision 3, dated August 22, 2007, to do the rework and installation.

(2) Deleted.

(g) The rework and installation specified in paragraph (f)(1) of this AD can also be done on-wing.

Previous Credit

(h) Previous credit is allowed for fan stator cases reworked and containment shields installed using GE SB No. CF6–50 S/B 72–0985, dated December 2, 1991, Revision 1, dated September 15, 1998, or Revision 2, dated March 21, 2007, before the effective date of this AD. Credit is also allowed for fan stator cases reworked and containment shields installed using GE SB No. CF6–50 S/B 72–0986, dated December 2, 1991, Revision 1, dated September 15, 1998, or Revision 2, dated march 21, 2007.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Deleted.

(k) Contact James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.rosa@faa.gov;* telephone (781) 238–7152; fax (781) 238–7199, for more information about this AD.

(l) Contact General Electric Company, GE–Aviation, Room 285, 1 Newmann Way, Cincinnati, OH 45215, telephone (513) 552-3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com,* for a copy of the service information referenced in this AD.

Material Incorporated by Reference

(m) You must use GE Service Bulletin No. CF6–50 S/B 72–0985, Revision 3, dated August 22, 2007, to do the rework and installation required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company, GE–Aviation, Room 285, 1 Newmann Way, Cincinnati, OH 45215, telephone (513) 552- 3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com,* for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on November 16, 2009.

Peter A. White,

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

[FR Doc. E9–28167 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0571; Directorate Identifier 2009–NM–004–AD; Amendment 39–16096; AD 2009–24–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –200LR, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. This AD requires inspections for scribe lines in the skin along lap joints, butt joints, certain external doublers, and the large cargo door hinges; and related investigative and corrective actions if necessary. This AD results from reports of scribe lines found at lap joints and butt joints, around external doublers, and at locations where external decals had been removed. We are issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin. Undetected fatigue cracks can grow and cause sudden decompression of the airplane.

DATES: This AD is effective January 4, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 4, 2010.

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: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; 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 all Boeing Model 777 series airplanes. That NPRM was published in the **Federal Register** on June 25, 2009 (74 FR 30245). That NPRM proposed to require inspections for scribe lines in the skin along lap joints, butt joints, certain external doublers, and the large cargo door hinges; and related investigative and corrective actions if necessary.

Comments

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

Request To Eliminate Reporting Requirement for Negative Findings

Boeing requests that we revise paragraph (k) of the NPRM to eliminate the requirement to report negative findings. Boeing states that this requirement deviates from Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008, in that the service bulletin specified that operators report findings of cracking. Boeing states that since the Model 777 fleet is young relative to the inspection thresholds, this reporting requirement may last for decades and it would involve hundreds of airplanes. Boeing states that after a period of time, the requirement would become redundant and is therefore an unnecessary burden.

We agree with the commenter for the reasons provided. We revised paragraph (k) of the final rule to eliminate the requirement to report negative findings.

Explanation of Change To Applicability

We have revised the applicability of this AD to identify model designations as published in the type certificate data sheet for the affected models listed in Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008.

Conclusion

We reviewed the relevant data, considered the comment 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 129 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. A work-hour estimate is not available for the inspection for an external repair doubler since the inspection required can be different depending on the in-service repair history of the airplane. This inspection affects up to 129 U.S.-registered airplanes.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Exploratory Inspection	9 to 34	$80	None	$720 to $2,720	129	$92,880 to $350,880

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:

2009–24–08 Boeing: Amendment 39–16096. Docket No. FAA–2009–0571; Directorate Identifier 2009–NM–004–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of scribe lines found at lap joints and butt joints, around external doublers, and at locations where external decals had been cut. We are issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin. Undetected fatigue cracks can grow and cause sudden decompression of the airplane.

Compliance

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

Inspection

(g) At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008, except as provided in paragraphs (h) and (j) of this AD, do detailed exploratory inspections for scribe lines in the skin along lap joints, butt joints, certain external doublers, and the large cargo door hinges. Do all applicable related investigative and corrective actions at the times specified in the service bulletin, by accomplishing all actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (i) of this AD.

Note 1: The inspection exemptions described in NOTES 1.–5. in paragraph 1.E. of Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008, apply to this AD.

Exceptions to Service Bulletin Specifications

(h) Where Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Where Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008, specifies to contact Boeing for appropriate action, accomplish applicable actions using a method approved in accordance with the

procedures specified in paragraph (l) of this AD.

(j) Where paragraph 1.E. of Boeing Alert Service Bulletin 777–53A0054, dated August 7, 2008, specifies to ''contact Boeing for inspection requirements for operation beyond 60,000 total flight-cycles after first repaint,'' for those airplanes, this AD requires contacting the Manager, Seattle Aircraft Certification Office (ACO), for all inspection requirements of this AD and doing the requirements.

Report

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD: Submit a report of positive findings of cracks found during the inspection required by paragraph (g) of this AD to the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Alternatively, operators may submit reports to their Boeing field service representatives. The report must contain, at a minimum, the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane. 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 contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle 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: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

(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.

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

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 777–53A0054, dated August 7, 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 November 12, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28169 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1073; Directorate Identifier 2009–NM–174–AD; Amendment 39–16097; AD 2007–15–06 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–111 and –112 Series Airplanes, and Model A319, A320, and A321 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to all Airbus Model A318–111 and –112 series airplanes, and all Model A319, A320, and A321 series airplanes. That AD currently requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside 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 14, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 14, 2009.

On August 28, 2007 (72 FR 40222, July 24, 2007), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

We must receive any comments on this AD by January 11, 2010.

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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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 street address for the Docket 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: Tim Dulin, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On July 13, 2007, we issued AD 2007–15–06, Amendment 39–15135 (72 FR 40222, July 24, 2007). That AD applied to all Airbus Model A318–111 and –112 series airplanes, and all A319, A320, and A321 series airplanes. That AD required revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS. But once the CDCCLs are incorporated into the ALS, future maintenance actions on components must be done in accordance with those CDCCLs.

Relevant Service Information

AD 2007–15–06 cites Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005; and Airbus A318/A319/A320/A321 ALS Part 5—Fuel Airworthiness Limitations, dated February 28, 2006. Since we issued that AD, Airbus has revised the referenced service information and issued Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008. 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

The affected product(s) have been approved by the aviation authority of another country, and are approved for operation in the United States. 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. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 720 products of U.S. registry. We also estimate that it would take about 2 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 the AD on U.S. operators to be $115,200, or $160 per product.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1073; Directorate Identifier 2009–NM–174–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 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 the regulation:

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

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

See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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. The FAA amends § 39.13 by removing amendment 39–15135 (72 FR 40222, July 24, 2007) and adding the following new AD:

2007–15–06 R1 Airbus: Amendment 39–16097. Docket No. FAA–2009–1073; Directorate Identifier 2009–NM–174–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 14, 2009.

Affected ADs

(b) This AD revises AD 2007–15–06, Amendment 39–15135.

Applicability

(c) This AD applies to all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and critical design configuration control limitations (CDCCLs). Compliance with the operator maintenance documents is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections and CDCCLs, the operator may not be able to accomplish inspections and CDCCLs described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required inspections and CDCCLs that will preserve the critical ignition source prevention feature of the affected fuel system.

Unsafe Condition

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

Compliance

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

Restatement of AD 2007–15–06, With Revised Service Information

Revise Airworthiness Limitations Section (ALS) To Incorporate Fuel

Maintenance and Inspection Tasks

(f) Within 3 months after August 28, 2007 (the effective date of AD 2007–15–06), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 ALS Part 5—Fuel Airworthiness Limitations, dated February 28, 2006, as defined in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005 (approved by the European Aviation Safety Agency (EASA) on March 14, 2006), Section 1, ''Maintenance/Inspection Tasks;'' or Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008 (approved by the EASA on December 19, 2008), Section 1, ''Maintenance/Inspection Tasks.'' For all tasks identified in Section 1 of Document 95A.1931/05, the initial compliance times start from August 28, 2007, and the repetitive inspections must be accomplished thereafter at the intervals specified in Section 1 of Document 95A.1931/05.

Note 2: Airbus Operator Information Telex (OIT) SE 999.0076/06, dated June 20, 2006, identifies the applicable sections of the Airbus A318/A319/A320/A321 Airplane Maintenance Manual necessary for accomplishing the tasks specified in Section 1 of Document 95A.1931/05.

Revise ALS To Incorporate CDCCLs

(g) Within 12 months after August 28, 2007, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 ALS Part 5—Fuel Airworthiness Limitations, dated February 28, 2006, as defined in Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005 (approved by the EASA on March 14, 2006), Section 2, ''Critical Design Configuration Control Limitations;'' or Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008 (approved by EASA on December 19, 2008), Section 2, ''Critical Design Configuration Control Limitations.''

No Alternative Inspections, Inspection Intervals, or CDCCLs

(h) Except as provided by paragraph (i) of this AD: After accomplishing the actions specified in paragraphs (f) and (g) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used.

New Information

Explanation of CDCCL Requirements

Note 3: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraphs (f) and (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Other FAA AD Provisions

(i) 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; 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. 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

(j) EASA Airworthiness Directive 2006–0203, dated July 11, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005; Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008; and Airbus A319/A319/A320/A321 ALS Part 5—Fuel Airworthiness Limitations, dated February 28, 2006; 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 Airbus A318/A319/A320/A321 Fuel

Airworthiness Limitations, Document 95A.1931/05, Issue 2, dated July 8, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus A318/A319/A320/A321 Fuel Airworthiness Limitations, Document 95A.1931/05, Issue 1, dated December 19, 2005; and Airbus A319/A319/A320/A321 ALS Part 5—Fuel Airworthiness Limitations, dated February 28, 2006; on August 28, 2007 (72 FR 40222, July 24, 2007).

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) 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.

(5) 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 November 16, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28159 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD; Amendment 39–16092; AD 2009–24–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 800 Series 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:

Under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the fuel-to-oil heat exchanger (FOHE) front face and limit fuel flow through the FOHE.

We are issuing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss, and loss of control of the airplane.

DATES: This AD becomes effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010.

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: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

You can get the service information identified in this AD from Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936.

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 23, 2009 (74 FR 36422). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive has been raised following an incident involving dual loss of engine response in the final stages of approach leading to touchdown short of the runway. The phenomenon involved in the loss of engine response has also been seen in flight affecting just one engine.

Post incident analysis and investigation has established that, under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the FOHE front face and limit fuel flow through the FOHE. This type of icing event was previously unknown and creates ice concentrations in the fuel system beyond those specified in the certification requirements.

To mitigate the risk of engine FOHE blockage, this AD requires replacing the FOHE, part number (P/N) 55003001–1 or 55003001–11, with a FOHE that has been modified using Rolls-Royce plc Alert Service Bulletin (ASB) No. RB.211–79–AG257, Revision 1, dated September 14, 2009.

Comments

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

Request To Eliminate ''Or Equivalent'' From Paragraph (e)

Delta Airlines requests that we eliminate the words ''or equivalent'' from paragraph (e) of the proposed AD.

We agree. We deleted them from paragraph (e) of the AD.

Requests To List the Replacement FOHE P/N or Subsequent Post Alert Service Bulletin FOHE P/N

American Airlines, Rolls-Royce plc, Boeing, and the Airlines Pilot Association (ALPA) request that we require replacing the FOHE, P/N 55003001–1 or 55003001–11, with a FOHE P/N 55003001–21, or subsequent post Rolls-Royce plc ASB No. RB.211–79–AG257 FOHE P/N.

We partially agree. Rulemaking requirements do not permit advance approval of unknown future revisions to service bulletins and part numbers. However, we agree that we can clarify the compliance to identify the modification needed to replace the FOHE. We changed paragraph (e) to state ''Unless already done, within 6,000 flight hours after the effective date of this AD, but no later than January 1, 2011, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE modified using Rolls-Royce plc ASB No. RB.211–79–AG257, Revision 1, dated September 14, 2009.

Request To Change the Summary and Discussion Paragraphs

Boeing requests that we change the Summary and Discussion paragraphs from ''under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system'' to ''under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft and/or engine fuel systems.'' The commenter states that the current wording suggests that ice accumulation is possible only in the aircraft-side wing and strut fuel feed lines. Post incident analysis and investigation could not conclusively identify where in the feed lines ice accumulated, nor did it exclude the possibility of accumulation

within the engine-side fuel feed lines, and or components. The suggested wording eliminates this ambiguity.

We do not agree. For the purpose of this AD, separating the aircraft fuel system from the engine fuel system is not necessary. Together, they represent the single fuel system for the aircraft. We did not change the AD.

Identify the AD as Terminating Action for AD 2009–05–11

American Airlines requests that compliance with the AD on both engines of an airplane be identified as terminating action for AD 2009–05–11. AD 2009–05–11 currently requires on-ground and in-flight procedures at the airplane-level.

We do not agree. AD 2009–05–11, which is a Transport Airplane Directorate AD, defines procedures for the aircraft and not the engines. This AD is applicable to the engines only. Terminating the requirements of AD 2009–05–11 must be done within the constraints of that AD and cannot be defined in this AD. We did not change the AD.

Request To Revise the Costs of Compliance Estimate

Rolls-Royce plc requests that we revise the estimated costs of compliance from a total of $1,647,720, to a total of $8,098,530, to be more accurate.

We agree. Since we prepared our initial cost estimate, Rolls-Royce has updated their information to us. We changed the costs of compliance section in the AD preamble.

Request To Change the Compliance Time

ALPA International requests that we change the proposed AD compliance time from ''Within 6,000 flight hours after the effective date of this AD, but no later than January 1, 2011'', to ''Within six months after the effective date of the AD or within 6,000 flight hours after receipt of the Service Bulletin.'' ALPA International believes that the decreased compliance times are important since, in the event a blockage of the FOHE, the current procedure requires an immediate idle descent to melt the blockage. Due to this aircraft's design mission of long range flight, it often operates over oceanic and geographically remote areas where radar surveillance may not exist and communications with the air traffic control is encumbered by language limits, poor radio reception, and third party communication relay services. These areas may concentrate traffic on specific routes or tracks. This creates the potential for traffic conflicts during the descent, without the ability to receive timely Air Traffic Control clearance or the additional safety oversight provided by radar separation. This engine rollback is very insidious to the crew and creates the potential for a pilot to be faced with an immediate descent without adequate time to compensate for traffic, weather, or terrain.

We do not agree. On February 17, 2009, the Transport Airplane Directorate issued AD 2009–05–11 that revises the airplane flight manual to include in-flight procedures for pilots to follow in certain cold weather conditions. That AD also includes mandating fuel circulation procedures on the ground when certain conditions exist. These procedures are considered adequate to assure continued safe operation through all environments and conditions, including those expressed by ALPA, until hardware modifications become available. Those procedures also reduce hazardous amounts of ice buildup within the fuel feed system and eliminate ice accumulation on the face of the FOHE. We did not change the AD.

Request a Mandate To Retrofit At Least One Engine

The National Transportation Safety Board (NTSB) requests that we mandate the retrofit of at least one engine on each airplane in the affected fleet by the end of December 2009. The NTSB believes that the January 1, 2011 compliance date for installation of the new FOHE is not consistent with the risk associated with the original FOHE design.

We do not agree. AD 2009–05–11 revises the airplane flight manual to include in-flight procedures for pilots to follow in certain cold weather conditions. It also includes mandating fuel circulation procedures on the ground when certain conditions exist. It was issued to assure continued safe operation until hardware modifications become available. The actions reduce hazardous amounts of ice buildup within the fuel feed system and eliminate ice accumulation on the face of the FOHE. Those procedures were put into place while the investigation was ongoing and in advance of a permanent solution to the problem. We consider those procedures appropriate as an interim action to ensure continued safe operation until a permanent solution can be incorporated.

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 changes described previously. We determined that these changes 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

The EASA AD 2009–0142, dated July 13, 2009, requires replacing the FOHE within 6,000 flight hours from July 10, 2009 or before January 1, 2011, whichever occurs first. This AD requires replacing the FOHE within 6,000 flight hours after the effective date of the AD, rather than within 6,000 flight hours from July 10, 2009.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 138 products of U.S. registry. We also estimate that it will take about 8.5 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $58,005 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $8,098,530.

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, 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:

2009–24–05 Rolls-Royce plc: Amendment 39–16092. Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc models RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines with fuel-to-oil heat exchangers, part numbers 55003001–1 and 55003001–11, installed. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Reason

(d) This AD results from the risk of engine fuel-to-oil heat exchanger (FOHE) blockage. We are issuing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss and loss of control of the airplane.

Actions and Compliance

(e) Unless already done, within 6,000 flight hours after the effective date of this AD, but no later than January 1, 2011, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE modified using Rolls-Royce plc Alert Service Bulletin No. RB.211–79–AG257, Revision 1, dated September 14, 2009.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) by requiring replacing the FOHE within 6,000 flight hours after the effective date of this AD, rather than within 6,000 flight hours from July 10, 2009.

Other FAA AD Provisions

(g) *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

(h) Refer to MCAI Airworthiness Directive 2009–0142, dated July 13, 2009, and Rolls-Royce plc Alert Service Bulletin No. RB.211–79–AG257, Revision 1, dated September 14, 2009, for related information. Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for a copy of this service information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov; telephone* (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce plc Alert Service Bulletin No. RB.211–79–AG257, Revision 1, dated September 14, 2009, to perform the FOHE modification required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on November 16, 2009.

Peter A. White,

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

[FR Doc. E9–28151 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0800 Directorate Identifier 2009–CE–041–AD; Amendment 39–16088; AD 2009–24–02]

RIN 2120–AA64

Airworthiness Directives; Scheibe-Flugzeugbau GmbH Models Bergfalke-III, Bergfalke-II/55, SF 25C, and SF–26A Standard Gliders

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) 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:

The manufacturer has advised of receiving a report of looseness of the drive arm of the mechanical elevator trim tab, found during an annual inspection. This kind of damage is likely caused by penetrated humidity over the years.

If left uncorrected, this condition could lead to the separation of the drive arm which could result in flutter of the elevator and possible loss of control of the aircraft.

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

DATES: This AD becomes effective January 4, 2010.

On January 4, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Greg Davison, Aerospace Engineer, FAA,

Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

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 August 31, 2009 (74 FR 44777). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The manufacturer has advised of receiving a report of looseness of the drive arm of the mechanical elevator trim tab, found during an annual inspection. This kind of damage is likely caused by penetrated humidity over the years.
>
> If left uncorrected, this condition could lead to the separation of the drive arm which could result in flutter of the elevator and possible loss of control of the aircraft. For the reasons stated above, this new Airworthiness Directive mandates repetitive inspections for solid fixation of the drive arms of the mechanical elevator trim tabs.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 5 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $14 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,270 or $654 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 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 Management Facility 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 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:

2009–24–02 Scheibe-Flugzeugbau GmbH: Amendment 39–16088; Docket No. FAA–2009–0800; Directorate Identifier 2009–CE–041–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models Bergfalke-III, Bergfalke-II/55, SF 25C, and SF–26A Standard gliders, all serial numbers, certificated in any category.

Subject

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

Reason

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

The manufacturer has advised of receiving a report of looseness of the drive arm of the mechanical elevator trim tab, found during an annual inspection. This kind of damage is likely caused by penetrated humidity over the years.

If left uncorrected, this condition could lead to the separation of the drive arm which could result in flutter of the elevator and possible loss of control of the aircraft.

For the reasons stated above, this new Airworthiness Directive mandates repetitive inspections for solid fixation of the drive arms of the mechanical elevator trim tabs.

Actions and Compliance

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

(1) At the next scheduled maintenance inspection after January 4, 2010 (the effective date of this AD) or within the next 12 months after January 4, 2010 (the effective date of this AD), whichever occurs first, inspect the drive arm of the mechanical elevator trim tab

for separation of the drive arm following Scheibe Aircraft GmbH Service Bulletin No. 104–24/1; No. 232–6/1; and No. 653–91/1 (same document), dated June 25, 2009. If any looseness is found, before further flight, repair the drive arm of the mechanical elevator trim tab following Scheibe Aircraft GmbH Work Instruction No. 104–24; No. 232–6; and No. 653–91 (same document), dated March 23, 2009.

(2) Repetitively thereafter, at intervals not to exceed every 12 months, inspect the drive arm of the mechanical elevator trim tab and do all corrective actions following Scheibe Aircraft GmbH Service Bulletin No. 104–24/1; No. 232–6/1; and No. 653–91/1 (same document), dated June 25, 2009; and Scheibe Aircraft GmbH Work Instruction No. 104–24; No. 232–6; and No. 653–91 (same document), dated March 23, 2009.

Note 1: The service information references four documents: 104–24 (104–24/1), 232–6 (232–6/1), 653–91 (653–91/1), and 770–30 (770–30/1). This AD does not reference 770–30 (770–30/1) because the Model SF28A Tandem Falke is not type certificated in the United States. 14 CFR part 39 only allows the FAA to issue ADs against type certificated products.

FAA AD Differences

Note 2: 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, Standards 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: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (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 (EASA) AD No.: 2009–0132, dated June 23, 2009; Scheibe Aircraft GmbH Service Bulletin No. 104–24/1; No. 232–6/1; and No. 653–91/1 (same document), dated June 25, 2009; and Scheibe Aircraft GmbH Work Instruction No. 104–24; No. 232–6; and No. 653–91 (same document), dated March 23, 2009, for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 1 of this AD 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 SCHEIBE AIRCRAFT GMBH/Customer Service, Am Flugplatz 5, 73540 Heubach, Federal Republic of Germany; telephone: + 49 (0) 7173–184286; fax: + 49 (0) 7173–185587; E-mail: *info@scheibe-aircraft.de;* Internet: *http://www.scheibe-aircraft.de/.*

(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.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service information	Pages	Revision	Date
Scheibe Aircraft GmbH Service Bulletin No. 104–24/1; No. 232–6/1; and No. 653–91/1 (same document).	1 and 2	Not Applicable	June 25, 2009.
Scheibe Aircraft GmbH Work Instruction No. 104–24; No. 232–6; and No. 653–91 (same document).	1 and 2	Not Applicable	March 23, 2009.

Issued in Kansas City, Missouri, on November 10, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–27777 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1075; Directorate Identifier 2009–NM–181–AD; Amendment 39–16107; AD 2008–09–23 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. 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; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that would revise an existing AD. 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:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that it is necessary to introduce Critical Design Configuration Control Limitations (CDCCL), in order to preserve critical fuel tank system ignition source prevention features during configuration changes such as modifications and repairs, or during maintenance actions Failure to preserve critical fuel tank system ignition source prevention features could result in a fuel tank explosion. * * *

We are issuing this AD to require actions to correct the unsafe condition on these products. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 14, 2009.

On June 6, 2008 (73 FR 24145, May 2, 2008), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD.

We must receive comments on this AD by January 11, 2010.

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.

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.*

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: Mazdak Hobbi, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

On April 24, 2008, we issued AD 2008–09–23, Amendment 39–15504 (73 FR 24145, May 2, 2008). That AD applied to all 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. That AD required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to include the critical design configuration control limitations (CDCCL) data.

CDCCLs are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS of the Instructions for Continued Airworthiness. But once the CDCCLs are incorporated into the ALS of the Instructions for Continued Airworthiness, future maintenance actions on components must be done in accordance with those CDCCLs.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components. We have renumbered subsequent notes accordingly.

Explanation of Additional Change to AD

AD 2008–09–23 allowed the use of alternative CDCCLs if they are part of a ''later revision'' of the ALS of the Instructions for Continued Airworthiness. That provision has been removed from this AD. Allowing the use of ''later revisions'' of specific service documents violates Office of the Federal Register policies for approving materials that are incorporated by reference. Affected operators, however, may request approval to use an alternative CDCCL that is part of a later revision of the referenced service document as an alternative method of compliance, under the provisions of paragraph (g) of this AD.

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.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that this AD will affect about 297 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 $23,760, or $80 per product.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less 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–2009–1075; Directorate Identifier 2009–NM–181–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 removing amendment 39–15504 (73 FR 24145, May 2, 2008) and adding the following new AD:

2008–09–23 R1 Bombardier, Inc. (Formerly Bombardier Aerospace, Inc.; Canadair): Amendment 39–16107. Docket No. FAA–2009–1075; Directorate Identifier 2009–NM–181–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2009.

Affected ADs

(b) This AD revises AD 2008–09–23, Amendment 39–15504.

Applicability

(c) This AD applies to all Bombardier Inc. 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, certificated in any category, all serial numbers.

Subject

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

Reason

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

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that it is necessary to introduce Critical Design Configuration Control Limitations (CDCCL), in order to preserve critical fuel tank system ignition source prevention features during configuration changes such as modifications and repairs, or during maintenance actions. Failure to preserve critical fuel tank system ignition source prevention features could result in a fuel tank explosion. Revision has been made to Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24 Maintenance Requirements Manual, CSP B–053, Part 2, Section 3, ''Fuel System Limitations'' to introduce the required CDCCL.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to include the CDCCL data.

Restatement of AD 2008–09–23, With Changes to Compliance Method: Actions and Compliance

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

(1) Within 60 days after June 6, 2008 (the effective date of AD 2008–09–23), revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCL data specified in CRJ 700/900 Series Regional Jet (Bombardier) Temporary Revision (TR) 2–222, dated March 30, 2006, to Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual CSP B–053.

Note 1: The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of the TR into the maintenance requirements manual. When the TR has been included in the general revision of the maintenance program, the general revision may be inserted into the maintenance requirements manual, provided the relevant information in the general revision is identical to that in the TR, and the temporary revision may be removed.

(2) After accomplishing the actions specified in paragraph (f)(1) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

NEW INFORMATION

Explanation of CDCCL Requirements

Note 2: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS of

the Instructions for Continued Airworthiness, as required by paragraph (f) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS of the Instructions for Continued Airworthiness has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 3: 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, New York ACO, ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; 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 ensure 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. 3502 *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–2008–07, dated January 25, 2008; and CRJ 700/900 Series Regional Jet (Bombardier) Temporary Revision 2–222, dated March 30, 2006; for related information.

Material Incorporated by Reference

(i) You must use CRJ 700/900 Series Regional Jet (Bombardier) Temporary Revision 2–222, dated March 30, 2006, to Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual CSP B–053, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of CRJ 700/900 Series Regional Jet (Bombardier) Temporary Revision 2–222, dated March 30, 2006, to Section 3, ''Fuel System Limitations,'' of Part 2 of Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual CSP B–053, on June 6, 2008 (73 FR 24145, May 2, 2008).

(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 November 18, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28297 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0317; Directorate Identifier 79–ANE–18; Amendment 39–16087; AD 2009–24–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–7, –7A, –7B, –9, –9A, –11, –15, and –17 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, and –17 turbofan engines with 2nd stage fan blades, part number (P/N) 433802, 645902, 759902, 695932, 678102, or 746402, installed. That AD currently requires initial and repetitive ultrasonic inspection (UI) and fluorescent penetrant inspection (FPI) of those P/N 2nd stage fan blades. This AD replaces the required FPI with eddy current inspection (ECI) on all affected 2nd stage fan blades and maintains the requirement of UI of the blade root attachment on some of the affected 2nd stage fan blades. This AD also introduces an optional terminating action to the repetitive blade inspections for certain engine models. This AD results from reports of 10 fractures of 2nd stage fan blades since AD 87–14–01R1 became effective. We are issuing this AD to prevent uncontained failure of 2nd stage fan blades, which could result in damage to the airplane.

DATES: This AD becomes effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

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: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 87–14–01 R1, Amendment 39–6359 (54 FR 43954, October 30, 1989), with a proposed AD. The proposed AD applies to JT8D–7, –7A, –7B, –9, –9A, –11, –15, and –17 turbofan engines with 2nd stage fan blades, P/N 433802, 645902, 759902, 695932, 678102, or 746402 installed. We published the proposed AD in the **Federal Register** on August 7, 2009 (74 FR 39582). That action proposed to replace the required FPI with ECI on all affected 2nd stage fan blades and would maintain the requirement of UI of the blade root attachment on some of the affected 2nd stage fan blades. That action also proposed to introduce an optional terminating action to the repetitive blade inspections for certain engine models.

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.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

One commenter, FedEx Express, requests that we add a requirement to the AD to mandate the inspections to be performed at a repair agency having engine overhaul capabilities.

We do not agree. Code of Federal Regulations, 14 Part 43 (Maintenance, Preventative Maintenance, Rebuilding, and Alteration) establish the requirements as to who can perform these types of actions on type-certificated products, including the actions specified in this AD. Restating these requirements in the AD is unnecessary. We did not change the AD.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 1,380 engines installed on airplanes of U.S. registry. We also estimate that it will take about 25 work-hours per engine to perform one inspection cycle, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,760,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 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 removing Amendment 39–6359 (54 FR 43954, October 30, 1989), and by adding a new airworthiness directive, Amendment 39–16087, to read as follows:

2009–24–01 Pratt & Whitney: Amendment 39–16087. Docket No. FAA–2009–0317; Directorate Identifier 79–ANE–18.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 4, 2010.

Affected ADs

(b) This AD supersedes AD 87–14–01 R1, Amendment 39–6359.

Applicability

(c) This AD applies to Pratt & Whitney JT8D–7, –7A, –7B, –9, –9A, –11, –15, and –17 turbofan engines, with 2nd stage fan blades, part number (P/N) 433802, 645902, 759902, 695932, 678102, or 746402, installed. These engines are installed on, but not limited to, Boeing 727, 737, and McDonnell Douglas DC–9 series airplanes.

Unsafe Condition

(d) This AD results from reports of 10 fractures of 2nd stage fan blades since AD 87–14–01R1 became effective. We are issuing this AD to prevent uncontained failure of 2nd stage fan blades, which could result in damage to the airplane.

Compliance

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

2nd Stage Fan Blade Inspections

(f) For 2nd stage fan blades, P/N 678102 and P/N 746402, perform an eddy current inspection (ECI) of the blade pin-root holes for cracks, and for 2nd stage fan blades, P/Ns 433802, 645902, 759902, and 695932, perform an ECI of the blade pin-root holes and perform an ultrasonic inspection (UI) of the blade root attachment for cracks, as follows:

(1) Perform an inspection at the first disassembly of the 2nd stage fan rotor from the low-pressure (LP) compressor after accumulation of 3,000 cycles-in-service (CIS) since the last inspection of the blade root attachment, not to exceed 10,000 CIS since last inspection.

(2) If the 2nd stage fan blades were new at their last installation onto the 2nd stage fan disk, inspect at the first disassembly of the 2nd stage fan rotor from the LP compressor after accumulating 3,000 cycles-since-new (CSN), not to exceed 10,000 CSN.

(3) Thereafter, inspect the 2nd stage fan blades at each disassembly of the 2nd stage fan rotor from the LP compressor after accumulating 3,000 CIS, not to exceed 10,000 CIS since the last inspection.

(4) Guidance on performing ECIs and UIs of the 2nd stage fan blade pin-root holes and blade root attachments can be found in Pratt & Whitney Maintenance Advisory Notice MAN–JT8D–1–08. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503, for a copy of this service information.

(5) Remove from service before further flight any 2nd stage fan blades that are found cracked.

Optional Terminating Action

(g) For JT8D–9, –9A, –11, –15, and –17 engines, as optional terminating action to the repetitive inspections required by this AD, replace the affected 2nd stage fan blades with redesigned 2nd stage fan blades using Pratt & Whitney Service Bulletin No. 5866, Revision 2, dated October 20, 1998.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Pratt & Whitney Service Bulletin No. 5866, Revision 2, dated October 20, 1998, to perform the optional terminating action in this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on November 9, 2009.

Peter A. White,

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

[FR Doc. E9–27518 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0411; Directorate Identifier 2008–NM–190–AD; Amendment 39–16095; AD 2009–24–07]

RIN 2120–AA64

Airworthiness Directives; Boeing 737–600, –700, –700C, and –800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. This AD requires repetitive lubrications of the right and left main landing gear (MLG) forward trunnion pins. This AD also requires an inspection for discrepancies of the transition radius of the MLG forward trunnion pins, and corrective actions if necessary. For certain airplanes, this AD also requires repetitive detailed inspections for discrepancies (including finish damage, corrosion, pitting, and base metal scratches) of the transition radius of the left and right MLG trunnion pins, and corrective action if necessary. Replacing or overhauling the trunnion pins terminates the actions required by this AD. This AD results from a report that the protective finishes on the forward trunnion pins for the left and right MLG might have been damaged during final assembly. We are issuing this AD to prevent stress corrosion cracking of the forward trunnion pins, which could result in fracture of the pins and consequent collapse of the MLG.

DATES: This AD is effective January 4, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 4, 2010.

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: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; 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 737–600, –700, –700C, and –800 series airplanes. That NPRM was published in the **Federal Register** on May 5, 2009 (74 FR 20661). That NPRM proposed to require repetitive lubrications of the right and left main landing gear (MLG) forward trunnion pins. That NPRM also proposed to require an inspection for discrepancies of the transition radius of the MLG forward trunnion pins, and corrective actions if necessary. For certain airplanes, that NPRM also proposed to require repetitive detailed inspections for discrepancies (including finish damage, corrosion, pitting, and base metal scratches) of the transition radius of the left and right MLG trunnion pins, and corrective action if necessary. Replacing or overhauling the trunnion pins would terminate the actions proposed by that NPRM.

Comments

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

Support for the NPRM

Boeing and Alaska Airlines support the NPRM.

Request To Change Reference to Terminating Action in Paragraph (h) of the Final Rule

Air Transport Association (ATA), on behalf of its member AirTran, states that paragraph (h) of the NPRM should refer to paragraph (j) of the NPRM instead of paragraph (i) of the NPRM as the optional terminating action.

We agree that paragraph (h) of the NPRM should reference paragraph (j) of the NPRM. We have changed this final rule accordingly.

Request To Clarify Service Information

ATA, on behalf of its member AirTran, states that Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008 (the source of service information cited in the NPRM), contains two errors. AirTran notes a discrepancy between the part number cited in the materials section of the service bulletin and the Work Instructions. AirTran states that the section titled ''Parts and Materials Supplied by the Operator'' of the service bulletin identifies BMS3–26 as ''grease—aircraft general purpose.'' However, AirTran notes that BMS3–26 is a corrosion-inhibiting compound, and the work instructions for the lubrication requirement identify Boeing specification BMS3–33 for the grease. In addition, the materials section of the service bulletin identifies MS20995NC32 (corrosion-resistant steel). AirTran requests that we provide clarification regarding the correct safety wire to be used for the trunnion pin installation to ensure consistent fleet compliance.

We agree that the information on page 23 of Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, under the heading ''Parts and Materials Supplied by the Operator'' contains errors. However, this section of the service bulletin is not mandated by the AD; therefore, no change to the AD is necessary. We have requested that Boeing issue an information notice to clarify the intent of the service bulletin. We have not changed the AD in this regard.

Request To Not Require the Use of Ultrachromate 300

Continental Airlines notes that Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, specifies the use of Ultrachromate 300. Continental Airlines states that this chemical is a known carcinogen that requires special handling precautions and states that using this chemical is better suited in a landing gear shop environment where adequate safety precautions are in place. Furthermore, Continental Airlines states there is a risk that using Ultrachromate 300 could contaminate the surrounding landing gear structures. The commenter requests that we revise the NPRM to require applying primer and paint with repetitive lubrications as sufficient protection against corrosion. The commenter notes that it has overhauled 64 landing gear sets on Boeing Model 737–700 and –800 series airplanes, and has not received any reports of corrosion findings on the transition radius of the forward trunnion pins.

We disagree that applying primer and paint in combination with repetitive lubrications provides sufficient protection against corrosion for all affected airplanes. Ultrachromate 300 or equivalent is used to ensure that the primer adheres properly. We agree that appropriate precautions should be taken when handling Ultrachromate 300. The procedure for using Ultrachromate 300 was developed with operator input during an all-operator meeting held in Seattle on November 6, 2007. We have not changed this AD in this regard. Operators who wish to use an alternative procedure may request approval of an AMOC following the procedures outlined in paragraph (k) of this AD.

Request To Extend Compliance Time

Continental Airlines notes that Boeing currently has no forward trunnion pins in stock, and the lead time for this part is 175 days. Continental Airlines states that it is concerned that the unavailability of parts could severely impact its ability to perform the inspection within the proposed time limits.

We infer that Continental Airlines is requesting that we extend the compliance time. We do not agree to extend the compliance time. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. According to the manufacturer, an ample number of required parts will be available to modify the U.S. fleet within the proposed compliance time. We have not changed this AD in this regard. However, according to the provisions of paragraph (k) of the final rule, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Request To Clarify Magnification Requirements

ATA, on behalf of its member AirTran, also states that Part I, step 5, of the Work Instructions of Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, allows for a range of magnification from unaided to up to 10X magnification. AirTran questions the reason for specifying a range of the magnification and requests that we change the NPRM to require a specific level of magnification to ensure consistent fleet compliance.

We do not agree to limit the choice provided by the service bulletin. We have determined that using any of the magnification levels specified in the service bulletin provides an adequate level of safety. We have not changed the final rule 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 change described previously. We also determined that this 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 100 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Repetitive lubrication	1	$80	$0	$80	100	$8,000.
Inspections	8	80	0	$640 per inspection cycle	100	$64,000 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2009–24–07 Boeing: Amendment 39–16095. Docket No. FAA–2009–0411; Directorate Identifier 2008–NM–190–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, and –800 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Unsafe Condition

(e) This AD results from a report indicating that the protective finishes on the main landing gear (MLG) forward trunnion pins might have been damaged during final assembly. We are issuing this AD to prevent stress corrosion cracking of the forward trunnion pins, which could result in fracture of the pins and consequent collapse of the MLG.

Compliance

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

Lubrication

(g) Within 30 days after the effective date of this AD: Lubricate the left and right MLG forward trunnion pins in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008. Repeat the lubrication at intervals not to exceed 30 days until all applicable requirements of paragraph (h) of this AD have been accomplished.

Inspection and Corrective Actions

(h) Within 60 months after the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later: Except as provided by paragraph (j) of this AD, do a detailed inspection for discrepancies (including finish damage, corrosion, pitting, and base metal scratches) of the transition radius of the left and right MLG trunnion pins, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008. Except as provided by paragraph (j) of this AD, at the times specified in paragraph 1.E., ''Compliance,'' of the service bulletin, do all applicable repetitive inspections and corrective actions, in accordance with the service bulletin. Accomplishing the detailed inspections (initial and repetitive) and all applicable corrective actions specified in this paragraph terminates the repetitive lubrication requirements of paragraph (g) of this AD.

No Report Required

(i) Although Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, specifies to send inspection reports to the manufacturer, this AD does not include that requirement.

Optional Terminating Action

(j) Overhauling or replacing a trunnion pin in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, ends the repetitive lubrication requirements of paragraph (g) of this AD, and the actions required by paragraph (h) of this AD, for that pin.

Alternative Methods of Compliance (AMOCs)

(k)(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:* Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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.

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

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating action specified in this AD, you must use Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008, to do those actions, 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 November 12, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28171 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–OS–0009; RIN 0790–AH77]

32 CFR Part 260

Vending Facility Program for the Blind on DoD-Controlled Federal Property

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule reinstates Department of Defense regulations related to the vending facility program for the blind on DoD-controlled Federal property. This rule shall not apply to military dining facilities that are subject to and defined in section 856 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

DATES: *Effective Date:* This rule is effective December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Olivia Smith, 703–602–4601.

SUPPLEMENTARY INFORMATION:

A. Summary

The proposed rule was published in the **Federal Register** on January 16, 2009 (74 FR 2932–2935). In response to the proposed rule, the DoD received 93 submissions with 310 comments during the 60-day comment period. 87 of the submissions contained three identical comments. Other comments fell into one of the following categories: Expanding the scope of the rule beyond the Randolph-Sheppard Act (R–SA) as implemented by the Department of Education (DoEd) in 34 CFR 395; the military dining exclusion; definitions; the military exchange exemption; references to DoD policies; allocation and billing of costs; leasing of privately-owned buildings with existing food facilities; and arbitration.

B. Identical Comments

1. *Comment:* Make a statement that the DoD intends to comply with the letter and the spirit of the R–SA.

Response: DoD's policy to extend priority to the blind when implementing the R–SA is contained in section 260.4.

2. Ensure that the language of the final regulations is consistent with and preferably identical to regulations issued by the DoEd and with the language of the R–SA.

Response: The language in the rule is consistent with the DoED regulations. One variation is the definition of ''cafeteria,'' which uses the exact definition contained in the R–SA and 34 CFR 395.1(d), and adds, ''The DoD Component food dispensing facilities that conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not ''cafeterias'' if they engage primarily in full table service operations.'' DoD added this language to ensure that DoD food dispensing facilities that use a serving line for only a brief portion of the day are not considered cafeterias for the purpose of the Final Rule.

3. Clarify that the R–SA priority applies to all vending operations, even when the DoD would not be required to provide a suitable location, and that when there is a change in the contract or permit, the vending opportunity must be re-offered to the State Licensing Agency (SLA) even if that agency has previously declined to exercise the R–SA priority.

Response: Section 260.4 gives the blind priority in the establishment and operation of vending facilities, except those vending facilities to which the R–SA does not apply. An SLA shall not forfeit the R–SA priority for future contract solicitations or permits by declining the priority for an earlier solicitation. However, there is no requirement in the R–SA that the DoD terminate an existing contract because an SLA that previously declined a priority asserts the priority at a later date.''

C. Additional Comments

1. Expanding the Scope of the Rule. Several comments suggested changes to expand the scope of the rule beyond the provisions of the R–SA and the DoEd's implementing rule (34 CFR 395).

Response: The DoD rule is consistent with 34 CFR 395, and DoD does not have the authority to expand the scope beyond the RSA. One comment proposed expanding the rule to establish a priority in the operation of vending operations even when the proposed location does not contain a suitable location. This suggestion, which would apparently cover situations when DoD is leasing space in privately owned buildings, is inconsistent with 20 USC 107a(d)(2). A second comment proposed changing the definition of ''individual installation, location or facility,'' but the DoD rule uses the definition contained at 34 CFR 395.1(h). A third comment asked DoD to alter the arbitration procedures delineated at 34 CFR 395.37 by deleting the word ''all'' from section 260.6(f) of the proposed rule. However, section 395.37(a) specifically uses the word ''all'' when referring to informal efforts to resolve issues of noncompliance.

2. Military Dining Exclusion. Several of the comments recommended deletion of references to and the definition of military dining facilities.

Response: Section 260.4(b) has been modified to exclude reference to Section 856 of the John Warner National Defense Authorization Act for Fiscal Year 2007, since it only applies to military dining facilities. The definition of military dining facilities is necessary to explain that the rule does not apply to such facilities.

3. Definitions. Several of the comments recommended changes to definitions.

Response: The definitions are consistent with the definitions in 34 CFR 395. The one variation occurs in the definition of ''cafeteria,'' where the proposed rule uses the same definition as 34 CFR 395.1(d), but adds, ''the DoD Component food dispensing facilities that conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not ''cafeterias'' if they engage primarily in full table service operations.'' DoD added this language to ensure that DoD food dispensing facilities that use a serving line for only a brief portion of the day are not considered cafeterias for the purpose of the Final Rule. A second comment proposed changing the definition of ''individual installation, location or facility.'' However, the final rule uses the same definition contained at 34 CFR 395.1(h).

4. Military Exchange Exemption. Several of the comments recommended limitations on the income-sharing exemption for vending machines operated by or for the military exchanges or ships store systems.

Response: The income-sharing exemption for vending machines operated by or for the military exchanges or ships store systems is codified at § 107d–3(d) of the R–SA and 34 CFR 395.32(h)(1), and the rule is consistent with both.

5. References to DoD Policies. Several of the comments recommended deleting references to DoD policies that may be changed without public notice, comment, or other opportunity for stakeholders to be consulted.

Response: Any DoD publication that grants a right or privilege to the public or has a substantial or direct impact on any significant portion of the public is required to be published. Since 32 CFR 260 prescribes implementation of the R–SA within the DoD, it is necessary to reference applicable DoD policies and publications. The DoD publications referenced in the Final Rule are available on the internet at *http://www.dtic.mil/whs/directives.*

6. Allocation and Billing of Costs. One commenter recommended using more explicit language in 260.6(b)(4) to specify the methodology for allocating costs, prohibiting retroactive or prospective billing, limiting costs to similar costs charged to other food vendors, including military exchanges and commercial enterprises, and adapting charges as the number of people using the facility fluctuates.

Response: Pursuant to the comment, we have removed the language at section 260.6(b)(4) of the final rule and inserted language consistent with 34 CFR 395.35, which provides that the permit shall state (1) no charge shall be made to the State Licensing agency for the cost of normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas, and (2) no charge shall be made to the DoD for the cost of sanitation and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment.

7. Leasing of Privately-Owned Buildings with Existing Food Facilities. One comment recommended adding language that DoD components should avoid leasing all or part of a privately-owned building in which there is an existing food facility that would be in direct competition with a R–SA operation, resulting in the absence of a requirement to provide a satisfactory site.

Response: This comment is inconsistent with 20 U.S.C. 107a(d)(2)(B), which exempts from the R–SA privately owned buildings ''any part of which is leased by any department, agency or instrumentality of the United States and in which, (i) prior to the execution of such lease, the lessor or any of his tenants had in operation a restaurant or other food facility in a part of the building no included in such lease, and (ii) the operation of such a vending facility by a blind person would be in proximate and substantial direct competition with such restaurant or other food facility except that each such department, agency and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.'' Moreover, the suggested language would overly restrict the DoD's ability to lease facilities.

8. Arbitration. One comment recommended deleting the word ''all'' in section 260.6(f) to clarify who has the authority to determine that all informal attempts to resolve the issues have been unsuccessful.

Response: The final rule is consistent with 34 CFR 395.37(a), which specifically uses the word ''all'' when referring to informal efforts to resolve issues.

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

It has been certified that 32 CFR part 260 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.

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

It has been certified that 32 CFR part 260 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year.

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

It has been certified that 32 CFR part 260 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. This rule is consistent with the Randolph-Sheppard Act (20 U.S.C. 107), the implementing regulations of the U.S. Department of Education (34 CFR part 395), and Section 856 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

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

It has been certified that 32 CFR part 260 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 260 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 260

Persons with disabilities, Blind, Vending.

■ Accordingly, 32 CFR part 260 is added to read as follows:

PART 260—VENDING FACILITY PROGRAM FOR THE BLIND ON DOD-CONTROLLED FEDERAL PROPERTY

Sec.
260.1 Purpose.
260.2 Applicability.
260.3 Definitions.
260.4 Policy.
260.5 Responsibilities.
260.6 Procedures.
260.7 Information requirements.

§ 260.1 Purpose.

This part:

(a) Assigns responsibilities in compliance with 20 U.S.C. 107 *et seq.* and 34 CFR part 395 and establishes the following policies within the Department of Defense:

(1) Uniform policies for application of priority accorded the blind to operate vending facilities;

(2) Requirements for satisfactory vending facility sites on DoD-controlled property; and

(3) Vending machine income-sharing requirements on DoD-controlled property

(b) Prescribes requirements and operating procedures for the vending facility program for the blind on DoD-controlled property.

(c) Does NOT apply to full food services, mess attendant services, or services supporting the operation of a military dining facility.

§ 260.2 Applicability.

This part applies to:

(a) Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Vending facility sites on DoD-controlled property.

§ 260.3 Definitions.

Blind licensee. A blind person licensed by the State licensing agency to

operate a vending facility on DoD-controlled property.

Cafeteria. A food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself or herself from displayed selections. A cafeteria may be fully automatic, or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided. The DoD Component food dispensing facilities that conduct cafeteria-type operations during part of their normal operating day and full table-service operations during the remainder of their normal operating day are not ''cafeterias'' if they engage primarily in full table service operations.

Direct competition. The presence and operation of a DoD Component vending machine or a vending facility on the same DoD-controlled property as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas serving employees, the majority of whom normally do not have access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor, shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

DoD-controlled property. Federal property that is owned, leased, or occupied by DoD.

Federal employees. Civilian appropriated fund and nonappropriated fund employees of the United States.

Federal property. Any building, land, or other real property owned, leased, or occupied by DoD in the United States.

Individual location, installation, or facility. A single building or a self-contained group of buildings. A self-contained group of buildings refers to two or more buildings that must be located in close proximity to each other and between which a majority of the Federal employees working in such buildings regularly move from one building to another in the normal course of their official business during a normal working day.

License. A written instrument issued by a State licensing agency to a blind person, authorizing that person to operate a vending facility on DoD-controlled property.

Military dining facility. A facility owned, operated, or leased and wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces.

Normal working hours. An 8-hour work period between the approximate hours of 0800 and 1800, Monday through Friday.

On-site official. The individual in command of an installation or separate facility or location. For the Pentagon Reservation only, the Washington Headquarters Services (WHS) Director of the Defense Facilities Directorate is designated as the on-site official.

Permit. The official approval given a State licensing agency by a department, agency, or instrumentality responsible for DoD-controlled property whereby the State licensing agency is authorized to establish a vending facility.

Satisfactory site. An area fully accessible to vending facility patrons and having sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of a vending facility in compliance with applicable health laws and building requirements. A ''satisfactory site'' shall have a minimum of 250 square feet available for sale of items and for storage of articles necessary for the operation of a vending facility.

State. A state, the District of Columbia, the Commonwealth of Puerto Rico, a territory, or possession of the United States.

State licensing agency. The State agency designated by the Secretary of Education, to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

Substantial alteration or renovation. A permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

United States. The several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Vending facility. Automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment that may be operated by blind licensees and that are necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles and services to be dispensed automatically or manually and that are prepared on or off the premises according to applicable health laws. Also includes facilities providing the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State within such State.

Vending machine. For the purposes of assigning vending machine income, a coin or currency operated machine that dispenses articles or services except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

Vending machine income. (1) DoD Component receipts from the DoD Component vending machine operations on DoD-controlled property, where the machines are operated by any DoD Component activity, less costs incurred; or

(2) Commissions received by any DoD Component activity from a commercial vending firm that provides vending machines on DoD-controlled property.

(3) ''Costs incurred'' include costs of goods, including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, and accounting for income-sharing.

Vendor. A blind licensee who is operating a vending facility on DoD-controlled property.

§ 260.4 Policy.

It is DoD policy that a DoD Component having accountability for real property shall extend priority on such property to the blind when implementing the Randolph-Sheppard Act, as set out in the following paragraphs:

(a) The blind shall be given priority in the establishment and operation of vending facilities.

(b) The blind shall be given priority in the award of contracts to operate cafeterias.

(c) In conjunction with acquisition or substantial alteration or renovation of a building, satisfactory sites shall be provided for operation of blind vending facilities.

(d) Specified income from vending machines operated on DoD-controlled property by a DoD Component either directly or by contract shall be given to State licensing agencies.

§ 260.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)), under the Under Secretary of Defense for Personnel and Readiness, shall establish policies and procedures and monitor the Vending Facility Program.

(b) The Heads of the DoD Components, in monitoring their respective programs, shall:

(1) Approve or disapprove State licensing agency applications for permits and the provision of satisfactory sites;

(2) Issue policies and procedures to designate and establish responsibilities of the on-site official;

(3) Suspend or terminate a permit to operate a vending facility after consulting with the PDUSD(P&R) where circumstances warrant.

(4) Ensure appropriate real property outgrants are accomplished in accordance with DoDI 4165.70, ''Real Property Management,'' [1] and consistent with the Randolph-Sheppard Act (20 U.S.C. 107) and the implementing regulations (34 CFR part 395).

(5) The On-Site Official shall be the point of contact with State licensing agencies and shall:

(i) Consult with State licensing agencies on articles and services to be provided;

(ii) Establish appropriate limitations on the location or operation of a vending facility upon finding that the granting of a priority under the Act would adversely affect the interests of the United States. The On-Site Official shall justify this limitation in writing through the Head of the DoD Component concerned and the PDUSD(P&R) to the Secretary of Education for determination of whether the limitation is warranted.

(iii) Notify State licensing agencies of acquisition or substantial alteration or renovation of property;

(iv) Negotiate with State licensing agencies on other matters and adhere to guidance provided in § 260.6 of this part.

§ 260.6 Procedures.

The DoD Components in control of the maintenance, operation, and protection of Federal property shall take necessary action to ensure the requirements set forth in this Section are implemented for these properties.

(a) The blind have a priority to operate vending facilities on DoD property, whenever feasible, in light of appropriate space and potential patronage. Implementation of this priority is not required when:

(1) The number of people using the property is or will be insufficient to support a vending facility; or

(2) The Secretary of Education determines that the limitation on the placement or operation of a vending facility is warranted pursuant to 260.5(b)(5)(ii), which is binding on the DoD Component. Notice of the Secretary of Education's determination will be published in the **Federal Register.**

(b) Applications for permits by the State licensing agency to operate vending facilities (except cafeterias) on DoD-controlled property must be submitted in writing to the Head of the DoD Component concerned through the on-site official. When an application is not approved, the Head of the DoD Component concerned shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval. Permits shall describe the location of the vending facility and shall be subject to the following requirements:

(1) The permit shall be issued in the name of the State licensing agency.

(2) The permit shall be issued for an indefinite period of time subject to suspension or termination upon failure to comply with agreed-upon terms. It shall be subject to termination by either party on 60 days' written notice to the other party, in cases of:

(i) Inactivation of the installation or activity.

(ii) Loss of use of a building or other facility housing the vending facility.

(iii) Change in the DoD Component's requirements for service.

(iv) Inability of the State licensing agency to continue to operate the vending facility.

(3) The permit shall provide:

(i) No charge shall be made by the DoD Component to the State licensing agency for normal repair and maintenance of the building, cleaning areas adjacent to the designated vending facility boundaries, or trash removal from a designated collection point (not to include any hazardous waste).

(ii) The State licensing agency shall be responsible for cleaning and maintaining the vending facility appearance and its security within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise, and other products to be sold, except as provided in paragraph (b)(3)(v) of this section. Neither party shall be responsible for loss or damage to the other's property, unless caused by its acts or omissions. The State licensing agency shall also be responsible for the acts or omissions of the blind vendor, the vendor's employees, or agents.

(iii) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services traditionally found in blind-operated vending facilities operated under 20 U.S.C. 107, as determined by the State licensing agency, in consultation with the on-site official, to be suitable for a particular location. Articles and services may be automatically or manually dispensed.

(iv) Vending facilities shall be operated in compliance with applicable Federal, state, interstate and local laws and regulations, including those concerning health and sanitation, the environment, and building codes.

(v) Installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval of the on-site official and the State licensing agency. The initiating party shall pay the costs of installation, modification, removal, relocation, or renovation. In any case of suspension or termination of a permit to operate a vending facility on the basis of noncompliance by either party, the costs of removal from the building shall be borne by the non-complying party.

(4) The permit shall state that no charge shall be made to the State Licensing Authority for the cost of normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas, and no charge shall be made to the DoD for the cost of sanitation and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment.

(5) In the event the blind licensee fails to provide satisfactory service or otherwise fails to comply with the requirements of the permit issued to the State licensing agency, the on-site official shall, after coordinating with the Head of the DoD Component, notify the State licensing agency of this deficiency in writing and request corrective action within a specified reasonable time. The notice shall indicate that failure to correct the deficiency shall result in temporary suspension or termination of the permit, as appropriate. Suspension or termination action shall be taken by the Head of the DoD Component concerned after consultation with the PDUSD(P&R).

(c) Any DoD Component-acquired (purchased, rented, leased, or constructed), substantially altered, or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility, except as provided in paragraph (c)(1) of this section.

[1] Available from *http://www.dtic.mil/whs/directives/corres/html/416570.htm.*

(1) A determination that a building contains a satisfactory site or sites is presumed if the State licensing agency and the on-site official consult and agree that the site or sites provided are satisfactory.

(i) The Heads of the DoD Components shall notify the appropriate State licensing agency [2] by certified or registered mail, return receipt requested, of buildings to be acquired or substantially altered or renovated. This notification shall be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the State licensing agency should be contacted early in the planning or design stage of a project. This notification shall:

(A) State that a satisfactory site(s) for the location and operation of a blind vending facility is (are) included in the plans for the building.

(B) Include a copy of a single line drawing indicating the proposed location of such site(s).

(C) Advise the State licensing agency that, subject to the approval of the DoD Component, it shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

(ii) Advise that the State licensing agency must respond within 30 days to the DoD Component, acknowledging receipt of the correspondence from the DoD Component and indicating whether it is interested in establishing a vending facility and, if interested, signifying its agreement or alternate selection of a location and its selection of type of vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's response, if any, shall be provided to the Secretary of Education.

(iii) If the State licensing agency's response to the DoD Component indicates it does not desire to establish and operate a vending facility and sets forth any specific basis other than the insufficiency of patrons to support a vending facility, or if the State licensing agency does not respond within 30 days, then a site meeting the anticipated needs of the DoD Component shall be incorporated. Each such site shall have a minimum of 250 square feet for sale of items and for storage of articles necessary for the operation of a vending facility.

(iv) If the State licensing agency indicates that the number of persons using the property is or will be insufficient to support a vending facility, then a satisfactory site to be operated under the auspices of the State licensing agency shall not be incorporated. The On-Site Official shall, through the Head of the DoD component, notify the Secretary of Education of the State licensing agency's response.

(2) The requirement to provide a satisfactory site shall not apply:

(i) When fewer than 100 Federal employees (as defined in § 260.3 of this part) are located in the building during normal working hours; or

(ii) When the building contains fewer than 15,000 square feet to be used for Federal Government purposes and the Federal Government space is used to provide services to the general public.

(iii) The provisions of paragraphs (c)(2)(i) and (c)(2)(ii) of this section do not preclude arrangements under which blind vending facilities may be established in buildings of a size or with an employee population less than that specified. For example, if a building is to be constructed that will contain only 30 Federal employees, upon agreement of the on-site official and the State licensing agency, the DoD Component may decide to provide a satisfactory site for a blind vending facility.

(3) When a DoD Component is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantial direct competition with such restaurant or other food operation, the requirement to provide a satisfactory site does not apply.

(d) Vending machine income generated by the Department of Defense shall be shared with State licensing agencies as prescribed in paragraph (d)(1) of this section. The on-site official is responsible for collecting and accounting for such vending machine income (as defined in § 260.3 of this part) and for ensuring compliance with the requirements of this paragraph.

(1) The vending machine income-sharing requirements are as follows:

(i) One hundred percent of the vending machine income from vending machines in direct competition with blind-operated vending facilities shall be provided to the State licensing agency.

(ii) Fifty percent of the vending machine income from vending machines not in direct competition with blind-operated vending facilities shall be provided to the State licensing agency.

(iii) Notwithstanding paragraph (d)(1)(ii) of this section, thirty percent of the vending machine income from vending machines not in direct competition with blind-operated vending facilities and located where at least fifty percent of the total hours worked on the premises occurs during other than normal working hours (as defined in § 260.3 of this part) shall be provided to the State licensing agency.

(2) The determination of whether a vending machine is in direct competition with the blind-operated vending facility is the responsibility of the on-site official subject to the concurrence of the State licensing agency.

(3) These vending machine income-sharing requirements do not apply to:

(i) Income from vending machines operated by or for the military exchanges or ships' store systems; or

(ii) Income from vending machines, not in direct competition with a blind-operated vending facility, at any individual location, installation, or facility where the total of the vending machine income from all such machines at such location, installation, or facility does not exceed $3,000 annually.

(4) The payment to State licensing agencies under these income-sharing requirements must be made quarterly on a fiscal year basis.

(e) Pursuant to 34 CFR 395.37, whenever any State licensing agency for the blind determines that any DoD activity is failing to comply with the provisions of 20 U.S.C. 107 and all informal attempts to resolve the issues have been unsuccessful, the State licensing agency may file a complaint with the Secretary of Education.

§ 260.7 Information requirements.

Within 90 days after the end of each fiscal year, the DoD Components shall forward to the PDUSD(P&R) the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected (as defined in § 260.3 of this part, excluding income exempt from the income sharing requirements by § 260.6(d)(3) of this part), and the amount of such vending machine income disbursed to State licensing agencies in each State. These reporting requirements have been assigned Report Control Symbol DD–P&R(A)2210, according to DoD 8910.1–M, ''Department of Defense Procedures for

[2] See the U.S. Department of Education Web site, Office of Special Education and Rehabilitative Services at *http://www.ed.gov.*

Management of Information Requirements.'' [3]

Dated: November 20, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28356 Filed 11–25–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2009–1039]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, and Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between March 2005 and November 2008, that expired before they could be published in the **Federal Register.** This notice lists temporary safety zones, security zones, special local regulations, and drawbridge operation regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules between March 26, 2005 and November 29, 2008 that became effective and were terminated before they could be published in the **Federal Register.**

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.** Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between March 2005 and November 2008 unless otherwise indicated.

Dated: November 20, 2009.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

2ND QUARTER 2008 LISTING

Docket No.	Location	Type	Effective date
CGD08–06–017	Illinois Waterway, IL	Drawbridge Operation Regulation (Part 117)	4/24/2006
CGD09–06–115	Frankfort, MI	Safety Zones (Parts 147 and 165)	9/2/2008
CGD09–08–019	Chicago, IL	Safety Zones (Parts 147 and 165)	5/15/2008
CGD09–08–020	Algonac, MI	Safety Zones (Parts 147 and 165)	6/2/2008
CGD09–08–026	Toledo, OH	Safety Zones (Parts 147 and 165)	5/24/2008
CGD09–08–031	Detroit, MI	Safety Zones (Parts 147 and 165)	7/21/2008
CGD09–08–033	Milwaukee, WI	Safety Zones (Parts 147 and 165)	6/5/2008
CGD09–08–051	Paradise, MI	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–054	Put In Bay, OH	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–057	Cedarville, MI	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–058	Munising, MI	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–059	Sault Ste. Marie, MI	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–067	Detroit, MI	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–081	Harrisville, MI	Safety Zones (Parts 147 and 165)	7/7/2008

[3] Available from *http://www.dtic.mil/whs/directives/corres/pdf/891001m.pdf.*

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
CGD09–08–082	AuGres, MI	Safety Zones (Parts 147 and 165)	7/1/2008
CGD09–08–083	Lorain, OH	Safety Zones (Parts 147 and 165)	7/8/2008
CGD09–08–084	Alpena, MI	Safety Zones (Parts 147 and 165)	7/4/2008
CGD09–08–085	Cleveland, OH	Safety Zones (Parts 147 and 165)	7/14/2008
CGD09–08–086	Marquette, MI	Safety Zones (Parts 147 and 165)	7/5/2008
CGD09–08–087	Grosse Pointe Park, MI	Safety Zones (Parts 147 and 165)	7/7/2008
CGD09–08–087	Bay Village, OH	Safety Zones (Parts 147 and 165)	7/22/2008
CGD09–08–089	Port Huron, MI	Safety Zones (Parts 147 and 165)	7/11/2008
CGD09–08–090	Tonawanda, NY	Safety Zones (Parts 147 and 165)	7/22/2008
CGD09–08–091	Detroit, MI	Safety Zones (Parts 147 and 165)	7/13/2008
CGD09–08–092	Harbor Beach, MI	Safety Zones (Parts 147 and 165)	7/14/2008
CGD09–08–093	Marinette, WI	Safety Zones (Parts 147 and 165)	7/20/2008
CGD09–08–094	Oswego, NY	Safety Zones (Parts 147 and 165)	7/25/2008
CGD09–08–095	Cleveland, OH	Safety Zones (Parts 147 and 165)	7/28/2008
CGD09–08–097	Trenton, MI	Safety Zones (Parts 147 and 165)	7/21/2008
CGD09–08–098	Trenton, MI	Safety Zones (Parts 147 and 165)	7/20/2008
CGD09–08–100	St. Clair, MI	Safety Zones (Parts 147 and 165)	7/27/2008
CGD09–08–101	Sault Ste. Marie, MI	Safety Zones (Parts 147 and 165)	7/28/2008
CGD09–08–103	Baldwinsville, NY	Safety Zones (Parts 147 and 165)	9/15/2008
CGD09–08–106	Erie, PA	Safety Zones (Parts 147 and 165)	8/10/2008
CGD09–08–114	Detroit, MI	Safety Zones (Parts 147 and 165)	9/1/2008
CGD09–08–117	Detroit, MI	Safety Zones (Parts 147 and 165)	8/31/2008
CGD09–08–118	Cleveland, OH	Safety Zones (Parts 147 and 165)	9/1/2008
CGD09–08–121	Cleveland, OH	Safety Zones (Parts 147 and 165)	9/8/2008
CGD11–06–004	San Francisco Bay, CA	Special Local Regulation (Part 100)	7/21/2008
CGD11–06–008	San Francisco Bay, CA	Special Local Regulation (Part 100)	5/26/2008
CGD11–06–009	San Francisco, CA	Drawbridge Operation Regulation (Part 117)	7/30/2008
CGD11–06–044	Knights Landing, CA	Drawbridge Operation Regulation (Part 117)	11/29/2008
CGD11–08–001	San Francisco, CA	Drawbridge Operation Regulation (Part 117)	1/26/2008
CGD13–06–021	Seattle, WA	Safety Zones (Parts 147 and 165)	5/6/2006
CGD13–06–022	Portland, OR	Safety Zones (Parts 147 and 165)	5/12/2006
CGD13–06–024	Olympia, WA	Security Zones (Part 165)	5/28/2006
CGD13–06–032	Tacoma, WA	Safety Zones (Parts 147 and 165)	7/2/2006
CGD13–06–033	Tacoma, WA	Safety Zones (Parts 147 and 165)	7/4/2006
CGD13–06–035	Warrenton, OR	Safety Zones (Parts 147 and 165)	7/14/2006
CGD13–06–036	Lake Washington, WA	Special Local Regulation (Parts 100)	8/3/2006
CGD13–06–039	Dyes Inlet, WA	Safety Zones (Parts 147 and 165)	8/19/2006
CGD13–06–040	Duwamish River, WA	Safety Zones (Parts 147 and 165)	8/16/2006
CGD13–06–055	Portland, OR	Safety Zones (Parts 147 and 165)	12/14/2006
CGD13–06–056	Puget Sound, WA	Safety Zones (Parts 147 and 165)	12/14/2006
CGD13–07–018	Olympia, WA	Safety Zones (Parts 147 and 165)	5/31/2007
CGD13–07–024	Lake Washington, WA	Safety Zones (Parts 147 and 165)	8/4/2007
CGD13–07–026	Lake Washington, WA	Special Local Regulation (Part 100)	8/2/2007
CGD13–07–027	Seattle, WA	Safety Zones (Parts 147 and 165)	8/1/2007
CGD13–07–039	Portland, OR	Safety Zones (Parts 147 and 165)	10/7/2007
CGD13–07–057	Portland, OR	Safety Zones (Parts 147 and 165)	12/27/2007
CGD13–08–008	Portland, OR	Safety Zones (Parts 147 and 165)	1/24/2008
CGD13–08–009	Puget Sound, WA	Security Zones (Part 165)	1/25/2008
CGD13–08–012	Portland, OR	Safety Zones (Parts 147 and 165)	2/5/2008
CGD13–08–014	Seattle, WA	Security Zones (Part 165)	8/1/2008
CGD13–08–015	Elliott Bay, WA	Security Zones (Part 165)	2/7/2008
CGD13–08–016	Tillamook Bay, OR	Safety Zones (Parts 147 and 165)	2/8/2008
CGD13–08–018	Portland, OR	Safety Zones (Parts 147 and 165)	2/15/2008
COTP Charleston 06–008	Charleston, SC	Safety Zones (Parts 147 and 165)	1/13/2006
COTP Charleston 06–025	Charleston, SC	Safety Zones (Parts 147 and 165)	2/15/2006
COTP Charleston 06–054	Charleston, SC	Safety Zones (Parts 147 and 165)	5/6/2006
COTP Charleston 06–085	Mount Pleasant, SC	Security Zones (Part 165)	5/4/2006
COTP Guam 06–002	Apra Harbor, GU	Safety Zones (Parts 147 and 165)	2/8/2006
COTP Guam 06–003	Tatague Basin, GU	Safety Zones (Parts 147 and 165)	2/26/2006
COTP Guam 06–007	Philippine Sea, GU	Safety Zones (Parts 147 and 165)	4/22/2006
COTP Honolulu 06–006	Honolulu, HI	Security Zones (Part 165)	10/6/2006
COTP Jacksonville 06–075	Fernandina Beach, FL	Safety Zones (Parts 147 and 165)	5/5/2006
COTP Jacksonville 06–076	Palatka, FL	Safety Zones (Parts 147 and 165)	5/26/2006
COTP Jacksonville 06–077	Augustine, FL	Safety Zones (Parts 147 and 165)	5/28/2006
COTP Jacksonville 06–102	Jacksonville, FL	Safety Zones (Parts 147 and 165)	7/22/2006
COTP Jacksonville 06–117	Green Cove Springs, FL	Safety Zones (Parts 147 and 165)	5/29/2006
COTP Jacksonville 06–225	Kissimmee, FL	Safety Zones (Parts 147 and 165)	12/9/2006
COTP Jacksonville 06–229	Merritt Island, FL	Safety Zones (Parts 147 and 165)	12/1/2006
COTP Jacksonville 06–258	Jacksonville, FL	Safety Zones (Parts 147 and 165)	11/25/2006
COTP Miami 06–202	Broward, FL	Special Local Regulation (Part 100)	12/17/2006
COTP Miami 07–002	Miami, FL	Security Zones (Part 165)	2/2/2007
COTP Miami 07–016	Miami, FL	Safety Zones (Parts 147 and 165)	1/25/2007

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP Miami 07–018	Miami, FL	Safety Zones (Parts 147 and 165)	1/25/2007
COTP Miami 07–025	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	2/9/2007
COTP Miami 07–033	Miami, FL	Safety Zones (Parts 147 and 165)	4/28/2007
COTP Miami 07–042	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	3/14/2007
COTP Miami 07–042	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	3/14/2007
COTP Miami 07–049	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	3/9/2007
COTP Miami 07–064	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	5/19/2007
COTP Miami 07–071	Golden Beach, FL	Safety Zones (Parts 147 and 165)	3/26/2007
COTP Miami 07–080	West Palm Beach, FL	Safety Zones (Parts 147 and 165)	5/6/2007
COTP Miami 07–088	Miami Beach, FL	Safety Zones (Parts 147 and 165)	4/18/2007
COTP Miami 07–096	Port Everglades, FL	Security Zones (Part 165)	4/30/2007
COTP Miami 07–097	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Miami 07–099	Miami, FL	Safety Zones (Parts 147 and 165)	4/29/2007
COTP Miami 07–101	Miami, FL	Safety Zones (Parts 147 and 165)	4/21/2007
COTP Miami 07–105	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Miami 07–106	Miami, FL	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Miami 07–113	Miami, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Miami 07–118	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	6/4/2007
COTP Miami 07–119	Miami, FL	Security Zones (Part 165)	6/10/2007
COTP Miami 07–124	Miami, FL	Safety Zones (Parts 147 and 165)	6/2/2007
COTP Miami 07–135	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	6/1/2007
COTP Miami 07–176	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	7/18/2007
COTP Mobile–05–051	Mobile, AL	Safety Zones (Parts 147 and 165)	5/23/2006
COTP Mobile–06–001	Destin, FL	Safety Zones (Parts 147 and 165)	4/7/2006
COTP Mobile–06–003	Panama City, FL	Safety Zones (Parts 147 and 165)	8/20/2006
COTP Mobile–06–004	Pensacola, FL	Safety Zones (Parts 147 and 165)	3/22/2006
COTP Mobile–06–005	Pensacola, FL	Safety Zones (Parts 147 and 165)	3/19/2006
COTP Mobile–06–006	Biloxi, MS	Safety Zones (Parts 147 and 165)	3/6/2006
COTP Mobile–06–007	Mobile, AL	Safety Zones (Parts 147 and 165)	3/6/2006
COTP Mobile–06–008	Pensacola, FL	Safety Zones (Parts 147 and 165)	3/7/2006
COTP Mobile–06–014	Mobile, AL	Safety Zones (Parts 147 and 165)	5/23/2006
COTP Mobile–06–016	Mobile, AL	Safety Zones (Parts 147 and 165)	6/10/2006
COTP Mobile–06–017	Panama City, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Mobile–06–018	Panama City, FL	Safety Zones (Parts 147 and 165)	6/12/2006
COTP Mobile–06–020	Demopolis, AL	Safety Zones (Parts 147 and 165)	7/14/2006
COTP Mobile–06–021	Pensacola, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Mobile–06–022	Orange Beach, AL	Safety Zones (Parts 147 and 165)	8/19/2006
COTP Mobile–06–023	Gulfport, MS	Safety Zones (Parts 147 and 165)	7/19/2006
COTP Mobile–06–024	Destin, FL	Safety Zones (Parts 147 and 165)	11/14/2006
COTP Mobile–06–025	St. Louis, MS	Safety Zones (Parts 147 and 165)	8/14/2006
COTP Mobile–06–027	Walton Beach, FL	Safety Zones (Parts 147 and 165)	9/21/2006
COTP Mobile–06–028	Pascagoula, MS	Safety Zones (Parts 147 and 165)	9/19/2006
COTP Mobile–06–029	Pascagoula, MS	Safety Zones (Parts 147 and 165)	9/22/2006
COTP Mobile–06–030	Panama City, FL	Safety Zones (Parts 147 and 165)	10/28/2006
COTP Mobile–06–031	Mobile, AL	Safety Zones (Parts 147 and 165)	10/21/2006
COTP Mobile–06–032	Pensacola, FL	Security Zones (Part 165)	11/9/2006
COTP Mobile–07–010	Pensacola Bay, FL	Safety Zones (Parts 147 and 165)	3/12/2007
COTP Mobile–07–011	Pensacola Bay, FL	Safety Zones (Parts 147 and 165)	3/14/2007
COTP Mobile–07–015	Pascagoula, MS	Safety Zones (Parts 147 and 165)	4/18/2007
COTP Mobile–07–016	Santa Rosa Island, FL	Safety Zones (Parts 147 and 165)	5/30/2007
COTP Mobile–07–017	Pensacola Beach, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Mobile–07–020	Biloxi, MS	Safety Zones (Parts 147 and 165)	5/11/2007
COTP Morgan City–06–001	Morgan City, LA	Safety Zones (Parts 147 and 165)	1/24/2006
COTP Morgan City–06–006	Morgan City, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP Morgan City–06–007	Morgan City, LA	Safety Zones (Parts 147 and 165)	10/12/2006
COTP Morgan City–07–007	Morgan City, LA	Safety Zones (Parts 147 and 165)	8/13/2007
COTP Morgan City–07–011	Morgan City, LA	Safety Zones (Parts 147 and 165)	9/26/2007
COTP Morgan City–07–016	Morgan City, LA	Safety Zones (Parts 147 and 165)	10/12/2007
COTP Morgan City–08–003	Morgan City, LA	Safety Zones (Parts 147 and 165)	3/13/2008
COTP New Orleans–05–055	Angoa, LA	Safety Zones (Parts 147 and 165)	8/8/2005
COTP New Orleans–05–056	Plaquemine, LA	Safety Zones (Parts 147 and 165)	8/10/2005
COTP New Orleans–05–057	Jonesville, LA	Safety Zones (Parts 147 and 165)	8/22/2005
COTP New Orleans–05–080	Natchez, MS	Safety Zones (Parts 147 and 165)	10/8/2005
COTP New Orleans–05–081	Natchez, MS	Safety Zones (Parts 147 and 165)	10/9/2005
COTP New Orleans–05–082	Natchez, MS	Safety Zones (Parts 147 and 165)	10/14/2005
COTP New Orleans–05–083	Natchez, MS	Safety Zones (Parts 147 and 165)	10/15/2005
COTP New Orleans–05–084	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/10/2005
COTP New Orleans–05–085	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/12/2005
COTP New Orleans–05–086	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/14/2005
COTP New Orleans–05–087	Pilottown, LA	Safety Zones (Parts 147 and 165)	10/28/2005
COTP New Orleans–05–088	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	11/5/2005
COTP New Orleans–05–089	Lake Providence, LA	Safety Zones (Parts 147 and 165)	10/23/2005

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP New Orleans–05–090	Angoa, LA	Safety Zones (Parts 147 and 165)	10/31/2005
COTP New Orleans–05–091	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/28/2005
COTP New Orleans–05–092	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/22/2005
COTP New Orleans–05–094	Shreveport-Bossier City, LA	Safety Zones (Parts 147 and 165)	11/26/2005
COTP New Orleans–05–095	Monroe, LA	Safety Zones (Parts 147 and 165)	12/17/2005
COTP New Orleans–05–096	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/25/2005
COTP New Orleans–05–097	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/28/2005
COTP New Orleans–05–098	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/30/2005
COTP New Orleans–05–099	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	12/2/2005
COTP New Orleans–05–100	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/1/2005
COTP New Orleans–05–104	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/20/2005
COTP New Orleans–05–105	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/22/2005
COTP New Orleans–06–001	New Orleans, LA	Safety Zones (Parts 147 and 165)	1/18/2006
COTP New Orleans–06–002	St James, LA	Safety Zones (Parts 147 and 165)	1/16/2006
COTP New Orleans–06–003	New Orleans, LA	Safety Zones (Parts 147 and 165)	2/27/2006
COTP New Orleans–06–004	Pilottown, LA	Safety Zones (Parts 147 and 165)	2/4/2006
COTP New Orleans–06–005	New Orleans, LA	Safety Zones (Parts 147 and 165)	3/4/2006
COTP New Orleans–06–006	Chalmette, LA	Safety Zones (Parts 147 and 165)	3/7/2006
COTP New Orleans–06–007	New Orleans, LA	Security Zones (Part 165)	3/8/2006
COTP New Orleans–06–008	Chalmette, LA	Safety Zones (Parts 147 and 165)	3/10/2006
COTP New Orleans–06–009	New Orleans, LA	Safety Zones (Parts 147 and 165)	4/9/2006
COTP New Orleans–06–010	Chalmette, LA	Safety Zones (Parts 147 and 165)	3/14/2006
COTP New Orleans–06–012	New Orleans, LA	Security Zones (Part 165)	4/27/2006
COTP New Orleans–06–013	New Orleans, LA	Safety Zones (Parts 147 and 165)	5/17/2006
COTP New Orleans–06–014	New Orleans, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP New Orleans–06–015	New Orleans, LA	Safety Zones (Parts 147 and 165)	6/7/2006
COTP New Orleans–06–016	Harvey, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans–06–017	New Orleans, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans–06–018	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans–06–019	Luling, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP New Orleans–06–020	Donaldsonville, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP New Orleans–06–021	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans–06–033	Longwood, LA	Safety Zones (Parts 147 and 165)	9/2/2006
COTP New Orleans–06–034	Convent, LA	Safety Zones (Parts 147 and 165)	10/1/2006
COTP New Orleans–06–035	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/4/2006
COTP New Orleans–06–037	Algiers, LA	Safety Zones (Parts 147 and 165)	10/16/2006
COTP New Orleans–06–038	Donaldsonville, LA	Safety Zones (Parts 147 and 165)	10/16/2006
COTP New Orleans–06–039	Kenner, LA	Safety Zones (Parts 147 and 165)	10/16/2006
COTP New Orleans–06–040	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/8/2006
COTP New Orleans–06–042	Port Allen, LA	Safety Zones (Parts 147 and 165)	12/16/2006
COTP New Orleans–06–043	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	12/1/2006
COTP New Orleans–06–045	Metairie, LA	Safety Zones (Parts 147 and 165)	12/31/2006
COTP New Orleans–06–046	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/31/2006
COTP New Orleans–06–047	Donaldsonville, LA	Safety Zones (Parts 147 and 165)	12/31/2006
COTP Ohio Valley 06–033	Cincinnati, OH	Safety Zones (Parts 147 and 165)	7/8/2006
COTP Ohio Valley 06–038	Louisville, KY	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Ohio Valley 06–047	Huntington, WV	Safety Zones (Parts 147 and 165)	8/13/2006
COTP Ohio Valley 06–050	Huntsville, AL	Safety Zones (Parts 147 and 165)	8/31/2006
COTP Ohio Valley 06–053	Louisville, KY	Safety Zones (Parts 147 and 165)	10/21/2006
COTP Ohio Valley 07–007	Louisville, KY	Security Zones (Part 165)	3/2/2007
COTP Ohio Valley 07–042	Clarksville, TN	Safety Zones (Parts 147 and 165)	9/8/2007
COTP Ohio Valley–06–029	Cape Girardeau, MO	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Ohio Valley–06–035	Kingston, TN	Safety Zones (Parts 147 and 165)	7/2/2006
COTP Ohio Valley–06–037	Louisville, KY	Safety Zones (Parts 147 and 165)	7/3/2006
COTP Ohio Valley–06–039	Cincinnati, OH	Safety Zones (Parts 147 and 165)	7/8/2006
COTP Ohio Valley–06–046	Richmond, OH	Safety Zones (Parts 147 and 165)	8/20/2006
COTP Ohio Valley–06–048	Cincinnati, OH	Security Zones (Part 165)	9/22/2006
COTP Ohio Valley–06–049	Florence, AL	Safety Zones (Parts 147 and 165)	8/3/2006
COTP Ohio Valley–06–051	Cincinnati, OH	Safety Zones (Parts 147 and 165)	10/3/2006
COTP Ohio Valley–06–052	Charleston, WV	Safety Zones (Parts 147 and 165)	10/7/2006
COTP Ohio Valley–06–054	Kingston, TN	Safety Zones (Parts 147 and 165)	11/14/2006
COTP Ohio Valley–06–055	Parkersburg, WV	Safety Zones (Parts 147 and 165)	11/4/2006
COTP Ohio Valley–07–009	Louisville, KY	Safety Zones (Parts 147 and 165)	4/19/2007
COTP Ohio Valley–07–012	Pickwick Dam, TN	Safety Zones (Parts 147 and 165)	5/5/2007
COTP Port Arthur–06–012	Sweet Lake, LA	Safety Zones (Parts 147 and 165)	12/4/2006
COTP Port Arthur–06–015	Orange, TX	Safety Zones (Parts 147 and 165)	6/25/2006
COTP Port Arthur–06–016	Lake Charles, LA	Safety Zones (Parts 147 and 165)	6/21/2006
COTP Port Arthur–06–018	Orange, TX	Safety Zones (Parts 147 and 165)	7/8/2006
COTP Port Arthur–06–019	Orange, TX	Safety Zones (Parts 147 and 165)	7/20/2006
COTP Port Arthur–06–020	Port Arthur, TX	Safety Zones (Parts 147 and 165)	8/11/2006
COTP Port Arthur–06–022	Port Arthur, TX	Safety Zones (Parts 147 and 165)	9/11/2006
COTP Port Arthur–06–023	Orange, TX	Safety Zones (Parts 147 and 165)	10/8/2006

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Docket No.	Location	Type	Effective date
COTP Port Arthur–06–024	Port Arthur, TX	Safety Zones (Parts 147 and 165)	10/22/2006
COTP Port Arthur–06–025	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/5/2006
COTP Port Arthur–06–026	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/15/2006
COTP Port Arthur–06–027	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/24/2006
COTP Port Arthur–06–028	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/19/2006
COTP Port Arthur–06–029	Orange, TX	Safety Zones (Parts 147 and 165)	12/5/2006
COTP Port Arthur–06–030	Port Arthur, TX	Safety Zones (Parts 147 and 165)	12/3/2006
COTP Port Arthur–06–031	Port Arthur, TX	Safety Zones (Parts 147 and 165)	12/10/2006
COTP Port Arthur–06–032	Orange, TX	Safety Zones (Parts 147 and 165)	12/21/2006
COTP Prince William Sound 07–001.	Valdez, AK	Safety Zones (Parts 147 and 165)	4/29/2007
COTP San Diego 05–030	Lake Havasu, AZ	Safety Zones (Parts 147 and 165)	3/26/2005
COTP San Diego 05–053	San Diego, CA	Safety Zones (Parts 147 and 165)	10/11/2005
COTP San Diego 05–061	San Diego, CA	Safety Zones (Parts 147 and 165)	7/15/2005
COTP San Diego 05–080	San Diego, CA	Safety Zones (Parts 147 and 165)	12/11/2005
COTP San Diego 05–091	San Diego, CA	Safety Zones (Parts 147 and 165)	7/24/2005
COTP San Diego 05–093	San Diego, CA	Safety Zones (Parts 147 and 165)	8/2/2005
COTP San Diego 05–097	San Diego, CA	Safety Zones (Parts 147 and 165)	8/18/2005
COTP San Diego 05–100	San Diego, CA	Safety Zones (Parts 147 and 165)	10/1/2005
COTP San Diego 05–102	San Diego, CA	Safety Zones (Parts 147 and 165)	11/13/2005
COTP San Diego 07–004	San Diego, CA	Security Zones (Part 165)	6/18/2007
COTP San Diego 07–005	San Diego, CA	Safety Zones (Parts 147 and 165)	7/7/2007
COTP San Diego 07–025	Laughlin, NV	Safety Zones (Parts 147 and 165)	4/30/2007
COTP San Diego 07–043	San Diego, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–052	Mission Bay, CA	Safety Zones (Parts 147 and 165)	12/31/2007
COTP San Diego 07–069	San Diego Bay, CA	Special Local Regulation (Part 100)	7/4/2007
COTP San Diego 07–074	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	5/15/2007
COTP San Diego 07–152	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	7/3/2007
COTP San Diego 07–251	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	6/30/2007
COTP San Diego 07–252	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–352	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–452	Ocean Beach, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–552	Ocean Beach, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP St. Petersburg 06–081	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	4/25/2006
COTP St. Petersburg 06–105	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	5/28/2006
COTP St. Petersburg 06–124	Ft. Myers, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP St. Petersburg 06–137	Marco Island, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP St. Petersburg 06–138	Venice Inlet, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP St. Petersburg 06–139	Bradenton Beach, FL	Safety Zones (Parts 147 and 165)	7/3/2006
COTP St. Petersburg 06–170	San Carlos Bay, FL	Safety Zones (Parts 147 and 165)	8/5/2006
COTP St. Petersburg 06–255	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	11/23/2006

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0664; FRL–8985–2]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Indiana; Chicago and Evansville Nonattainment Areas; Determination of Attainment of the Fine Particle Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Chicago-Gary-Lake County, Illinois-Indiana (''Chicago'') and Evansville, Indiana nonattainment areas have attained the 1997 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). These determinations are based upon quality-assured and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2006 to 2008 monitoring period. Currently available preliminary data for 2009 are consistent with continued attainment of the standard. As a result of these determinations, the requirements for these areas to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress plan (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard are suspended for so long as the areas continue to attain the 1997 $PM_{2.5}$ NAAQS.

DATES: This final rule is effective on November 27, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2009–0664. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Melissa M. Barnhart,

Environmental Scientist, at (312) 353–8641 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Melissa M. Barnhart, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8641, *barnhart.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Actions Is EPA Taking?
II. What Did EPA Propose?
A. Chicago Area
B. Evansville Area
III. What Comments Did EPA Receive and What Are EPA's Responses?
IV. What Is the Effect of These Actions?
V. When Are These Actions Effective?
VI. Statutory and Executive Order Reviews

I. What Actions Is EPA Taking?

EPA is determining that the Chicago nonattainment area (including portions in Illinois and Indiana) and the Evansville, Indiana nonattainment area have attained the 1997 $PM_{2.5}$ NAAQS. These determinations are based upon quality-assured and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2006–2008 monitoring period. Preliminary data available to date for 2009 are consistent with continued attainment of the standard.

II. What Did EPA Propose?

EPA proposed that the Chicago area (including portions in Illinois and Indiana) and the Evansville, Indiana area have attained the 1997 $PM_{2.5}$ NAAQS. EPA published these proposed determinations on September 24, 2009, at 74 FR 48690. Further details of EPA's review are available in the proposed rule.

A. Chicago Area

EPA reviewed the ambient air monitoring data for the Chicago area in accordance with the provisions of 40 CFR Part 50 Appendix N. All data considered have been recorded in EPA's Air Quality System (AQS) database. The review primarily addressed air quality data collected in the three-year period from 2006 to 2008.

Of sites with data to be compared to the annual standard, the highest three-year average annual concentration for 2006 to 2008 in the Chicago area was recorded at the Schiller Park site, site number 17–031–3103, observing a three-year average annual concentration of 14.6 micrograms per cubic meter ($\mu g/m^3$). As discussed in the proposed rule, even the sites that are not for comparison to the annual standard are observing average concentrations below the standard. The highest 98th percentile 24-hour average concentration is recorded at the McCook site, site number 17–031–1016, recording a three-year average 98th percentile 24-hour average concentration of 35 $\mu g/m^3$. Thus, all sites in the area have three-year average annual $PM_{2.5}$ concentrations below 15.0 $\mu g/m^3$ and three-year average 98th percentile 24-hour average concentrations far below the 1997 standard of 65 $\mu g/m^3$.[1] See 74 FR 48692, including footnote 1.

Further consideration of concentrations at Cicero, site 17–031–6005, was necessary because data at this site do not meet completeness requirements, and because the site monitored a violation for the most recent three years with complete data, i.e. 2005 to 2007. A detailed review of concentrations at the Cicero site in relation to concentrations at other similar sites in the Chicago area is provided in the proposed rule. Based on this review, EPA stated its belief that the Cicero site, like other sites in the area, is attaining the $PM_{2.5}$ standards for the 2006 to 2008 period. 74 FR 48692–48693.

In addition, the averages of available 2009 data from all monitors still operating in the Chicago nonattainment area are at or below the average for corresponding periods in 2006 to 2008, and the 98th percentile of available 24-hour average concentrations is again more than 30 $\mu g/m^3$ below the pertinent standard. Therefore, the available data for 2009 are consistent with the finding, based on 2006 to 2008 data, that the Chicago area is attaining the 1997 $PM_{2.5}$ standards.

B. Evansville Area

EPA reviewed the ambient air monitoring data for the Evansville area in accordance with the provisions of 40 CFR Part 50 Appendix N. All data considered have been recorded in EPA's AQS database. The review primarily addressed air quality data collected at six monitoring sites in the three-year period from 2006 to 2008.

The highest annual average $PM_{2.5}$ concentration in the Evansville nonattainment area for the 2006–2008 monitoring period was 13.7 $\mu g/m^3$, which occurred both at the Jasper Golf site (site 18–037–0005, in Dubois County) and at the Evansville/West Mill Road site (site 18–163–0012, in Vanderburgh County). The Evansville area also has four additional monitors with data for 2006 to 2008, at which the 2006–2008 three-year average annual concentrations ranged from 13.4 to 13.6 $\mu g/m^3$. The average 98th percentile 24-hour concentrations ranged from 28 to 32 $\mu g/m^3$. Thus, the Evansville area is observing concentrations well below the 1997 standards of 15.0 $\mu g/m^3$ and 65 $\mu g/m^3$, respectively.

The proposed rule notes a completeness criterion that a site record valid data for at least 75 percent of the scheduled sampling days for each quarter within the applicable three-year period. See 40 CFR 50 Appendix N 4.1. Three sites in the Evansville area, namely the Evansville/West Mill Road site in Vanderburgh County and the Jasper Golf site and the Jasper Sport Complex site in Dubois County, did not meet this completeness criterion. For these sites, as explained in the proposal (74 FR 48694), EPA conducted a conservative data substitution analysis, assessing whether the site would still have observed attainment under the hypothesis that the monitor on the days of missed samples might have recorded the highest concentration that the monitor observed during the applicable quarter during the 2006 to 2008 period.[2] Both the Jasper Golf site and the Evansville/West Mill Road site had one or more quarters in 2006 to 2008 that measured less than 75 percent complete data, but in both cases the substitution analysis indicates that the monitors would have shown attainment even with conservative assumptions about the missing data.

At the Jasper Sport Complex site (site 18–037–0004, in Dubois County), the data substitution approach using the highest concentration that the monitor observed during the applicable quarter during the 2006 to 2008 period did not yield a firm conclusion as to whether the site is attaining the annual standard. This site began operation in early 2006 (January 29, 2006), and so earlier (e.g. 2005 to 2007) three-year averages were not available. As EPA explained in its proposal (74 FR 48694), another method available to evaluate these data is to examine the data at this site in relation to data at other similar sites in the area, to judge the likelihood that the monitor

[1] EPA erroneously reported the annual average for the Burr Street site, site number 18–089–0026, as 14.9 $\mu g/m^3$; the correct value is 14.8 $\mu g/m^3$.

[2] This conservative substitution test to confirm a passing design value that is based on incomplete data is explained in the EPA guidance document ''Guideline On Data Handling Conventions For The PM NAAQS,'' EPA–454/R–99–008, April 1999, at page 16. (*http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf*).

would have shown attainment had it collected complete data. The available data at this site have always indicated annual average concentrations below 15.0 μg/m³ and 24-hour concentrations below 65 μg/m³. The available data at this site are similar to the data at other nearby sites in the area. Therefore, EPA believes this site, like the other sites in the Evansville area, is attaining the standards. In addition, all sites with data from 2005 to 2007 recorded measurements showing attainment for that period as well. Therefore, EPA proposed to find that all sites in the Evansville area, including sites that did not meet the 75 percent completeness requirement, are now meeting the 1997 NAAQS. See 40 CFR 50 Appendix N 4.1 and 4.2.

In addition, EPA examined data from the first half of 2009. For each site, the average of available 2009 data is at or below the average for corresponding periods in 2006 to 2008 and the 98th percentile of available 24-hour average concentrations is again more than 30 μg/m³ below the pertinent standard. Therefore, EPA observed that the available data for 2009 are consistent with the finding, based on 2006 to 2008 data, that the Evansville area is attaining the 1997 $PM_{2.5}$ standards.

III. What Comments Did EPA Receive and What Are EPA's Responses?

EPA received a total of four sets of comments in response to these actions, including comments by Indiana Steel Environmental Group (ISEG), the Northwest Indiana Forum, Valley Watch, Inc., and one anonymous commenter. ISEG and the Northwest Indiana Forum supported EPA's proposed determinations of attainment of the 1997 $PM_{2.5}$ NAAQS for the Chicago and Evansville areas. In this section, EPA responds to the adverse comments received in response to the September 24, 2009, proposed rulemaking. EPA did not receive any adverse comments specifically directed at its proposed determination of attainment for the Chicago area.

Comment: Valley Watch requests that EPA accept its ''comments objecting to EPA's proposal to redesignate the Evansville, IN area to 'attainment' of the 1997 standard for $PM_{2.5}$.'' Valley Watch also submitted to this rulemaking the same comments that it submitted to the Indiana Department of Environmental Management (IDEM) in March 2008, at a State hearing on the State's planned petition for redesignation of the Evansville area. Many of those comments include contentions about the health effects of $PM_{2.5}$, the status of the Clean Air Interstate Rule (CAIR), and the potential impact of new power plants that Valley Watch believes will increase emissions of fine particulate matter precursors. Valley Watch also expressed its concern that the recent economic downturn is responsible for temporary decreases in concentrations of $PM_{2.5}$, and thus the ''low'' levels of particulate matter being measured are not due to permanent and enforceable emissions limitations.

Response: As EPA stated in its proposal (74 FR 48695), EPA in this rulemaking is merely determining that the Evansville area is attaining the 1997 $PM_{2.5}$ standards, based on the most recent three years of quality assured air monitoring data. EPA is not redesignating the area under section 107(d)(3)(E) of the Clean Air Act (CAA). EPA is not evaluating whether any of the other criteria for redesignation, as set forth in section 107(d)(3)(E) of the CAA, have been met. The only issue before EPA in this rulemaking is whether the air quality monitored in the area meets the 1997 $PM_{2.5}$ standards. Therefore, any comments that address other issues pertaining to redesignation, and that do not address the question of whether, as a matter of air quality, the area is attaining the 1997 $PM_{2.5}$ standards, are not relevant to this rulemaking. For example, the causes of air quality levels—whether they are due to permanent and enforceable emissions reductions and whether such reductions will be maintained over time—are not addressed in a determination of attainment. Nor is there any relevance for this rulemaking of commenter's assertions regarding the impact of CAIR or other regulatory regimes or emissions from prospective new power plants. If, in the future, EPA determines that the area has lapsed out of attainment with the standards, EPA would take action to withdraw its determination of attainment. Thus, comments addressing issues other than whether air quality currently meets the 1997 $PM_{2.5}$ standards are not relevant to this determination of attainment.

Comment: Valley Watch contends that there are ''huge gaps'' in the data for 2006–2007, and that this action should not go forward until more data are collected. The commenter claims that gaps of 13 percent and 16 percent occurred in 2006 and 2007, respectively, when ''mysteriously or perhaps fraudulently data seemed to just disappear at times when fine particle levels were elevating at other regional monitors.'' Valley Watch submitted these comments to Indiana on March 27, 2008, in response to a State solicitation of comments on a prospective request for redesignation of the Evansville area; Valley Watch then attached those comments to its comments on EPA's proposed clean data determination.

The commenter focuses on data at the Evansville Civic Center monitor (site number 18–163–0006). The commenter in particular notes for this site that ''[i]n June, six out of ten measurements are missing. In August, five out ten measurements are also missing.''

Response: The Evansville Civic Center site has two operating instruments. The shortfall in data collection noted by the commenter occurred in 2007 for one of these instruments (''Instrument 1''). However, many of the days lacking valid data at Instrument 1 had valid data at Instrument 2. Since both instruments collect equally valid data, EPA views valid data from Instrument 2 as a suitable substitute for missing data from Instrument 1, and in fact EPA treats the site as having valid data for such days.[3] In particular for June and August of 2007, EPA finds that seven of the ten scheduled sampling days in June 2007 and nine of the eleven scheduled sampling days in August 2007 had valid data. Similarly for the full year, using data from Instrument 2 where data are missing from Instrument 1, EPA finds for 2007 for example that this site has valid data for 92 percent of the days, not 84 percent.

The commenter expresses concern that the days it considers to lack data may disproportionately be days with high concentrations. Indeed, for the six days in the two months at the site especially in question (June and August 2007 at the Civic Center site) for which Instrument 2 obtained valid data and Instrument 1 did not, the average concentration was 20.0 μg/m³. The commenter may believe that availability of more complete data and inclusion of that data in the calculation of average concentrations at the Civic Center would have yielded a computed violation. However, in EPA's view, a majority of the days that the commenter considers to lack data in fact have data, and EPA included those data in its computation of average concentrations. The results, as reported in the proposed rulemaking, are well below the applicable standard. EPA has no reason to believe that the days without data on average would have had concentrations higher (or lower) than the average for the applicable quarter, *e.g.,* that the days without data in the third quarter of 2007

[3] The use of data from a second instrument in place of missing data from the first instrument is explained in the EPA guidance document ''Guideline On Data Handling Conventions For The PM NAAQS,'' EPA–454/R–99–008, April 1999, at page 16. (*http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf*)

at this site on average would have had concentrations higher than the quarterly average of 18.27 μg/m³, much less that the data on average would have been enough higher to yield a three-year average greater than 15.0 μg/m³. Inasmuch as the combined data set from the two instruments meets the data completeness requirements of 40 CFR part 50 Appendix N 4.1(b), EPA believes that sufficient data are available to have adequate confidence in the result, *i.e.,* that the site is attaining the standards.

EPA computes annual average concentration through a multi-step process in which it first computes quarterly average concentrations and then computes each year's average concentration as an average of the four quarterly average concentrations. This process assures that the four quarters are equally represented in the computation of the annual average, so that differences in the data completeness for different quarters do not influence the computed annual average. EPA agrees that summer concentrations in Evansville tend to be higher than concentrations at other times of year, but EPA does not expect a modest number of missing summer values (*e.g.,* for the Civic Center site in 2007, 3 values in June and 2 values in August) to introduce any significant potential for bias in the average values for the respective quarters that are used in computing the annual average.

The proposed rulemaking addressed a number of issues relating to data completeness. The proposal notes EPA's completeness criterion that a site have valid data for at least 75 percent of the scheduled samples in all twelve quarters of the applicable three years, reflecting EPA's view that this quantity of data provides an adequate representation of each quarter, *i.e.,* EPA has adequate confidence that a complete data set would not be expected to show a significantly different average (or peak) concentration. The proposed rulemaking also addresses three sites (not including the Civic Center site; instead including the West Mill Road site in Vanderburgh County (site 18–163–0012) and the Jasper Sports Complex and Jasper Golf sites (sites 18–037–0004 and 18–037–0005) in Dubois County) that had quarters with less than 75 percent data capture, describing the data substitution analyses that EPA performed to assess whether it is plausible that complete data would have shown these sites to violate the standards.

The commenter did not comment on any of this discussion in the proposed rulemaking. Specifically, the commenter did not comment on EPA's 75 percent completeness criterion, and the commenter did not comment on the analyses EPA conducted for sites for which that criterion was unmet. Indeed, by excluding the Civic Center site from its list of sites not meeting this completeness criterion, EPA made clear that it viewed the Civic Center as meeting this completeness criterion, and yet the commenter did not expressly challenge this EPA view. Furthermore, the commenter made no mention of the Dubois County sites, to which a majority of the Evansville area data completeness issues apply. As a result, EPA has no reason to change its views on the completeness criterion, the application of that criterion to the Evansville area, the analyses of Evansville air quality data, or the conclusion that EPA has adequate confidence that the Evansville area is attaining the 1997 air quality standards. EPA finds there is no evidence that data have ''fraudulently'' or ''mysteriously'' disappeared, as commenter contends. Valley Watch's comments on the State's redesignation request were submitted prior to the time that calendar year data for 2008 were recorded and quality-assured and certified. After Valley Watch's comments on the redesignation request were submitted, more data have been acquired and evaluated for purposes of EPA's determination of attainment. Thus Valley Watch's analysis contained only a partial and outdated review of the relevant data. EPA finds no need for an additional ''independent'' analysis that was requested by the commenter in its comments on redesignation.

Comment: Valley Watch, in its March, 2008 comments on the request for redesignation that IDEM had proposed, included criticisms of 2004 and 2005 data, and requested that the redesignation be stopped ''until at least another year of data is collected'' in order to see air quality trends.

Response: EPA is making its determination of attainment based on 2006–2008 quality-assured data, rather than 2004–2006 data. Although in fact EPA believes that Evansville attained the standards based on 2004 to 2006 data, air quality for that period are not relevant to EPA's determination that the area is currently attaining the standards. The commenter prepared the substance of his analysis of the data in March 2008, and did not update his review to include the more recent data used by EPA, or EPA's evaluation and conclusions with respect to those data. It has now been more than a year and a half since Valley Watch submitted its March 2008 comments, and more than another year of data has been collected which shows continued attainment of the $PM_{2.5}$ standards. Thus commenter's wish for another year of quality-assured data has been satisfied.

Comment: The commenter includes a series of comments related to criteria for redesignation that do not bear on the question of whether or not the area is currently attaining the standard. The commenter contends that ''Utility executives that Valley Watch has consulted indicate that throughout 2008 and 2009 electrical generation demand has reduced nearly 25% in the region.'' The commenter argues that this decrease in demand would yield a commensurate reduction in the formation of fine particles and that economic recovery will result in a rise of electrical production and fine particle levels; thus this decrease ''cannot be considered as federally enforceable for redesignation purposes.'' Further, ''[n]umerous, already under construction, approved or soon to be approved new coal plants will add to an already fragile 'attainment' of the NAAQS for fine particles.''

Response: EPA's determination here is limited to a finding that the area's air quality currently meets the 1997 $PM_{2.5}$ standards. Unlike the case for redesignations, EPA need not evaluate whether the air quality improvement is due to permanent and enforceable reductions, and projections as to whether the air quality standards will be maintained in the future also are not germane to EPA's determination of attainment here. Moreover, the future impact of new sources and potential new sources on the area has and will be assessed in the context of permitting of those sources. For the reasons set forth in the discussions of EPA's review of the data in this final rulemaking and in its proposal, EPA does not agree with the commenter's contentions that currently monitored levels are too close to the 1997 standards for EPA to make determinations of attainment, or that the data recorded at the monitors are ''skewed low''. In the future, if EPA determines that the area no longer is attaining the standards, EPA will take action, after notice-and-comment rulemaking, to withdraw its determination.

Comment: The commenter states that ''EPA's Clean Air Scientific Advisory Committee (CASAC), a blue ribbon panel of scientists, recommended in 2005 and 2006 that the annual NAAQS for fine particles be set at a level as low as 13 μg/m³ and no higher than 14 μg/m³.'' In addition, ''[a]s further proof that residents of this area are forced to breathe unhealthy air, a study conducted by the Partnership for Healthcare Information through the

University of Southern Indiana found that 'In 1996, Vanderburgh County had a hospitalization rate of 51.7 per 10,000 versus 32.2 per 10,000 in Allen County for the 0–3 age group; for the 4–8 year old group, Vanderburgh County's rate was 35.2 while Allen County's rate was 10.5; and the 9–13 year group showed 40.2 for Vanderburgh County and 8.3 for Allen County.' ''

Response: This rulemaking addresses whether air quality in the Evansville area is meeting the 1997 $PM_{2.5}$ air quality standards, based on the most recent quality-assured monitoring data. It is not relevant to this determination that EPA has subsequently lowered the 24-hour standard or that the commenter believes EPA should have set the annual standard lower. Challenges to the $PM_{2.5}$ standards have been raised in other proceedings, and are not properly brought here. Moreover, the historical study of health indicators in Vanderburgh and Allen Counties, which cites to information collected in 1996, and the question of whether the current air quality standards are health protective, are not relevant to the only question at issue here, which is whether the Evansville area is meeting the 1997 $PM_{2.5}$ standards that are in place.

Based on the reasons previously discussed, EPA continues to believe that determinations of attainment are warranted for the Chicago (Illinois and Indiana) and Evansville (Indiana) areas.

Comment: Valley Watch makes numerous allegations reflecting a view that the Evansville data and the officials responsible for collecting and reporting these data are not to be trusted. These comments include allegations that the local agency may have avoided collecting data particularly on days with high concentrations. The commenter seeks investigation of a discrepancy between the value reported by the local agency versus the value reported by the State for July 7, 2007. The commenter believes that EPA's computation involves rounding of a value above the standard to a value found to meet the standard; the commenter finds this a problematic ''bureaucratic spin.'' The commenter contends that, given the missing data, the commenter finds the values too close to the standard to be sure that the area is meeting the standard.

Response: The commenter provides no credible evidence to justify the allegations that are lodged. Most relevantly here, EPA finds no reason to question the data that the State has certified as accurate, and EPA has no grounds for believing that the collected data are unrepresentative of the quarters during which they were collected. EPA used values reported in the AQS, not the values in either of the reports cited by the commenter, and, in any case, EPA finds that July 7, 2007 was not a scheduled sampling day and evidently no concentration measurements were made.[4] The comments regarding rounding and being close to the standard are not relevant to data from 2006 to 2008, which show annual average concentrations at all sites (with or without rounding as dictated under Appendix N) being more than 1 $\mu g/m^3$ below the standard.

Comment: An anonymous commenter stated the view that ''cities are absolutely disgusting,'' and that ''they are getting way out of control. We need to do whatever it takes to clean them up!''

Response: This comment does not address the actual air quality levels for the Chicago and Evansville areas or how those levels compare to the 1997 $PM_{2.5}$ NAAQS. It is thus not germane to whether the Chicago and Evansville areas are attaining those standards.

IV. What Is the Effect of These Actions?

On the basis of this review, EPA is determining that the Chicago area and the Evansville area have attained the 1997 $PM_{2.5}$ NAAQS based on 2006–2008 data. In addition, monitoring data for 2009 that are available to date in the EPA AQS database, but not yet certified, indicate that these areas continues to attain the 1997 $PM_{2.5}$.

Under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR 51.1004(c)), the requirements for Illinois and Indiana to submit attainment demonstrations and associated RACM, RFPs, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for the Chicago and Evansville $PM_{2.5}$ nonattainment areas are suspended for so long as the areas continue to attain the 1997 $PM_{2.5}$ NAAQS.

As further discussed below, these determinations will: (1) For the Chicago and Evansville nonattainment areas, suspend the requirements for the submittal of attainment demonstrations and associated RACM, RFPs, contingency measures, and any other planning SIP revisions related to attainment of the 1997 $PM_{2.5}$ NAAQS; (2) continue until such time, if any, that EPA subsequently determines that one of the areas has violated the 1997 $PM_{2.5}$ NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Chicago and Evansville areas based on the 2006 $PM_{2.5}$ NAAQS; and (4) remain in effect regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 $PM_{2.5}$ NAAQS. Furthermore, as described below, any such final determination is not equivalent to the redesignation of the area to attainment based on the 1997 $PM_{2.5}$ NAAQS.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that either or both areas have violated the 1997 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist for the pertinent area(s), and EPA would take action to withdraw the determination and direct the pertinent area(s) to address the suspended requirements.

The determinations that the air quality data show attainment of the 1997 $PM_{2.5}$ NAAQS are not equivalent to the redesignation of the areas to attainment. These actions do not constitute a redesignation to attainment under 107(d)(3) of the CAA, because we do not yet have approved maintenance plans for the areas as required under 175A of the CAA, nor have we determined whether the areas have met the other requirements for redesignation. The designation status of the areas will remain nonattainment for the 1997 $PM_{2.5}$ NAAQS until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment.

These actions are limited to determinations that the Chicago and Evansville areas have attained the 1997 $PM_{2.5}$ NAAQS. The 1997 $PM_{2.5}$ NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7.

The 2006 $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144), are set forth at 40 CFR 50.13. EPA has recently determined that the Chicago and Evansville areas meet the 2006 24-hour $PM_{2.5}$ NAAQS, and has designated the areas as unclassifiable/attainment for the 2006 24-hour NAAQS. 74 FR 58688, 58726–58729 (November 13, 2009). The status of the 2006 annual NAAQS designations is described in the 2006 24-hour NAAQS designations notice. 74 FR 58690–58691. However, designations for the 2006 $PM_{2.5}$ NAAQS are independent of today's determinations that the Chicago and Evansville areas are attaining the 1997 $PM_{2.5}$ NAAQS.

[4] The monitor at issue with regard to July 7, 2007 (at site number 18–163–0012) was operating on an every third day schedule in 2007. The dates of sampling for this schedule are set by EPA so that the same days are monitored in all locations, and are posted at *http://www.epa.gov/ttn/amtic/files/ambient/pm25/cal2007.pdf.*

If the Chicago and Evansville areas continue to attain the 1997 $PM_{2.5}$ NAAQS, the requirements for Illinois and Indiana to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS in these areas would remain suspended.

V. When Are These Actions Effective?

EPA finds that there is good cause for these determinations to become effective on the date of publication of these actions in the **Federal Register,** because a delayed effective date is unnecessary due to the nature of the actions. The expedited effective date for these actions is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As noted above, these determinations of attainment will result in a suspension of the requirements for Chicago and Evansville to submit an attainment demonstration, a RFP, section 172(c)(9) contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the $PM_{2.5}$ NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the suspension of the obligations of Illinois and Indiana to make submissions for these requirements provides good cause to make this rule effective on the date of publication of this action in the **Federal Register,** pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Chicago and Evansville areas, do not need time to adjust and prepare before the rule takes effect.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks'' (62 FR 19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determinations of attainment of the fine particle standard for the Chicago (Illinois and Indiana) and Evansville (Indiana) areas, involves determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there is no federally recognized Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 2010. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 18, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.725 is amended by adding paragraph (j) to read as follows:

§ 52.725 Control strategy: Particulates.

* * * * *

(j) Determination of Attainment. EPA has determined, as of November 27, 2009, that the Chicago-Gary-Lake County, IL-IN $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standard for as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraph(s) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(s) Determination of Attainment. EPA has determined, as of *November 27, 2009,* that the Chicago-Gary-Lake County, IL-IN $PM_{2.5}$ nonattainment area, which includes Lake and Porter counties in IN, and the Evansville nonattainment area have attained the 1997 $PM_{2.5}$ NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standard for as long as the area(s) continue to meet the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. E9–28256 Filed 11–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0649–200918; FRL–8984–7]

Approval and Promulgation of Implementation Plans; Georgia: Revisions to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Environmental Protection Division (GA EPD) in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The submittals include modifications to Georgia's Rules for Air Quality Control, Chapter 391–3–1. EPA is not acting on the August 22, 2007, revisions to rule 391–3–1–.03(6) ''Exemptions, Combustion Equipment'' in this action. EPA is also not acting on the August 22, 2007, revisions to rule 391–3–1–.03(9), as it is not part of the Federally-approved SIP. These submittals also included revisions to Georgia's Prevention of Signification Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs, which EPA is addressing separately. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This rule will be effective December 28, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2006–0649. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deanne Grant, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9291. Ms. Grant can also be reached via electronic mail at *grant.deanne@epa.gov*. For information relating to the Georgia SIP, please contact Ms. Stacy Harder at (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. EPA's Action.
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I. EPA's Action

EPA is taking final action to approve SIP revisions, provided by the State of Georgia in three respective submittals, to Chapter 391–3–1. The first submittal dated October 31, 2006, includes revisions to Rule 391–3–1–.03(6)(b) ''Permit Exemption for Combustion Equipment.'' The second submittal dated March 5, 2007, includes revisions to Rules 391–3–1–.02(2)(jjj) ''NO_X Emissions from Electric Utility Steam Generating Units,'' and 391–3–1–.02(6)(a)4 ''Emission Statements.'' The third submittal dated August 22, 2007, includes revisions to Rules 391–3–1–.01(llll) ''Volatile Organic Compound,'' 391–3–1–.02(12) ''Clean Air Interstate Rule NO_X Annual Trading Program,'' and 391–3–1–.03(6)(b)11 ''Stationary Engines.'' The revisions are approvable pursuant to section 110 of the CAA. EPA is not acting on the August 22, 2007, revisions to Rule 391–3–1–.03(6)(b)16 ''Exemptions, Combustion Equipment'' in this action. Additionally, EPA is not acting on the August 22, 2007, revisions to Rule 391–3–1–.03(9), as it is not part of the Federally-approved SIP, or on provisions pertaining to Georgia's PSD and NNSR rules.

II. Background

The GA EPD submitted revisions to the Georgia SIP in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The October 31, 2006, submittal revises Rule 391–3–1–.03(6)(b), ''Permit Exemption for Combustion Equipment.'' This revision adds two new subparagraphs, (b)14 and

15, for the purpose of exempting temporary boilers and electric generators that are used to replace a facility's boilers or generators during periods of repair or maintenance, from the requirement to obtain a permit. This rule revision is meant to streamline the permitting process for certain operators, and no longer require stationary sources that install temporary boilers and electric generators to obtain a permit for the temporary equipment operated during periods of maintenance or repair. This revision provides language stating the exemption is permissible ''provided the actual and potential emissions of the temporary sources do not exceed that of the main source.''

The March 5, 2007, submittal revises Rule 391–3–1–.02(2)(jjj), ''NO_X Emissions from Electric Utility Steam Generating Units.'' This revision amends NO_X emission limits in subparagraphs (jjj)4., 5., 6., 7., and 8., for coal-fired electric utility steam generating units with a maximum heat input greater than 250 Million British thermal units per hour (MMBtu/hr). The limit is based on a 30-day rolling average (averaged over all existing units) and was effective at the beginning of the 2007 ozone season, which runs from May 1st through September 30th in Georgia. Consistent with the existing regulation, unit specific NO_X limits are to be established in a permit. Additionally, the March 5, 2007, submittal revises Rule 391–3–1–.02(6)(a)4, ''Emission Statements.'' This revision amends the emission statement requirements so they are consistent with Federal regulations for 8-hour ozone nonattainment areas. The Emission Statement deadline is changed from July 31st to June 15th of each calendar year. Additionally, applicability of the requirements is expanded to include the counties of Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton, which are part of the Atlanta 8-hour ozone nonattainment area. The basis of this rule is to require submission of NO_X and volatile organic compounds (VOC) emissions inventories for sources located in the Atlanta ozone non-attainment area.

The August 22, 2007, submittal revises Rule 391–3–1–.01(llll), ''Volatile Organic Compound.'' This revision adds 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethylpentane to the list of those excluded from the definition of VOC, on the basis that the compound makes a negligible contribution to ozone formation. Therefore, the revision updates the definition of VOC, to comply with the Federal list of compounds designated as having negligible photochemical activity. The August 22, 2007, submittal also revises Rule 391–3–1–.02(12), ''Provisions,'' by deleting inadvertent references and inserting correct references in paragraph (12), ''Clean Air Interstate Rule NO_X Annual Trading Program.'' Lastly, the August 22, 2007, submittal revises Rule 391–3–1–.03(6)(b)11, ''Stationary Engines,'' to correct an inadvertent error in subparagraphs (iii) and (iv) to read ''hours-per-year,'' rather than ''hours-per-hour.'' The rules in these three submittals became State effective on April 19, 2006, March 12, 2007, and July 25, 2007, respectively.

The May 21, 2009, rulemaking proposed approval of the aforementioned revisions to the Georgia SIP (74 FR 23812). The comment period closed on June 22, 2009, and no comments were received. A detailed discussion of Georgia's submittals and EPA's rationale for approval of these Georgia SIP revisions may be found in the proposed rulemaking notice. The discussion in the proposed rule describes the basis on which EPA is now taking final action on the Georgia SIP revisions.

III. Final Action

EPA is taking final action to approve the aforementioned revisions, specifically, Chapters 391–3–1–.03(6)(b), 391–3–1–.02(2)(jjj), 391–3–1–.02(6)(a)4, 391–3–1–.01(llll), 391–3–1–.02(12), and 391–3–1–.03(6)(b)11, into the Georgia SIP. These revisions were submitted by GA EPD on October 31, 2006, March 5, 2007, and August 22, 2007. These revisions meet CAA requirements and are consistent with EPA policy and regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 26, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 16, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. In § 52.570(c) the table is amended as follows:

■ a. By revising the entries for ''391–3–1–.01,'' ''391–3–1–.02(2)(jjj),'' ''391–3–1–.02(12),'' and ''391–3–1–.03''.

■ b. By adding an entry in numerical order for ''391–3–1–.02(6)''.

■ c. By removing the entry for ''391–3–1–.02(2)(6)''.

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	7/25/07	11/27/09 [Insert citation of publication].	
*	*	*	*	*
391–3–1–.02(2) (jjj)	NO_X Emissions from Electric Utility Steam Generating Units.	3/12/07	11/27/09 [Insert citation of publication].	
*	*	*	*	*
391–3–1–.02(6)	Source Monitoring	3/12/07	11/27/09 [Insert citation of publication].	
*	*	*	*	*
391–3–1–.02(12)	Clean Air Interstate Rule NO_X Annual Trading Program.	7/25/07	11/27/09 [Insert citation of publication].	
*	*	*	*	*
391–3–1–.03	Permits	7/25/07	11/27/09 [Insert citation of publication].	Paragraph (9) Permit Fees; Paragraph (10) Title V Operating Permits are not Federally approved.
*	*	*	*	*

* * * * *

[FR Doc. E9–28255 Filed 11–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0670; FRL–8985–6]

Finding of Failure To Submit State Implementation Plans Required for the 1997 Particulate Matter Less Than 2.5 Micrometer ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking a final action in which it finds that three States, Georgia, Illinois, and Pennsylvania, have failed to submit State Implementation Plans (SIPs) to satisfy requirements of the Clean Air Act (CAA) for attaining the 1997 National Ambient Air Quality Standards (NAAQS) for particulate matter less than 2.5 micrometers ($PM_{2.5}$). Under the CAA and EPA's implementing regulations, States with nonattainment areas were required to submit SIPs by April 5, 2008, demonstrating how each nonattainment area would attain the 1997 $PM_{2.5}$ standards as expeditiously as practicable. If within 18 months of the effective date of this notice EPA has not determined that the State has submitted the required nonattainment plan, then any new or modified source in the nonattainment area will be required to obtain emission reduction offsets that exceed its emission increases on a two-to-one basis. If within 24 months of the effective date of this notice EPA has not determined that the State has submitted the required SIP, then the highway funding sanction also will apply in the nonattainment area. No later than 2 years after EPA makes the finding, EPA must promulgate a Federal Implementation Plan (FIP) if the State has not submitted the required nonattainment SIP and EPA has not approved it.

DATES: *Effective Date.* This action is effective on November 27, 2009.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C504–2, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone (919) 541–5208.

SUPPLEMENTARY INFORMATION: For questions related to a specific State please contact the appropriate regional office:

Regional offices	States
Cristina Fernandez, Associate Director, Office of Air Program Planning (3AP30), Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2023.	Pennsylvania.
Dick Schutt, Chief, Air Planning Branch, Air, Pesticides and Toxics Management Division, EPA Region IV, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.	Georgia.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604	Illinois.

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I. Background

The CAA requires States with areas that are designated nonattainment for the 1997 $PM_{2.5}$ NAAQS to develop a SIP providing how the State will attain the NAAQS. Section 172 of the CAA specifies the required elements of a SIP for an area designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. These requirements include, but are not limited to, an attainment demonstration, reasonably available control measures (RACM) and reasonably available control technology (RACT), annual emissions reductions to ensure reasonable further progress (RFP), and contingency measures. Most States with $PM_{2.5}$ nonattainment areas designated in 2005 have submitted SIPs addressing these requirements as required under the CAA and EPA's implementing regulations. However, three States (Georgia, Illinois, and Pennsylvania) have not yet submitted SIPs to satisfy these requirements for four $PM_{2.5}$ nonattainment areas. By this action, EPA is making a finding that these States have failed to submit the required SIPs for these areas.

A. Statutory Requirements

On July 18, 1997, EPA promulgated the NAAQS for fine particles ($PM_{2.5}$). The 1997 annual standard was set at a level of 15 micrograms per cubic meter, based on the 3-year average of annual mean $PM_{2.5}$ concentrations. The 1997 24-hour standard was set at a level of 65 micrograms per cubic meter, based on the 3-year average of the 98th percentile of 24-hour concentrations. (62 FR 38652). These standards remain in effect. *See* 40 CFR section 50.7.

The designation of $PM_{2.5}$ nonattainment areas was delayed due to the need to obtain 3 years of data from an expanded nationwide air quality monitoring network, as well as due to a series of legal challenges to the 1997 standards which were resolved in 2002. *See Whitman* v. *American Trucking Associations, Inc.*, 121 S.Ct. 903 (2001). The Transportation Equity Act for the Twenty-first Century revised the deadline for promulgation of designations to December 31, 2004, in order to provide additional time to collect air quality monitoring data, obtain designation recommendations from the States, and finalize the designation process.

The $PM_{2.5}$ designations based on 2001–2003 air quality data were published in the **Federal Register** on January 5, 2005 (70 FR 943). A total of 47 nonattainment areas were identified. EPA noted that because 2004 air quality data was just becoming available, it would consider such data and modify the designations as appropriate prior to the April 5, 2005, effective date. EPA issued a supplemental notice on April 5, 2005 (70 FR 19844; published April 14, 2005), indicating that eight areas changed status to attainment based on consideration of 2002–2004 data, resulting in a final list of 39 areas designated as nonattainment for the 1997 $PM_{2.5}$ NAAQS.

On April 25, 2007 (72 FR 20586), EPA published a final rule describing the requirements for implementation plans designed to meet the 1997 $PM_{2.5}$ standards (the ''$PM_{2.5}$ Implementation Rule''). Section 172 of the CAA requires States with nonattainment areas to submit nonattainment SIPs within 3 years of the effective date of the designation. Therefore, the $PM_{2.5}$ plans were required to be submitted by April 5, 2008.

As explained in further detail in the $PM_{2.5}$ Implementation Rule, the key required elements of the nonattainment SIP include the attainment demonstration, RACM and RACT, RFP, and contingency measures. The attainment demonstration is required to show how the nonattainment area would attain the 1997 $PM_{2.5}$ standards as expeditiously as practicable, but no later than April 5, 2010. (Note that for an area with a more severe or complex nonattainment problem, the State could propose in its plan to have an extended attainment date of an additional one to 5 years beyond the initial 5-year period if it meets the statutory and regulatory requirements.) The attainment demonstration takes into account projected emission reductions from existing Federal and State measures, plus any additional RACM/RACT that can be adopted by the State to attain ''as expeditiously as practicable.'' Air quality modeling of these projected emissions reductions in future years is an important element of the attainment demonstration.

Each nonattainment SIP must include RACM and RACT as necessary for the area to attain the 1997 $PM_{2.5}$ NAAQS. The CAA requires the State to demonstrate that it has adopted all RACM, considering economic and technical feasibility and other factors, that are needed to show that the area will attain the fine particle standards as expeditiously as practicable. The $PM_{2.5}$ Implementation Rule sets forth more specific requirements and guidance for making RACM and RACT determinations.

Each plan must also ensure that the area is making RFP in terms of emission reductions and air quality improvements toward attainment. The $PM_{2.5}$ Implementation Rule provides that, for areas with an attainment date

within 5 years of designation, the attainment demonstration is considered to satisfy the RFP requirement. Areas with attainment dates beyond 2010 are required to submit an RFP plan according to the requirements in the implementation rule.

SIPs must also include contingency measures, which are emission reduction measures to be undertaken if the area fails to satisfy the RFP requirement or fails to attain the standards by the attainment date. These measures are to take effect without significant further action by the State or EPA.

We note that several $PM_{2.5}$ nonattainment areas currently have air quality that attains the level of the 1997 $PM_{2.5}$ NAAQS, but have not yet completed the process for redesignating the area to attainment. Under EPA's ''Clean Data Policy,'' certain nonattainment SIP submission requirements may be suspended if the area is monitoring attainment. *See* 40 CFR 50.1004(c). EPA identifies these areas through clean data determinations published in the **Federal Register.** Pursuant to 40 CFR 51.1004, the States' obligation to submit the RACM/RACT, contingency measures, RFP, and attainment demonstrations are stayed as of the effective date of a final approval of the clean air determination for these areas. This stay will remain in effect for so long as the area remains in attainment and will no longer apply if the area is redesignated to attainment. For this reason, States with areas that have received final clean data determinations are not subject to the final action in this notice.

B. Consequences of Findings of Failure To Submit

Section 179(a)(1) of the CAA establishes specific consequences if EPA finds that a State has failed to submit a SIP or, with regard to a submitted SIP, if EPA determines it is incomplete or if EPA disapproves it. Additionally, any of these findings also triggers an obligation for EPA to promulgate a FIP if the State has not submitted, and EPA has not approved, the required SIP within 2 years of the finding. CAA section 110(c). The first finding, that a State has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding that EPA is making in this action.

EPA is finding that three States have failed to make the required nonattainment SIP submissions for four nonattainment areas. If EPA has not affirmatively determined that a State has made the required complete nonattainment SIP submission within 18 months of the effective date of this action, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the area subject to the finding. If EPA has not affirmatively determined that the State has made a complete submission within 6 months after the emission offset sanction is imposed, then the highway funding sanction will also apply in areas designated nonattainment, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete nonattainment SIP submission for each area for which the finding is made. In addition, EPA is not required to promulgate a FIP if the State makes the required SIP submittal, and EPA takes final action to approve the submittal, within 2 years of EPA's finding.

At approximately the same time as the signing of this notice, EPA Regional Administrators are sending letters to the States of Georgia, Illinois, and Pennsylvania, informing them that EPA is determining that they have failed to make one or more of the required SIP submissions for the specified areas. These letters, and any accompanying enclosures, have been included in the docket to this rulemaking.

II. This Action

In this action, EPA is making a finding of failure to submit for three States with regard to the $PM_{2.5}$ nonattainment areas listed below. In each case, the State failed to submit one or more of the required nonattainment SIP elements identified in the CAA and in the $PM_{2.5}$ Implementation Rule:

—Attainment demonstration (including emission inventory and modeling; CAA section 172(c)(1) and (3), and 40 CFR 51.1007 and 1008);
—RACM/RACT (CAA section 172(c)(1) and 40 CFR 51.1010);
—RFP (CAA sections 172(c)(2) and 40 CFR 51.1009); and
—Contingency measures (CAA sections 172(c)(9) and 40 CFR 51.1012).

In accordance with CAA section 179, this finding starts the 18-month emission offset sanctions clock, the 24-month highway funding sanctions clock, and a 24-month clock for the promulgation by EPA of a FIP. This action will be effective on November 27, 2009.

State	Area
Georgia	Atlanta.
Illinois	St. Louis (Illinois portion only).
Pennsylvania	Liberty-Clairton.
Pennsylvania	Philadelphia-Wilmington (PA portion only).

III. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedure Act

This is a final EPA action, but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that, because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, n.17 (Oct. 1, 1993); 59 FR 39832, 39853 (Aug. 4, 1994).

B. Effective Date Under the Administrative Procedure Act

This action will be effective on November 27, 2009. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to specify an earlier effective date. This action concerns SIP submissions that are already overdue. In addition, this action simply starts a ''clock'' that will not result in sanctions against the States for 18 months, and that the States may ''turn off'' by submitting complete SIPs to EPA. These reasons support an effective date prior to 30 days after the date of publication.

C. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not

subject to review by the Office of Management and Budget (OMB) under the Executive Order.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule relates to the requirement in the CAA for States to submit SIPs under section Part D of title I of the CAA to satisfy elements required for the 1997 $PM_{2.5}$ NAAQS. The present final rule does not establish any new information collection requirement.

E. Regulatory Flexibility Act (RFA)

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement. Thus Executive Order 13132 does not apply to this action.

F. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1998 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposed no enforceable duty on any State, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

G. 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. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS and the Federal government acts as a backstop where States fail to take the required actions. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

H. 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 rule responds to the requirement in the CAA for States to submit SIPs to satisfy the nonattainment area requirements of the CAA for the 1997 $PM_{2.5}$ NAAQS. The CAA requires States with areas that are designated nonattainment for the NAAQS to develop a SIP describing how the State will attain and maintain the NAAQS. The rule will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

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

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action does not directly affect the level of protection provided to human health or the environment.

J. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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. In this action, EPA is finding that several States have failed to submit SIPs to satisfy the nonattainment area requirement of the CAA for the $PM_{2.5}$ NAAQS.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

Executive Order 12898 (59 FR 7629 (Feb. 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 directly affect the level of protection provided to human health or the environment.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 27, 2009.

N. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date final action is published in the **Federal Register.** Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of action.

Thus, any petitions for review of this action making findings of failure to submit $PM_{2.5}$ SIPs for the nonattainment areas identified in section II above, must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register.**

List of Subjects in 40 CFR Part 52

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

Dated: November 19, 2009.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. E9–28257 Filed 11–25–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206144–9697–02]

RIN 0648–XT09

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for New Jersey

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

ACTION: Closure of commercial fishery.

SUMMARY: NMFS announces that the Atlantic bluefish commercial quota available to New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the Atlantic bluefish fishery may not land bluefish in New Jersey for the remainder of calendar year 2009, unless additional quota becomes available through a transfer. Regulations governing the Atlantic bluefish fishery require publication of this notification to advise New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing bluefish in New Jersey.

DATES: Effective 0001 hours, November 25, 2009, through 2400 hours, December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, (978) 281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

On May 4, 2009, NMFS published the final specifications for the Atlantic bluefish fishery (74 FR 20423). The initial Federal coastwide commercial quota for Atlantic bluefish for the 2009 calendar year was set equal to 4,991,000 lb (2,263 mt). The initial commercial quota was adjusted by transferring 4,838,000 lb (2,194 mt) from the initial recreational allocation, resulting in a total commercial quota of 9,828,000 lb (4,458 mt). The percent allocated to vessels landing bluefish in New Jersey is 14.8162 percent, resulting in an initial commercial quota of 1,441,702 lb (653.95 mt).

The regulations at § 648.161(b) require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing bluefish in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New Jersey has harvested its quota for calendar year 2009.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land bluefish in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 25, 2009, further landings of bluefish in New Jersey by vessels holding Atlantic bluefish commercial Federal fisheries permits are prohibited for the remainder of the 2009 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, November 25, 2009, federally permitted dealers are also notified that they may not purchase bluefish from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

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

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

Dated: November 23, 2009.

Emily H. Menashes,

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

[FR Doc. E9–28397 Filed 11–23–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061228342–7068–02]

RIN 0648–XT07

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that, effective 0001 hours, November 26, 2009, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Management Area 1A (Area 1A) per trip or calendar day until January 1, 2010, when the 2010 total allowable catch (TAC) becomes available, except for transiting purposes as described in this notice.

This action is based on the determination that 95 percent of the Atlantic herring TAC allocated to Area 1A for 2009 is projected to be harvested by November 26, 2009. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 2.

DATES: Effective 0001 hrs local time, November 26, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Aja Peters-Mason, Fishery Management Specialist, (978) 281–9195.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2009 TAC allocated to Area 1A (72 FR 17807, April 10, 2007) is 45,000 mt; 1,350 mt of the TAC is set aside for research, which leaves in a TAC of 43,650 mt for the commercial fishery.

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan (FMP) for the Atlantic herring fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1A with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 1A for the 2009 fishing year is projected to be harvested. Therefore, effective 0001 hrs local time, November 26, 2009, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1A per trip or calendar day through December 31, 2009. Vessels transiting Area 1A with more than 2,000 lb (907.2 kg) of herring on board may land this amount provided such herring was not caught in Area 1A and provided all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective November 26, 2009, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1A through 2400 hrs local time, December 31, 2009.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the Atlantic herring fishery for Management Area 2 until January 1, 2010, under current regulations. The regulations at § 648.201(a) require such action to ensure that Atlantic herring vessels do not exceed the 2009 TAC. The Atlantic herring fishery opened for the 2009 fishing year at 0001 hours on January 1, 2009. Data indicating the Atlantic herring fleet will have landed at least 95 percent of the 2009 TAC have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

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

Dated: November 23, 2009.

Emily H. Menashes,

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

[FR Doc. E9–28403 Filed 11–23–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 227
Friday, November 27, 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 AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580–AB12

Request for Public Comment on the United States Standards for Wheat

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers, and Stockyards Administration (GIPSA) is reviewing the United States (U.S.) Standards for Wheat under the United States Grain Standards Act (USGSA). Since the standards were last revised, numerous changes have occurred in the breeding and production practices of wheat; the technology used to harvest, process, and test wheat; and also wheat marketing. To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current wheat standards and grading practices need to be changed.

DATES: Comments must be received on or before February 25, 2010.

ADDRESSES: You may submit your written or electronic comments on this notice to:

- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *E-mail comments to: comments.gipsa@usda.gov.*
- *Fax:* (202) 690–2173.
- *Internet: Go to http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''United States Standards for Wheat Notice Comments,'' making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at *http://www.regulations.gov* and in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read comments received.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, Beacon Facility, Stop 1404, P.O. Box 419205, Kansas City, MO 64131–6205; Telephone (816) 823–4639; Fax Number (816) 823–4644; e-mail *Patrick.J.McCluskey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for wheat and other grains regarding kind, class, quality and condition. The wheat standards, established by USDA on August 1, 1917, were last revised in 1993 and 2006 and appear in the USGSA regulations at 7 CFR 810.2201–810.2205. The standards facilitate wheat marketing and define U.S. wheat quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; specify grades, grade requirements, special grades; and special grade requirements, such as garlicky wheat and light smutty wheat. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 13, ''Wheat,'' which also includes standardized procedures for additional quality attributes not used to determine grade, such as protein content and falling number. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare wheat quality using equivalent forms of measurement and assist in price discovery.

GIPSA's grading and inspection services are provided through a network of federal, state, and private laboratories that conduct tests to determine the quality and condition of wheat. These tests are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. Furthermore, the tests yield rapid, reliable and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded wheat are accepted as *prima facie* evidence in all Federal courts. U.S. wheat standards and the affiliated grading and testing services offered by GIPSA verify that a seller's wheat meets specified requirements, and ensure that customers receive the quality of wheat they purchased.

In order for U.S. standards and grading procedures for wheat to remain relevant, GIPSA is issuing this advance notice of proposed rulemaking to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. wheat standards and inspection procedures.

Authority: 7 U.S.C. 71–87K.

J. Dudley Butler,
Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–28429 Filed 11–25–09; 8:45 am]
BILLING CODE 3410–KD–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[Docket No. PRM–26–3; NRC–2009–0482]

Professional Reactor Operator Society; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated October 16, 2009, filed by the Professional Reactor Operator Society (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM–26–3. The petitioner is requesting that the NRC amend the regulations that govern fitness for duty programs. Specifically, the petitioner requests that the definition of ''unit outage'' be changed to ''site outage'' and be amended to clarify the way licensees schedule manpower on the front and

back end of outages. The petitioner believes the suggested amendment would require licensees to abandon past practice that could impact licensees' ability to safely execute future outages and would help to ensure that nuclear utilities continue to perform outages in a safe and efficient manner.

DATE: Submit comments by February 10, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include PRM–26–3 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Personal information, such as your name, address, telephone number, e-mail address, *etc.,* will not be removed from your submission.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0482]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. E-mail comments to: *rulemaking.comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays, telephone number 301–415–1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the Federal eRulemaking Portal *http://www.regulations.gov.*

Publicly available documents created or received at the NRC, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

For a copy of the petition, write to Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The petition is also available electronically in ADAMS at ML092960440.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–492–3663 or Toll-Free: 1–800–368–5642 or E-mail: *Michael.Lesar@NRC.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking dated October 16, 2009, submitted by Robert N. Meyer on behalf of the Professional Reactor Operator Society (PROS) (petitioner). PROS is an organization of reactor operators employed at nuclear power plant sites throughout the U.S. The petitioner requests that the NRC amend 10 CFR part 26, ''Fitness for Duty Programs.'' Specifically, the petitioner requests that the definition of *Unit outage* in § 26.5, ''Definitions'' be changed to *Site outage.* The petitioner also requests that the text of the definition be amended to clarify the way licensees schedule manpower on the front and back end of outages. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition was docketed by the NRC as PRM–26–3 on October 21, 2009. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner states that the final rule the NRC published on March 31, 2008 (73 FR 16965), pertaining to fitness for duty programs of nuclear facility licensees required all licensees to establish ''clear and enforceable requirements for the management of worker fatigue.'' The petitioner notes that the term ''unit outage'' was added to clarify that a specific reactor has to be disconnected from the electrical grid to be declared in an outage. The petitioner states that the NRC added this term in response to a stakeholder comment raised during a public meeting to clarify that for the purpose of implanting work hour controls, a reactor unit would only be considered in an outage if disconnected from the power grid, not when reactor power was reduced for repair but not shut down. The NRC determined that its definition provides a clearly identifiable plant state for applying the work hour controls specified in §§ 26.205(d)(4) and (5).

The petitioner disagrees with the rationale for this definition and recommends two changes:

(1) The definition should be changed from ''unit outage'' to ''site outage'' and

(2) Clarify the definition of ''site outage'' to ''up to one week prior to disconnecting the reactor unit from the grid and up to 75 percent turbine power following reconnection to the grid.'' The current definition of ''unit outage'' in § 26.5 ''means, for the purposes of this part, that the reactor unit is disconnected from the electrical grid.''

The petitioner states that its proposal applies to dual-unit sites with a shared control room where the reactor operators are licensed on both units to allow the control room to use a 12-hour supercrew, resulting in less work hours for personnel on the operating unit. The petitioner believes this is particularly important in view of the recently implemented work hours rule. The petitioner notes that although the outage work for many crews falls between the breaker open and close phases, this is not true for operations crews. Just before shutdown, activities such as the switch from the non-outage shift to the outage shift schedules, training for the control room crew who will actually perform the shutdown, and final work schedule walkdowns occur.

The petitioner states that many facilities combine the operations crews into four groups (two for days and two for nights) one week before shutdown to accommodate the additional workload. The petitioner believes the pre-outage advantages to the proposed amendment

include the crew's acclimation to the outage shift before shutdown and familiarization with each other, a transition period from normal shift rotation to the outage shift rotation, adequate staffing for outage crew preparation, and better preparation time to safely perform the large amount of infrequently performed tasks associated with plant shutdown. The petitioner also cites outage preparation that will be performed by outage crews, not regular shift personnel whose main responsibility should be monitoring the operating reactor, and more preparation time to keep the stress level as low as possible in the Control Room to reduce the chance of errors and improve overall safety as additional pre-outage advantages to its proposed amendment.

The petitioner also states that post-outage advantages to its proposed definition include allowing major equipment to be tested and placed in service before release of support personnel, ensuring there are sufficient personnel on duty to handle any emergencies following an outage, and allowing for a controlled transition from an outage shift schedule to the normal schedule to eliminate worker fatigue because the same crews who were performing outage functions are now the ones operating the reactor. The petitioner sees the only disadvantage to its proposal is that the total outage time may be longer, meaning that personnel operating the plant just before shutdown or startup may have worked beyond the hourly limitations normally permitted for an operating reactor but believes the advantages cited far outweigh any potential disadvantage. The petitioner states that it is not proposing any change in the work hour allowance specified in § 26.205(d)(4) but believes its proposed amendment would allow licensees more flexibility for applying the outage working hour limitations when preparing for and recovering from an outage.

Lastly, the petitioner states that its proposed amendment would not require an environmental impact statement, does not contain any new or amended information requirements subject to the Paperwork Reduction Act of 1980, and does not involve backfit issues.

The petitioner has concluded that adopting its proposed amendment will help ensure that nuclear power facilities continue to perform outages safely and efficiently.

Dated at Rockville, Maryland, this 23rd day of November 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–28380 Filed 11–25–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1014; Airspace Docket No. 09–ANM–10]

Proposed Establishment and Amendment of Class E Airspace; Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Garfield County Regional Airport, Rifle, CO. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Garfield County Regional Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport. This action also would amend existing Class E airspace by changing the airport name.

DATES: Comments must be received on or before January 11, 2010.

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–2009–1014; Airspace Docket No. 09–ANM–10, 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, AJV–W2, 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 2009–1014 and Airspace Docket No. 09–ANM–10) 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–2009–1014 and Airspace Docket No. 09–ANM–10''. 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 Center, Operations Support Group, AJV–W2, 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 establishing Class E airspace at Rifle, CO. Controlled airspace designated as surface area is necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at Garfield County Regional Airport, Rifle, CO, and would enhance the safety and management of aircraft operations at the airport. This action also would change the airport name from Garfield County Airport to Garfield County Regional Airport for the existing Class E airspace extending upward from 700 feet above the surface.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, 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 Garfield County Regional Airport, Rifle, 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 6002 Class E airspace designated as surface areas.

* * * * *

ANM CO E2 Rifle, CO [New]

Garfield County Regional Airport, Rifle, CO
(Lat. 39°31′35″ N., long. 107°43′37″ W.)

Within a 4.1-mile radius of Garfield County Regional Airport, and within 1 mile each side of the 093° bearing extending from the 4.1-mile radius to 5.5 miles east of the Garfield County Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Rifle, CO [Amended]

Garfield County Regional Airport, Rifle, CO
(Lat. 39°31′35″ N., long. 107°43′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Garfield County Regional Airport, and within 4.3 miles each side of the 090° bearing from the airport, extending from the 7-mile radius to 18.3 miles east of the airport, and within 4.5 miles each side of the 321° bearing from the airport, extending from the 7-mile radius to 14.5 miles northwest of the airport.

* * * * *

Issued in Seattle, Washington, on November 17, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–28441 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 610

RIN 3084-AA94

Free Annual File Disclosures Amendments to Rule To Prevent Deceptive Marketing of Credit Reports and To Ensure Access to Free Annual File Disclosures

AGENCY: Federal Trade Commission.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: In a **FEDERAL REGISTER** notice published on October 15, 2009, the Federal Trade Commission (''Commission'' or ''FTC'') requested comment on its Notice of Proposed Rulemaking (''NPRM'') in connection with its rulemaking pursuant to Section 205 of the Credit CARD Act of 2009. The NPRM stated that comments must be received on or before November 30, 2009. In response to a request to extend the comment period received on November 16, 2009, the Commission has determined to extend the comment period until December 7, 2009.

DATES: Comments on the NPRM published on October 15, 2009 (74 FR 52915) must be received on or before December 7, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*http://public.commentworks.com/ftc/FreeCreditReportNPRM*) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

FOR FURTHER INFORMATION CONTACT: Katherine Armstrong, Attorney, Steven Toporoff, Attorney, or Tiffany George, Attorney, Division of Privacy and Identity Protection. Bureau of Consumer Protection, Federal Trade Commission,

600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

SUPPLEMENTARY INFORMATION: On October 15, 2009, the Commission published an NPRM[1] pursuant to the authority granted to it in Section 205 of the Credit CARD Act of 2009 (''the Act'')[2] to prevent deceptive marketing of ''free credit reports.'' In the NPRM, the Commission solicited comment on amendments to the Free Annual File Disclosure Rule (''Free Reports Rule'' or ''Rule'') that would require prominent disclosures for ''free credit report'' offers that are not the federally mandated free annual file disclosures. Section 205 of the Act requires the Commission to issue a final rule within 9 months of the enactment of the Act, or by February 22, 2010. The NPRM set a deadline of November 30, 2009 for filing public comments.

In a letter dated November 13, 2009, the Illinois Office of the Attorney General, Consumer Protection Division, on behalf of interested states (''States''), requested that the Commission extend the comment deadline in the NPRM proceeding until December 14, 2009. In the request, the States explain that they may need additional time to compile data and file comprehensive comments responsive to the NPRM.

The Commission recognizes that its proposal raises significant issues and believes that extending the comment period will facilitate the creation of a more complete record. In light of the statutory deadline for the issuance of the final rule, however, the Commission believes that a seven-day extension of the comment period is reasonable. The additional time should enable the States and other commenters to finalize and submit comments in response to the NPRM. Accordingly, the Commission has determined to extend the comment period set forth in the NPRM to December 7, 2009.

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Free Annual File Disclosures, Rule No. R411005'' 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 any 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 Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC 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).[3]

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: (*http://public.commentworks.com/ftc/FreeCreditReportNPRM*) (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 weblink (*http://public.commentworks.com/ftc/FreeCreditReportNPRM*). If this document appears at (*http://www.regulations.gov/search/Regs/home.html#home*), 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 document and the news release describing it.

A comment filed in paper form should include the ''Free Annual File Disclosures Rulemaking, Rule No. R411005'' 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 T), 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.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delay due to heightened security precautions.

The 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*).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–28337 Filed 11–25–09; 8:45 am]

BILLING CODE 6750–01–S

[1] FTC, *Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures*, 74 FR 52915 (Oct. 15, 2009). The NPRM was announced in a press release on October 7, 2009, available at (*http://www.ftc.gov/opa/2009/10/freecredit.shtm*).

[2] Pub. L. No. 111-24, 123 Stat. 1734 (May 22, 2009).

[3] 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).

FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 284

[Docket No. RM96–1–036]

Standards for Business Practices for Interstate Natural Gas Pipelines

Issued November 19, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 1.9) of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines. The proposed standards include standards adopted in response to Order Nos. 698, 712, 717 and 682, as well as standards related to transactional reporting, NAESB contracts, communication protocols and technical standards. These standards can be obtained from NAESB at 1301 Fannin, Suite 2350, Houston, TX 77002, phone: 713–356–0060, *http://www.naesb.org,* and are available for viewing in the Commission's Public Reference Room.

DATES: Comments are due January 11, 2010.

ADDRESSES: You may submit comments, identified by Docket No. RM96–1–036, by any of these methods:

- *Agency Web site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Bruce McAllister (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8296. Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 1.9) of business practice standards adopted by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines.

I. Background

2. Since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines to create a more integrated and efficient pipeline grid. These regulations have been promulgated in the Order No. 587 series of orders,[1] wherein the Commission has incorporated by reference standards for interstate natural gas pipeline business practices and electronic communications that were developed and adopted by NAESB's WGQ. Upon incorporation by reference by the Commission, interstate natural gas pipelines must comply with the requirements contained in the standards.

3. On July 16, 2009, the Commission issued a Notice of Proposed Rulemaking (July 16 NOPR) proposing to incorporate into the Commission regulations by reference business practice standards adopted by NAESB's WGQ for index-based pricing for capacity releases and for increasing the flexibility of gas receipt and delivery points.[2] Comments on this notice have been received and the matter is currently pending Commission action. These WGQ standards were filed with the Commission September 14, 2007 and created and modified existing standards.

4. On September 30, 2009, NAESB filed a report informing the Commission that it had adopted and ratified Version 1.9 of its business practice standards applicable to natural gas pipelines. Both this NOPR and the July 16 NOPR are the result of a continuing effort by NAESB and the gas industry to add additional specificity and functionality to gas standards in several areas. For example, new or revised standards in Version 1.9 include communication standards and protocols related to the business practice standards dealing with index-based capacity release, which the Commission proposed to adopt in the July 16 NOPR, and new standards adopted in response to Order Nos. 698, 712, 717 and 682. These new and modified standards support the ability of pipelines to redirect gas around constraints, provide additional gas quality and transactional reporting, and create new standards for index-based capacity release transactions and new information posting requirements for Web sites and browsers.

[1] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[2] *Standards for Business Practices of Interstate Natural Gas Pipelines,* 74 FR 36633 (July 24, 2009), FERC Stats. & Regs. ¶ 32,645 (July 16, 2009).

II. Significant Changes and Additions Contained in the Version 1.9 Standards

A. Standards To Support Order No. 698 and Order No. 712

5. *In Order Nos. 698 and 698–A, the Commission requested that NAESB develop or modify standards for business practices:* (1) For index-based pricing for capacity release transactions; (2) to allow for increased receipt and delivery point flexibility through the use of redirects of scheduled quantities; and (3) to modify the existing intra-day nomination timeline.[3]

6. In response to Order Nos. 698 and 698–A, NAESB's WGQ Business Practice Subcommittee (BPS) adopted revised standards allowing index-based pricing for capacity release transactions,[4] and developed a business practice standard to allow for increased receipt and delivery point flexibility through the use of redirects of scheduled quantities. NAESB was unable to reach consensus on standards relating to the intra-day nomination timeline. The July 16 NOPR addressed the business practice standards developed by NAESB in these areas.

7. The Version 1.9 Standards provide details on the technical implementation[5] of index-based pricing for capacity release, and is coordinated with some of the changes developed to accommodate the determinations in Order Nos. 712 and 712–A[6] with respect to capacity release standards.[7]

B. Standards To Support Order No. 717

8. In Order No. 717, the Commission amended the Standards of Conduct for

[3] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 698, FERC Stats. & Regs. ¶ 31,251 (2007), *order on clarification and reh'g,* Order No. 698–A, 121 FERC ¶ 61,264 (2007).

[4] These included modification of three WGQ business practice standards, and the development of ten new WGQ business practice standards and two new WGQ definitions. These revisions are included in the standards presented in NAESB's September 2009 Report to the Commission. These revisions were first discussed in another NAESB report (submitted on September 3, 2008) in which the WGQ BPS discussed these business practices and the record developed by the WGQ BPS and WGQ EC as they were considered.

[5] Technical implementation is accomplished through the identification of the data required to support the transactions, definitions of information and mapping of those data into specific electronic transactions. This is outlined in the WGQ Capacity Release Related Standards section of Version 1.9.

[6] *Promotion of a More Efficient Capacity Release Market,* Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g,* Order No. 712–A, FERC Stats. & Regs. ¶ 31,284 (2008).

[7] The standards include new NAESB WGQ Definitions Nos. 5.2.4 & 5.2.5, NAESB WGQ Standard Nos. 5.3.1, 5.3.3, 5.3.26, and 5.3.61—5.3.69 and modifications to NAESB WGQ Standards Nos. 5.3.1, 5.3.3 and 5.3.26 and complementary modifications to the related data sets.

Transmission Providers.[8] In response to Order No. 717, the WGQ Business Practice Subcommittee made modifications to NAESB WGQ Standard No. 4.3.23 related to the Transportation Service Providers' requirements for their Informational Postings Web site. The modified standard includes a Standards of Conduct section where information can be posted regarding affiliate or corporate transactions as well as posting requirements for the Informational Postings Web site.

C. Posting of Gas Quality Information

9. NAESB modified Gas Quality Standards Nos. 4.3.90 and 4.3.92 and also added a new gas quality standard.[9] The Version 1.9 Standards related to the posting of gas quality information includes posting and format requirements, provisions for Transportation Service Providers to report hydrocarbon liquid drop out measurements and Informational Postings Web site criteria.

D. Internet Communication Standards

10. NAESB made a variety of technical and clean up revisions to the standards. Several standards were modified in response to the Sandia National Laboratories' security assessment of the NAESB communication standards. NAESB also modified the standards to reflect changes in the use of software used on the Internet, including support for Adobe Flash Player and Active X control as Internet browser plug-ins, Mozilla Firefox as another browser option, and the removal of Netscape as a supporting browser.

III. Discussion

11. In this NOPR, the Commission proposes to incorporate by reference in its regulations Version 1.9 of the NAESB WGQ's consensus standards,[10] with two exceptions.[11] Adoption of Version 1.9 will continue the process of updating and improving NAESB's business practice standards for the benefit of the wholesale gas market. The most noteworthy of the standards are those addressing recent changes to the Commission's regulations in Order Nos. 698 (gas-electric coordination), 712 (capacity release), and 717 (standards of conduct), and additional standards and revisions to standards that address pipelines' posting of gas quality information, and Internet security and communications.

12. In addition, the Version 1.9 standards include new or revised standards that the Commission proposed to adopt in the July 16 NOPR; these standards included updated communication protocols and other standards for implementing the Commission's findings on improving index-priced capacity release transactions and flexibility to designate receipt and delivery points adopted in response to Order No. 698. New standards in Version 1.9 include business practices and communication protocols for implementing asset management agreements and the removal of the price ceiling for capacity release transactions as permitted under Order No. 712. They also contain revisions to the posting requirements for affiliate information to be consistent with the new requirements of Order No. 717. In addition, they contain further refinements to the standards for posting gas quality information on pipeline Web sites, in particular requirements for formatting downloadable files. Finally, they contain standards that help to better ensure the security of Internet communications and to accommodate software changes in Internet usage.

13. NAESB reports that two of its new gas quality standards failed to pass as a result of a single segment failing to approve the standard. One of the blocked standards would have required a pipeline that currently does not post a Wobbe number[12] to post gas quality information on its Web site and to calculate and post a Wobbe number when notified by a Service Requestor of its desire to begin discussing the interchangeability of gas supplies. The other blocked standard would have added to an existing requirement that pipelines propose an additional requirement that three months of historical gas quality data be downloadable based on a given date range.

14. The Commission does not currently require pipelines to use the Wobbe number in calculating gas quality, and NAESB's September 30 Report shows that no consensus to approve such a requirement has been achieved. Nor has any showing been made of a need for a nationwide requirement for providing a Wobbe number applicable to those pipelines whose tariffs do not require the use of a Wobbe number. Accordingly, the Commission is not proposing to create any such requirement in this NOPR. Issues regarding gas quality, including the use of the Wobbe number, can be addressed in individual Commission proceedings involving gas quality when relevant. With respect to the blocked standard regarding downloading, the existing NAESB standards, 4.3.90, 4.3.91, and 4.3.92, already require pipelines to provide a downloadable file, with a standardized file format, of gas quality information for each identified location for a three month period. We therefore see no need for Commission intervention on the question of whether it is more efficient for the pipeline or the shipper to select the date range from the data provided.

15. As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry.[13] Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal

[8] *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 1 (2008).

[9] As discussed below, two other new gas quality standards failed to be adopted.

[10] In its Version 1.9 Standards, the WEQ made the following changes to its Version 1.8 standards: New Definitions Nos. 5.24, 5.25, and 11.21–11.2.5; Modified Definitions Nos. 10.2.8, 10.2.14, 10.2.24, 10.2.30–10.2.34, 10.2.37, and 10.2.38; New Standards Nos. 0.3.16, 0.3.17, 1.3.80, 4.3.94–4.3.99, 5.3.1, 5.3.3, 5.3.26, 5.3.61–5.3.69, 10.1.10, 10.3.26, 10.3.27 11.31, and 11.32; Modified Standards Nos. 4.1.39, 4.3.16, 4.3.23, 4.3.26, 4.3.29, 4.3.32, 4.3.33, 4.3.90, 4.3.92, 5.3.1, 5.3.3, 5.3.26, 10.2.8, 10.2.14, 10.2.24, 10.2.3–10.2.34, 10.2.37, 10.2.38, 10.3.13, 10.3.15, and 10.3.17; and miscellaneous maintenance clean-up revisions.

[11] The Commission is continuing its past practice and is not proposing to incorporate by reference Standards 4.3.4 and 10.3.2., because they are inconsistent with the Commission's record retention requirement in 18 CFR 284.12(b)(3)(v). *See, e.g., Standards for Business Practices for Interstate Natural Gas Pipelines,* Final Rule, Order No. 587–T, FERC Stats. & Regs. ¶ 31,289 at P 5 & n.9 (2009).

[12] The Wobbe number or Wobbe index is named after Goffredo Wobbe, an Italian physicist who developed a formula to compare the characteristics of two gasses. The Wobbe index is a measure of the physical combustion characteristics of natural gas used in the natural gas industry to ensure that natural gas from different sources is compatible with gas-burning equipment in a particular service area. *See* Williams, Technical Background and Issues of Gas Interchangeability, 27 (AGA Staff Paper, 2006) (*http://www.aga.org/NR/rdonlyres/C9D9FB1D-E244-4B9D-9C67-5FA74C24A8E0/0/0604GASINTERCHANGEABILITY STAFFPAPER.pdf.*).

[13] The NAESB process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—Distributors, End Users, Pipelines, Producers, and Services (including marketers and computer service providers). For final approval, 67 percent of the WGQ's general membership voting must ratify the standards.

agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.[14]

16. The Commission proposes that natural gas pipelines be required to implement the Version 1.9 Standards on the first day of the month three months after a final rule is issued. Based on past practice, we are proposing this implementation schedule to give the natural gas pipelines subject to these standards adequate time to prepare to implement for these changes. In addition, the Commission proposes that pipelines be required to file tariff sheets to reflect the changed standards two months before the implementation date.

IV. Notice of Use of Voluntary Consensus Standards

17. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

V. Information Collection Statement

18. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs to implement the WGQ's definitions and business practice standards for interstate natural gas pipelines and electronic communication protocols. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in ongoing costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	168	1	22	3,696
Totals				3,696

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 3,696.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:[15]

	FERC–549C
Annualized Capital/Startup Costs.	$554,400
Annualized Costs (Operations & Maintenance).	N/A
Total Annualized Costs	$554,400

19. OMB regulations[16] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices of Interstate Natural Gas Pipelines (FERC–549C).

Action: Proposed collections.

OMB Control No.: 1902–0174.

Respondents: Business or other for profit, (Natural Gas Pipelines (not applicable to small businesses.))

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: The proposals in this NOPR would, if implemented, upgrade the Commission's current business practices and communication standards in response to the Commission's determinations in Order Nos. 682, 698, 698–A, 712 and 717, and would: revise standards allowing index-based pricing for capacity release transactions and allow for increased receipt and delivery point flexibility through the use of redirects of scheduled quantities; create information posting requirements for Web sites and browsers; require the posting of gas quality information including posting and format requirements; report hydrocarbon liquid drop out measurements; and create standards to reflect changes in the use of software used on the Internet.

20. The implementation of these data requirements will increase the efficiency of the capacity release market and the ability to schedule gas around constraints, will provide additional transparency to informational posting Web sites, will improve gas quality measurements and will improve communication standards. The implementation of these standards and regulations will promote the additional efficiency and reliability of the gas industries' operations thereby helping the Commission to carry out its responsibilities under the Natural Gas Act of promoting the efficiency and reliability of the gas industries' operations. In addition, the Commission's Office of Energy Market and Regulation will use the data for general industry oversight.

21. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices of natural gas pipelines and made a preliminary determination that the proposed revisions are necessary to establish more efficient coordination between the gas and electric industries. Requiring such information ensures both a common means of communication and common business practices to limit miscommunication for participants engaged in the sale of electric energy at wholesale and the transportation of natural gas. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industries. The Commission has assured itself, by means of its

[14] Public Law No. 104–113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[15] The total annualized cost for the two information collections is $554,400. This number is reached by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of $150 (a composite estimate that includes legal, technical and support staff rates). $554,400 = $150 × 3,696.

[16] 5 CFR 1320.11.

internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

22. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426 Tel: (202) 502–8415/Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov*.

23. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285].

VI. Environmental Analysis

24. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[17] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[18] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[19] Therefore, an environmental assessment is unnecessary and has not been prepared as part of this NOPR.

VII. Regulatory Flexibility Act Certification

25. The Regulatory Flexibility Act of 1980 (RFA)[20] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment.[21] Based on our analysis of the requirements proposed in this NOPR, we do not think the proposed rule will have a significant impact on a substantial number of small entities.

VIII. Comment Procedures

26. The Commission invites interested persons to submit written comments on the NAESB business practice standards proposed for incorporation by reference in this NOPR, as well as any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 11, 2010. Comments must refer to Docket No. RM96–1–036, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format.

27. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. For paper filings, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely, as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

29. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

30. From FERC's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number, excluding the last three digits of this document in the docket number field (''RM96–1''), and in the subdocket number field type in the last three digits (''036'').

31. User assistance is available for eLibrary and the FERC's Web site during the Commission's normal business hours. For assistance, contact FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov*, or by telephone at 202–502–6652 (toll-free at (866) 208–3676) or for TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 284

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraph (a)(1)(i) through (vii) to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Additional Standards (General Standards, Creditworthiness Standards and Gas/Electric Operational Communications Standards) (Version 1.9, September 30, 2009);

(ii) Nominations Related Standards (Version 1.9, September 30, 2009);

(iii) Flowing Gas Related Standards (Version 1.9, September 30, 2009);

(iv) Invoicing Related Standards (Version 1.9, September 30, 2009);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 1.9, September 30, 2009) with the exception of Standard 4.3.4;

(vi) Capacity Release Related Standards (Version 1.9, September 30, 2009); and

(vii) Internet Electronic Transport Related Standards (Version 1.9,

[17] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* FERC Stats. & Regs. ¶ 30,783 (1987).

[18] 18 CFR 380.4.

[19] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[20] 5 U.S.C. 601–612.

[21] 5 U.S.C. 601–604.

September 30, 2009) with the exception of Standard 10.3.2.

* * * * *

[FR Doc. E9–28402 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 28 and 44

[Docket No. TTB–2009–0005; Notice No. 101; Re: Notice No. 100]

RIN 1513–AB77

Drawback of Internal Revenue Taxes; Extension of Comment Period

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to a request filed on behalf of an industry association, the Alcohol and Tobacco Tax and Trade Bureau is extending the comment period for Notice No. 100, a notice of proposed rulemaking published in the **Federal Register** on October 15, 2009, for an additional 30 days. The proposed rule sought comments on conforming amendments to our regulations to reflect proposed Customs and Border Protection regulations intended to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930.

DATES: The comment period for the proposed rule published on October 15, 2009 (74 FR 52937), is extended. Written comments on Notice No. 100 must now be received on or before January 14, 2010.

ADDRESSES: You may send comments on Notice No. 100 to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for this notice on the Federal e-rulemaking portal, Regulations.gov, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, Notice No. 100, and the comments we receive on Notice No. 100 within Docket No. TTB–2009–0005 at *http://www.regulations.gov*. A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 100. You also may view copies of those documents by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20220; telephone 202–453–2097.

SUPPLEMENTARY INFORMATION: In Notice No. 100, published in the **Federal Register** on October 15, 2009 (74 FR 52937), the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposed to amend its regulations to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930. The proposal provides conforming amendments to reflect proposed Customs and Border Protection (CBP) regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. The proposed CBP amendments to the customs regulations in 19 CFR parts 113 and 191 also were published in the **Federal Register** on October 15, 2009, as Docket No. USCBP–2009–0021 (74 FR 52928).

On November 8, 2009, TTB received a letter from the American Petroleum Institute (API) requesting a 30-day extension of the comment period for Notice No. 100. The API letter cited the complexity of the proposed regulatory changes since the proposal involved both TTB and CBP regulations, the complexity of the drawback issue, which involves Constitutional issues and various judicial decisions, and the ''potential far reaching implication'' of the notice ''to a wide range of industries and parties.'' API also noted that it was submitting a similar request to CBP regarding its October 15, 2009, proposed rule.

Given the factors cited above, TTB agrees that the comment period for Notice No. 100 should be extended by an additional 30 days. Therefore, comments on Notice No. 100 are now due on January 14, 2010.

Drafting Information

Michael Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

Signed: November 23, 2009.

John J. Manfreda,

Administrator.

[FR Doc. E9–28366 Filed 11–25–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–252–FOR; OSM–2009–0011]

Kentucky Regulatory Program

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

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

SUMMARY: We are announcing receipt of an amendment to the Kentucky regulatory program (hereinafter, the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted revisions to its administrative regulations pertaining to the disposal of coal mine waste. Kentucky intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

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

DATES: We will accept written comments until 4 p.m., e.s.t., December 28, 2009. If requested, we will hold a public hearing on December 22, 2009. We will accept requests to speak until 4 p.m., e.s.t., on December 14, 2009.

ADDRESSES: You may submit comments, identified by ''KY–252–FOR/Docket Number OSM–2009–0011'' by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2009–0011. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier: Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section in this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov*, you may also obtain information at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503; (859) 260–3900.

Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601; *Telephone:* (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: Joseph L. Blackburn, Telephone: (859) 260–3900. E-mail: *jblackburn@osmre.gov*.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Submission

By electronic mail on March 11, 2009, Kentucky sent us an informal amendment pertaining to coal mine waste disposal (*Docket:* OSM–2009–0011). We reviewed the informal submittal and by electronic mail dated June 9, 2009, we informed Kentucky that subject to formal review and public comment the revisions proposed at 405 KAR 16:140 and 18:140 were consistent with the counterpart Federal regulations at 30 CFR 816.81(a) and 817.81(a) (OSM–2009–0011). By letter dated September 14, 2009, Kentucky sent us a formal amendment to its program pertaining to coal mine waste disposal under SMCRA (30 U.S.C. 1201 *et seq.*) (OSM–2009–0011). Kentucky was responding to OSM's 30 CFR 732.17(d) letter dated May 27, 1977 (OSM–2009–0011). In that letter, OSM referred to its revised regulations at 30 CFR 816/817.81 that required that coal mine waste be ''hauled or conveyed'' in a controlled manner instead of ''placed.'' The full text of the program amendment is available for you to read at the location listed above under **ADDRESSES**. A summary of the proposed changes follows.

405 KAR 16:140 Disposal of Coal Mine Waste (surface mining) and 405 KAR 18:140 Disposal of Coal Mine Waste (underground mining). Kentucky proposes to make substantially identical changes to both administrative regulations. The revised regulations reference EO2009–0538, effective June 12, 2009, which abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. Throughout the regulations, the term ''coal processing waste'' is replaced by ''coal mine waste.'' In Section 1, the phrase ''transported and placed,'' as it refers to coal mine waste, is replaced by ''hauled and conveyed in a controlled (manner).'' In Section 2, the term ''registered professional engineer'' is replaced by ''professional engineer.'' Other minor wording changes are made throughout the regulations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Kentucky program.

Written or Electronic Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or at locations other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on December 14, 2009. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

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

Public Meeting

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

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 15, 2009.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. E9–28368 Filed 11–25–09; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2009–HA–0096]

RIN 0720–AB34

TRICARE: Transitional Assistance Management Program

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to implement section 4 of the Hubbard Act, Public Law 110–317, and section 734 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110–417. These Acts provide two new categories of beneficiaries for the Transitional Assistance Management Program (TAMP).

DATES: Comments received at the address indicated below by January 26, 2010 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 Rulemaking 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 implements section 4 of the Hubbard Act, Public Law 110–317, and section 734 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110–417, in establishing two new eligibility categories under TAMP. The TAMP benefit provides continued TRICARE coverage for a period of 180 days. For those who qualify, the 180-day time frame begins upon the active duty member's separation. For further information on TAMP benefits, please visit the TRICARE Web site at *http://www.tricare.mil.*

The TAMP is available to specific beneficiary categories. Prior to the two additional categories that are being proposed in this rule, the TAMP was available to:

(i) A member who is involuntarily separated from active duty.

(ii) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days.

(iii) A member who is separated from active duty for which the member is involuntarily retained under section 12305, in support of a contingency operation.

(iv) A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

Public Law 110–317 amended Section 1145(a)(2) of title 10, U.S.C. by adding ''a member who receives a sole survivorship discharge (as defined in section 1174(i) of this title)'' as an additional category of TAMP eligible. The provision is effective August 29, 2008.

Public Law 110–417 amended Section 1145(a)(2) of title 10, U.S.C. by adding ''a member who is separated from active duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component.'' This provision is effective October 14, 2008.

Although the TRICARE Management Activity is tasked with publishing legislatively mandated eligibility changes, determination of eligibility is the primary responsibility of the Uniformed Services. TRICARE relies on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification. However, a determination by the Uniformed Services that a person is eligible does not automatically entitle such a person to TRICARE payments. Before any TRICARE benefits may be extended, additional requirements of 32 CFR Part 199 must be met. Disputes regarding eligibility or dates of beginning eligibility for benefits under TRICARE can only be resolved by the appropriate Uniformed Service.

Regulatory Procedures

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

Section 801 of title 5, United States Code, and Executive Order 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 a major rule or significant regulatory action.

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''

Executive Order 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 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 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 199.3 is amended by adding two new paragraphs (e)(1)(v) and (e)(1)(vi) to read as follows:

§ 199.3 Eligibility.

* * * * *

(e) * * *

(1) * * *

(v) A member who receives a sole survivorship discharge (as defined in section 1174(i) of title 10, United States Code).

(vi) A member who is separated from active duty who agrees newly to become a member of the Selected Reserve of the Ready Reserve of a reserve component.

* * * * *

Dated: November 19, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28359 Filed 11–25–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–HA–0123; RIN 0720–AB29]

32 CFR Part 199

TRICARE; TRICARE Delivery of Health Care in Alaska

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: TRICARE has recognized the unique circumstances existing in Alaska which make the provision of medical care to TRICARE beneficiaries through the TRICARE program operated in the other 49 States unrealistic. Recognizing these unique conditions and circumstances, the Department of Defense has conducted a demonstration project in the State of Alaska since implementation of the TRICARE program under which certain exceptions have been made for administration of the program in Alaska. This rule proposes to incorporate those demonstration exceptions as permanent changes to the administration of the TRICARE program in Alaska. This rule proposes no change to the TRICARE benefit or to those who are eligible for it. However, the rule does eliminate the financial underwriting of health care costs in the State of Alaska by a TRICARE contractor. In addition, TRICARE Prime may be limited to those eligible beneficiaries enrolled to a military treatment facility and those eligible for TRICARE Prime Remote.

DATES: Written comments received at the address indicated below by January 26, 2010 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number 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, 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: Mr. Michael O'Bar, TRICARE Management Activity, TRICARE Policy and Operations Directorate, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

In recognition of the unique geographical and environmental characteristics of the State of Alaska, the Department of Defense has conducted a demonstration project which tested the viability of implementing the TRICARE program differently in Alaska (*see* **Federal Register,** Tuesday, May 18, 2004, 69 FR 28124–28125). To date that demonstration has supported the impracticability and lack of cost effectiveness to impose on a TRICARE contractor the financial underwriting of the delivery of health care resulting from costs associated with the TRICARE program over which the contractor has no control. In addition, implementation of the TRICARE program in Alaska has limited TRICARE Prime to those eligible beneficiaries enrolled at a military treatment facility (MTF) and those eligible for TRICARE Prime Remote. The demonstration is scheduled to end on March 31, 2009. This rule will make permanent those aspects of the demonstration which the Department of Defense found to be best in the delivery of health care in Alaska. However, in order to ensure continuity of health care services in Alaska during the transition to the competitively awarded follow-on TRICARE contract, the demonstration may be extended until the later of the start of health care delivery under the new contract or until this rule becomes final.

II. Regulatory Procedures

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

Section 801 of title 5, United States Code (U.S.C.) 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 an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

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

It has been certified that this 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)

The Regulatory Flexibility Act (RFA) requires 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 rule is not an economically 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 reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

We have examined the impact 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.

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—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 199.17 is amended by revising the second sentence of paragraph (a)(3), redesignating the current paragraph (v) as (w), and by adding a new paragraph (v) to read as follows:

§ 199.17 TRICARE Program

* * * * *

(a) * * *

(3) * * * Its geographical applicability is to all 50 States (except as modified for the State of Alaska under paragraph (v) of this section) and the District of Columbia. * * *

* * * * *

(v) *Administration of the TRICARE program in the State of Alaska.* In view of the unique geographical and environmental characteristics impacting the delivery of health care in the State of Alaska, administration of the TRICARE program in the State of Alaska will not include financial underwriting of the delivery of health care by a TRICARE contractor. In addition, the Assistant Secretary of Defense (Health Affairs) may limit the availability of TRICARE Prime in the State of Alaska to those eligible beneficiaries enrolled to a military treatment facility (MTF) and to those eligible beneficiaries under TRICARE Prime Remote. All other provisions of this section shall apply to administration of the TRICARE program in the State of Alaska as they apply to the other 49 States and the District of Columbia.

* * * * *

Dated: November 19, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28357 Filed 11–25–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2009–HA–0068; RIN 0720–AB30]

32 CFR Part 199

TRICARE; Continued Health Care Benefit Program Expansion

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule executes the expansion of section 1078a of title 10, United States Code. With the recent expansions of the Military Health System (MHS) coverage, particularly with the Reserve Component members, some MHS beneficiaries would not be eligible for CHCBP under certain circumstances that terminate their MHS coverage. This provision allows the Secretary to establish CHCBP eligibility for any categories of MHS beneficiaries who otherwise would lose MHS coverage with no continued care eligibility. This proposed rule also includes administrative changes providing clarification on some issues and updates the final rule published in the **Federal Register** on September 30, 1994, (59 FR 49817).

DATES: Comments must be received on or before January 26, 2010.

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, 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: Kathleen Larkin, 703–681–0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Section 713 of the National Defense Authorization Act (NDAA) for Fiscal Year 2004 authorized coverage for uniformed services rather than armed services. Section 705 of the NDAA for Fiscal Year 2008 authorizes the expansion of persons eligible for the Continued Health Care Benefit Program (CHCBP) under Title 10 of the United States Code, section 1078a. CHCBP is the program that provides continued healthcare coverage for MHS beneficiaries who lose their MHS eligibility. It is modeled after private sector ''COBRA Coverage,'' with the individual paying 100% of the program cost plus an amount to cover administrative expenses. Currently, CHCBP provides coverage for certain active duty (AD) service members and their family members; however, it does not provide coverage for Reserve Component (RC) members who have not been on Active Duty (AD) within the last 18 months. Furthermore, coverage under CHCBP is only authorized for 18 months from either separation from AD or when coverage under the Transitional Assistance Management Program (TAMP) (10 U.S.C. 1145) ends. Selected RC members losing coverage under TRS do not receive the same extent of coverage under CHCBP as either qualified AD members or their family members.

The change to 10 U.S.C. 1078a expands CHCBP to include qualified Reservists. For members of the Selected Reserves, coverage under CHCBP would run for 18 months after the date the member ceases to be entitled to care under 10 U.S.C. 1076d. In the case of all other persons, the coverage period is 36 months after the date on which the person first ceases to be covered under the military health benefits plan or transitional health care coverage.

Administrative Changes

CHCBP was directed by Congress in section 4408 of the National Defense Authorization Act of Fiscal Year 1993, Public Law 102–484, which amended titles 10 U.S.C., by adding section 1078a. The Department of Defense (DoD) published a final rule regarding CHCBP in the **Federal Register** on September 30, 1994, (59 FR 49817).

For the majority of beneficiaries, enrollment in CHCBP is for a specific and limited period of time. Certain former spouses, however, may elect to receive coverage for as long as they wish (beyond the initial 36-month enrollment) if they meet certain criteria. The September 30, 1994, final rule may have been ambiguous regarding the criteria for continued CHCBP coverage for former spouses. If he or she meets certain criteria specified in this rule, unlimited enrollment in the CHCBP is available for a former spouse.

This proposed rule also reflects administrative changes to accurately update information regarding the current CHCBP and TRICARE programs as follows: Updates the ''CHAMPUS'' (Civilian Health and Medical Program of the Uniformed Services) program name to ''TRICARE'' when appropriate; updates the Department of Defense agency name from ''OCHAMPUS'' (the Office of CHAMPUS) to ''TRICARE Management Activity'' (TMA); replaces the reference ''Third Party Administrator'' with ''CHCBP contractor'' to make it consistent with the ''contractor'' term used for TMA programs; updates ''military health services system'' with ''Military Health System''; and updates information regarding the enrollment process both in terms of the form to be used (DD Form 2837) as well as the documentation required to verify an applicant's eligibility for enrolling.

This proposed rule updates references to other paragraphs of Section 199.20 by: Changing the title of paragraph (n) of this section ''Peer Review Organization Program'' to ''Quality and Utilization Review Peer Review Organization Program;'' changing the title of the program in paragraph (p)(2)(ii) from ''Active Duty Dependents Dental Plan'' to ''TRICARE Dental Program;'' and by adding to that same paragraph the ''TRICARE Retiree Dental Program'' under Sec. 199.22 as a special program that is not available to participants in the CHCBP. In addition, this proposed rule deletes paragraph (p)(3) in its entirety, as that subpart referenced two demonstration projects that are no longer in existence and therefore no longer available to CHCBP participants: The ''Home Health Care Demonstration'' and the ''Home Health Care-Case Management Demonstration.''

This proposed rule provides for improved administration of CHCBP by: Allowing the Department of Defense and the other Uniformed Services the ability to delegate to a designee the responsibility for notifying persons eligible to receive health benefits under the CHCBP; requiring supporting documentation on any change in status that would make a child eligible for CHCBP; allowing notification of a former spouse's potential eligibility for CHCBP to be made by the member, former member or former spouse; establishing a 14-day period within which the CHCBP contractor must advise former spouses of their potential eligibility for CHCBP; and discontinuing the requirement that CHCBP premium rates be published annually but instead requiring that the premium rates be published whenever a change in rate occurs.

This proposed rule also makes minor editorial changes in an attempt to improve understanding of CHCBP program requirements and processes, including making grammatical improvements in the text of Section 199.20.

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 rule is not an economically 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. OMB previously cleared the collection requirements under OMB Control Number 0704–0364.

Executive Order 13132, ''Federalism''

We have examined the impact(s) 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.

Sec. 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 tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one 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 199.20 is revised to read as follows:

§ 199.20 Continued Health Care Benefit Program (CHCBP).

(a) *Purpose.* The CHCBP is a premium based temporary health care coverage program that will be available to qualified beneficiaries (set forth in paragraph (d)(1) of this section). Medical coverage under this program will mirror the benefits offered via the basic TRICARE program. Premium costs for this coverage are payable by enrollees to a Third Party Administrator. The CHCBP is not part of the TRICARE program. However, as set forth in this section, it functions under most of the rules and procedures of TRICARE. Because the purpose of the CHCBP is to provide a continuation health care benefit for the Department of Defense and the other uniformed Services (*e.g.,* NOAA, PHS, and the Coast Guard) health care beneficiaries losing eligibility, it will be administered so that it appears, to the maximum extent possible, to be part of TRICARE.

(b) *General provisions.* Except for any provisions the Director of the TRICARE Management Activity may exclude, the general provisions of § 199.1 shall apply to the CHCBP as they do to TRICARE.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in § 199.2 are relevant to the administration of the CHCBP, the definitions contained in that section shall apply to the CHCBP as they do to TRICARE.

(d) *Eligibility and enrollment.* (1) *Eligibility.* Enrollment in the CHCBP is open to the following individuals:

(i) Members of Uniformed Services, who:

(A) Are discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions;

(B) Immediately preceding that discharge or release, were entitled to medical and dental care under 10 U.S.C. 1074(a) (except in the case of a member discharged or released from full-time National Guard duty); and,

(C) After that discharge or release and any period of transitional health care provided under 10 U.S.C. 1145(a) would not otherwise be eligible for any benefit under 10 U.S.C. chapter 55.

(ii) A person who:

(A) Ceases to meet requirements for being considered an unmarried dependent child of a member or former member of the armed forces under 10 U.S.C. 1072(2)(D) or an unmarried dependent of a member of former member of the uniformed services under 10 U.S.C. 1072(2)(I);

(B) On the day before ceasing to meet those requirements, was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Would not otherwise be eligible for any benefits under 10 U.S.C. chapter 55.

(iii) A person who:

(A) Is an unremarried former spouse of a member or former member of the uniformed services;

(B) On the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Is not a dependent of the member or former member under 10 U.S.C. 1072(2)(F) or (G) or ends a one-year period of dependency under 10 U.S.C. 1072(2)(H).

(iv) An unmarried person who:

(A) Is placed in the legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child; and

(B) Either:

(1) Has not attained the age of 21 if not in school or age 23 if enrolled in a full time course of study at an institution of higher learning; or

(2) Is incapable of self-support because of a mental or physical incapacity which occurred while the person was considered a dependent of the member or former member; and

(C) Is dependent on the member or former member for over one-half of the person's support; and

(D) Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and

(E) Is not a dependent of a member or former member as described in § 199.3(b)(2).

(2) *Effective date.* Except for the special transitional provisions in paragraph (r) of this section, eligibility in the CHCBP is limited to individuals who lost their entitlement to regular military health services system benefits on or after October 1, 1994.

(3) *Notification of eligibility.* (i) The Department of Defense and the other Uniformed Services (National Oceanic and Atmospheric Administration (NOAA), Public Health Service (PHS), Coast Guard) will notify persons eligible to receive health benefits under the CHCBP.

(ii) In the case of a member who becomes (or will become) eligible for continued coverage, the Department of Defense shall notify the member of their rights for coverage as part of pre-separation counseling conducted under 10 U.S.C. 1142.

(iii) In the case of a dependent of a member or former member who becomes eligible for continued coverage under paragraph (d)(1)(ii) of this section:

(A) The member or former member may submit to the CHCBP contractor a notice with supporting documentation of the dependent's change in status (including the dependent's name, address, and such other information needed); and

(B) The CHCBP contractor, within 14 days after receiving such information, will inform the dependent of the dependent's rights under 10 U.S.C. 1142.

(iv) In the case of a former spouse of a member or former member who becomes eligible for continued coverage, the member, former member or former spouse may submit to the CHCBP contractor a notice of the former spouse's change in status. The CHCBP contractor within 14 days after receiving such information will notify the individual of their potential eligibility for CHCBP.

(4) *Election of coverage.* In order to obtain coverage under the CHCBP, a written election by the eligible beneficiary must be made within a prescribed time period.

(i) In the case of a member discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, the written election shall be submitted to the CHCBP contractor before the end of the 60-day period beginning on the later of:

(A) The date of the discharge or release of the member from active duty or full-time National Guard duty; or

(B) The date that the period of transitional health care applicable to the member under 10 U.S.C. 1145(a) ends; or

(C) The date the member receives the notification required in paragraph (d)(3)(ii) of this section.

(ii) In the case of a child who ceases to meet the requirements for being an unremarried dependent child of a member or former member under 10 U.S.C. 1072(2)(D), the written election shall be submitted to the CHCBP contractor before the end of the 60-day period beginning on the later of:

(A) the date that the dependent ceases to meet the definition of a dependent under 10 U.S.C. 1072(2)(D); or

(B) The date that the dependent receives the notification required in paragraph (d)(3)(iii) of this section,

(iii) In the case of former spouse of a member or former member, the written election shall be submitted to the CHCBP contractor before the end of the 60-day period beginning on the later of:

(A) The date as of which the former spouse first ceases to meet the requirements for being considered a dependent under 10 U.S.C. 1072(2); or

(B) Such other date as the Secretary of Defense may prescribe.

(iv) A member of the armed forces who is eligible for enrollment under paragraph (d)(1)(i) of this section may elect self-only or family coverage. Family members who may be included in such family coverage are the spouse and children of the member.

(v) All other categories eligible for enrollment under paragraph (d)(1) must elect self-only coverage.

(5) *Enrollment.* To enroll in the CHCBP, an eligible individual must submit a completed DD Form 2387 ''Continued Health Care Benefit Program (CHCBP) Application,'' documentation as requested on DD Form 2387 to verify the applicant's eligibility for enrolling in CHCBP, and payment to cover the quarter's premium. The CHCBP contractor may request additional information and documentation to confirm the applicant's eligibility for CHCBP.

(6) *Period of coverage.* CHCBP coverage may not extend beyond:

(i) For a member discharged or released from active duty (or full-time

National Guard duty), whether voluntarily or involuntarily, the date which is 18 months after the date the member ceases to be entitled to care under 10 U.S.C. 1074(a) and any transitional care under 10 U.S.C. 1145.

(ii) In the case of an child of a member or former member, the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered an unmarried dependent child under 10 U.S.C. 1072(2)(D).

(iii) In the case of an unremarried former spouse of a member or former member, the date which is 36 months after the later of:

(A) The date on which the final decree of divorce, dissolution, or annulment occurs; or

(B) If applicable, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires.

(iv) In the case of a former spouse of a retiree whose marriage was dissolved after the member retired from the service, the period of coverage under the CHCBP is unlimited, if the former spouse:

(A) Has not remarried before the age of 55; and

(B) Was enrolled in the CHCBP or TRICARE as the dependent of a retiree during the 18-month period before the date of the divorce, dissolution, or annulment; and

(C) Is receiving a portion of the retired or retainer pay of a member or former member or an annuity based on the retainer pay of the member; or

(D) Has a court order for payment of any portion of the retired or retainer pay; or

(E) Has a written agreement (whether voluntary or pursuant to a court order) which provides for an election by the member or former member to provide an annuity to the former spouse.

(v) For the beneficiary who becomes eligible for the CHCBP by ceasing to meet the requirements for being considered an unmarried dependent child of a member or former member, health care coverage not may extend beyond the date which is 36 months after the date the member becomes ineligible for medical and dental care under 10 U.S.C. 1074(a) and any transitional health care under 10 U.S.C. 1145(a).

(vi) Though beneficiaries have sixty days (60) to elect coverage under the CHCBP, upon enrolling, the period of coverage must begin the day after entitlement to a military health care plan (including transitional health care under 10 U.S.C. 1145(a)) ends as though no break in coverage had occurred.

(e) *CHCBP benefits.* (1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of § 199.4 shall apply to the CHCBP as they do to TRICARE.

(2) *Exceptions.* The following provisions of Sec. 199.4 are not applicable to the CHCBP:

(i) Section 199.4 (a)(2) concerning eligibility.

(ii) All provisions regarding nonavailability statements or requirements to use facilities of the Uniformed Services.

(3) *Beneficiary liability.* For purposes of TRICARE deductible and cost-sharing requirements and catastrophic cap limits, amounts applicable to the category of beneficiaries to which the CHCBP enrollee last belonged shall continue to apply, except that for separating active duty members, amounts applicable to dependents of active duty members shall apply.

(f) *Authorized providers.* The provisions of § 199.6 shall apply to the CHCBP as they do to TRICARE.

(g) *Claims submission, review, and payment.* The provisions of § 199.7 shall apply to the CHCBP as they do to TRICARE, except that no provisions regarding nonavailability statements shall apply.

(h) *Double coverage.* The provisions of § 199.8 shall apply to the CHCBP as they do to TRICARE.

(i) *Administrative remedies for fraud, abuse, and conflict of interest.* The provisions of § 199.9 shall apply to the CHCBP as they do to TRICARE.

(j) *Appeal and hearing procedures.* The provisions of § 199.10 shall apply to the CHCBP as they do to TRICARE.

(k) *Overpayments recovery.* The provisions of § 199.11 shall apply to the CHCBP as they do to TRICARE.

(l) *Third party recoveries.* The provisions of § 199.12 shall apply to the CHCBP as they do to TRICARE.

(m) *Provider reimbursement methods.* The provisions of § 199.14 shall apply to the CHCBP as they do to TRICARE.

(n) *Quality and Utilization Review Peer Review Organization Program.* The provisions of § 199.15 shall apply to the CHCBP as they do to TRICARE.

(o) *Preferred provider organization programs available.* Any preferred provider organization program under this part that provides for reduced cost sharing for using designated providers, such as the ''TRICARE Extra'' option under § 199.17, shall be available to participants in the CHCBP as it is to TRICARE beneficiaries.

(p) *Special programs not applicable.* (1) *In general.* Special programs established under this Part that are not part of the basic TRICARE program established pursuant to 10 U.S.C. 1079 and 1086 are not, unless specifically provided in this section, available to participants in the CHCBP.

(2) *Examples.* The special programs referred to in paragraph (p)(1) of this section include:

(i) The Program for Persons with Disabilities under § 199.5;

(ii) The TRICARE Dental Program under § 199.13;

(iii) The Supplemental Health Care Program under § 199.16;

(iv) The TRICARE Enrollment Program under § 199.17, except for TRICARE Extra program under that section; and

(v) The TRICARE Retiree Dental Program under § 199.22.

(q) *Premiums.* (1) *Rates.* Premium rates will be established by the Assistant Secretary of Defense (Health Affairs) for two rate groups—individual and family. Eligible beneficiaries will select the level of coverage they require at the time of initial enrollment (either individual or family) and pay the appropriate premium payment. The rates are based on Federal Employees Health Benefits Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. The administrative fee, not to exceed ten percent of the basic premium amount, shall be determined based on actual expected administrative costs for administration of the program. Premiums may be revised annually and shall be published when the premium amount is changed. Premiums will be paid by enrollees quarterly.

(2) *Effects of failure to make premium payments.* Failure by enrollees to submit timely and proper premium payments will result in denial of continued enrollment and denial of payment of medical claims. Premium payments that are late 30 days or more past the start of the quarter for which payment is due will result in the termination of beneficiary enrollment. Beneficiaries denied continued enrollment due to lack of premium payments will not be allowed to reenroll. In such a case, benefit coverage will cease at the end of the ninety-day (90) period for which a premium payment was received. Enrollees will be held liable for medical costs incurred after losing eligibility.

(r) *Transitional provisions.* (1) There will be a sixty-day period of enrollment for all eligible beneficiaries (outlined in paragraph (d)(1) of this section) whose entitlement to regular Military Health System coverage ended on or after August 2, 1994, but prior to the CHCBP implementation on October 1, 1994.

(2) Enrollment in the U.S. VIP program may continue up to October 1, 1994. Policies written prior to October 1, 1994, will remain in effect until the end of the policy life.

(3) On or after the October 1, 1994, implementation of the CHCBP, beneficiaries who enrolled in the U.S. VIP program prior to October 1, 1994, may elect to cancel their U.S. VIP policy and enroll in the CHCBP.

(4) With the exception of persons enrolled in the U.S. VIP program who may convert to the CHCBP, individuals who lost their entitlement to regular Military Health System coverage prior to August 2, 1994, are not eligible for the CHCBP.

(s) *Procedures.* The Director, TRICARE Management Activity, may establish other rules and procedures for the administration of the Continued Health Care Benefit Program.

Dated: November 19, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28358 Filed 11–25–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA–2009–0120; Notice 1]

RIN 2127–AK67

Requirements and Procedures for Consumer Assistance To Recycle and Save Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations implementing the Consumer Assistance to Recycle and Save (CARS) program, published on July 29, 2009, in the **Federal Register**, under the CARS Act. The rule change would allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle traded in under the CARS program. This additional time would allow the public to benefit from the availability of lower cost used vehicle parts from vehicles traded in under the CARS program and would provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding.

DATES: Submit comments on or before December 17, 2009.

ADDRESSES: You may submit comments electronically [identified by DOT Docket Number NHTSA–2009–0120] by visiting the following Web site:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *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 or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For questions, you may call David Jasinski, NHTSA Office of Chief Counsel, at (202) 366–5552.

SUPPLEMENTARY INFORMATION:

Current Rule and Proposed Change

This proposed rule would amend the regulations implementing the Consumer Assistance to Recycle and Save (CARS) program, published on July 29, 2009, in the **Federal Register** (74 FR 37878), under the CARS Act (Pub. L. 111–32), and amended by final rules published on August 5, 2009 (74 FR 38974), and September 28, 2009 (74 FR 49338). The rule change would allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle traded in under the CARS program. This additional time would allow the public to benefit from the availability of lower cost, used vehicle parts from CARS trade-in vehicles and would provide disposal facilities with an opportunity to derive more revenue from those vehicles prior to crushing or shredding thereby providing additional economic benefit from the CARS program.

Section 1302(c)(2) of the CARS Act grants the agency discretion to determine the appropriate time period in which a disposal facility must crush a vehicle. The rule currently requires a disposal facility that receives a vehicle traded in under the CARS program to crush or shred the vehicle within 180 days of receipt of the vehicle. 49 CFR 599.401(a)(3). After consulting with representatives of disposal facilities, the agency determined that 180 days was an appropriate amount of time to allow a disposal facility to possess a car prior to crushing or shredding. The allowed time period was determined based upon an estimate that 250,000 vehicles would be traded in under the CARS program and that the program's duration would be four months.

Due to the enormous popularity of the CARS program, the initial $1 billion in available funds were quickly depleted and, on August 7, 2009, Congress provided the CARS program with an additional $2 billion (Pub. L. 111–47). On August 25, 2009, approximately one month after the CARS program began, the agency stopped accepting new submissions because the additional funds were also depleted. By that time, nearly 700,000 new vehicles had been sold under the CARS program.

Shortly after new CARS program transactions ceased and the majority of the dealers' transactions were reimbursed by NHTSA, a representative of disposal facilities requested a meeting with NHTSA officials to discuss the possibility of extending the 180-day time period for crushing or shredding a trade-in vehicle. Although disposal facilities initially expected to receive 250,000 CARS trade-in vehicles spread out over four months, disposal facilities actually received nearly 700,000 CARS trade-in vehicles. Further, the majority of the CARS trade-in vehicles were received within less than one month.

At a September 29, 2009, meeting [1] with disposal facility representatives, agency officials learned that some disposal facilities were experiencing

[1] A memorandum summarizing the meeting has been placed in the docket. (Docket No. NHTSA–2009–0120).

substantial difficulty processing all of the CARS trade-in vehicles that were purchased from dealers or salvage auctions and that many disposal facilities anticipated significant difficulty in meeting the 180-day deadline to crush and shred these vehicles. The representatives also noted that the processing problems made it difficult for facilities to effectively inventory and sell parts from these vehicles, as authorized by the CARS Act. The disposal facilities suggested that, if they were able to hold a vehicle for more than 180 days prior to crushing or shredding, then consumers would have the benefit of cheaper used vehicle parts. The disposal facility representatives suggested that one year would be a suitable time to ensure that the public received the maximum benefit from used vehicle parts while simultaneously ensuring that the vehicles are crushed or shredded within a reasonable time frame.

The agency must balance the concerns of the disposal facilities and the public's interest in having access to cheaper used vehicle parts with two considerations that weigh against allowing more time to crush or shred trade-in vehicles. First, and most importantly, the agency is concerned about possible fraud. The CARS Act contains an explicit Congressional instruction to take measures to prevent fraud and the statute's clear environmental objective is to ensure that the fuel inefficient trade-in vehicles are never again used on the highway. The risk of fraud related to extending the deadline for crushing or shredding vehicles is mitigated substantially by the fact that dealers are required to disable the vehicles' engines within seven days after receipt of payment for the transaction and that vehicles must be flagged by disposal facilities in the National Motor Vehicle Title Information System as scrap vehicles within seven days of receipt. Nevertheless, the risk of a vehicle returning to the highway is not fully eliminated until the vehicle is crushed or shredded.

The agency is also concerned about the additional administrative burden caused by extending the deadline for crushing or shredding vehicles. The agency is committed to enforcing the requirements of the CARS program, including the requirements that vehicles are not transferred prior to crushing or shredding, vehicles' engine blocks are not sold, and vehicles are crushed or shredded on site. The longer that disposal facilities are allowed to keep vehicles on their lots prior to crushing, the longer the agency must devote resources to ensuring that disposal facilities comply with the requirements of the CARS program.

After considering the relevant interests, the agency proposes to amend section 599.401(a)(3) to allow disposal facilities an additional 90 days, for a total of 270 days, to crush or shred a vehicle. The 90 additional days strikes an appropriate balance between the public benefit of having cheaper used vehicle parts from the vehicles traded in under the CARS program and the potential for fraud and the administrative burdens on the agency.

As part of the certification forms that disposal facilities are required to sign under section 599.400 and Appendix E, a disposal facility must certify that a CARS program trade-in vehicle will be crushed or shredded within 180 days after receipt of the vehicle. Because NHTSA has already received the majority of the 700,000 Disposal Facility Certification Forms, it would be unnecessarily burdensome on both NHTSA and disposal facilities to require disposal facilities to submit new forms to NHTSA. Instead, if the proposed rule is adopted, NHTSA intends to treat the certifications on the forms already submitted as if they required disposal facilities to crush or shred a vehicle within 270 days of receipt. We also propose adding paragraph (d) to section 599.401 to formalize the *de facto* change to the existing certification.

Statutory Basis for This Action

This proposed rule would make amendments to regulations implementing the Consumer Assistance to Recycle and Save Act (CARS Act) (Pub. L. 111–32), which directs the Secretary to issue regulations implementing the Act.

APA Requirements and Public Comment

Section 1302(d) of the CARS Act provides that ''notwithstanding'' the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate final regulations to implement the Program not later than 30 days after the date of the enactment of this Act. The agency considered public notice and comment impracticable and used the statutory authority in the CARS Act to issue the CARS program regulations and the two subsequent amendments.

In the interest of openness and public participation, the agency has determined that a 20-day public notice and comment period is warranted for this proposed rule. Because the transaction submission portal was opened on July 27, 2009, the first vehicles would have been received by disposal facilities shortly thereafter. Therefore, the deadline for crushing or shredding some vehicles traded in under the CARS program would be as soon as approximately February 1, 2010 under the current regulations.

Although the agency recognizes that some vehicles traded in under the CARS program have already been crushed or shredded voluntarily well in advance of the 180 day deadline, basic fairness requires all vehicles traded in under the CARS program and not yet crushed or shredded be subject to the same deadline for crushing or shredding. Therefore, to ensure consistency, a final rule extending the deadline for crushing or shredding a trade in vehicle would need to be issued by approximately February 1, 2010. A 20-day comment period allows the agency time to solicit and consider public comment before issuing a final rule that would come into effect before February 1, 2010, ensuring that all vehicles traded in under the program would be subject to the same time period for crushing or shredding.

Effective Date

The amendments would be effective immediately upon publication of the final rule in the **Federal Register**. The 90-day increase from 180 days to 270 days would apply to all vehicles not yet crushed or shredded pursuant to the CARS program.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed,

stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Regulatory Analyses and Notices

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866, ''Regulatory Planning and Review.'' This action is limited to the proposed extension contained herein, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

The agency has discussed the relevant requirements of the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the National Environmental Policy Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act in the July 29, 2009 final rule cited above. This rule does not change the finding in those analyses.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 599

Fuel Economy, Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 599 as set forth below.

PART 599—REQUIREMENTS AND PROCEDURES FOR CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT PROGRAM

1. The authority citation for Part 599 continues to read as follows:

Authority: 49 U.S.C. 32901, Notes; delegation of authority at *49 CFR 1.50*.

2. Section 599.401 is amended by revising paragraph (a)(3) and adding paragraph (d) to read as follows:

§ 599.401 Requirements and limitations for disposal facilities that receive trade-in vehicles under the CARS program.

(a) * * *

(3) Crush or shred the trade-in vehicle onsite, including the engine block and the drive train (unless with respect to the drive train, the transmission, drive shaft, and rear end are sold separately), using its own machinery or a mobile crusher, within 270 days after receipt of the vehicle from the dealer or salvage auction;

* * * * *

(d) A completed Disposal Facility Certification Form (Appendix E to this part) for an individual transaction, which includes a certification by the disposal facility that the trade-in vehicle will be crushed or shredded within 180 days of receipt by the disposal facility is deemed to be amended to include an extension of time such that the trade-in vehicle will be crushed or shredded within 270 days of receipt by the disposal facility.

Issued on: November 23, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–28428 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0907141130–91224–01]

RIN 0648–AX80

Antarctic Marine Living Resources; Use of Centralized-Vessel Monitoring System and Importation of Toothfish; Re-export of Toothfish; Applications for Krill Fishing; Regulatory Framework for Annual Conservation Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This regulation proposes to facilitate conservation and management of Antarctic Marine Living Resources (AMLR). It would: further detail current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the Centralized-Vessel Monitoring System (C-VMS) regardless of where the fish was harvested; revise the NMFS catch-documentation requirements for re-exporting toothfish and add requirements for exporting U.S.-caught toothfish; require applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill; and rescind the existing regulatory framework for annual management measures. The intent of the rule is to further detail requirements for importing and re-exporting toothfish, to facilitate enforcement, to fulfill U.S. obligations in the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR), and to simplify the process for informing the public of annual conservation measures.

DATES: Comments must be submitted in writing on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX80 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*;
- Fax: 301–713–1193, Attn: Robert Gorrell; or
- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, Attn: CCAMLR Rulemaking, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Robert B. Gorrell at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to *David_Rostker@ob.eop.gov*, or fax to (202) 395–7825.

FOR FURTHER INFORMATION CONTACT: Robert Gorrell at 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

U.S. participation in Antarctic fisheries is managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements conservation measures developed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and adopted by the United States, through regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to facilitate compliance, to incorporate new conservation measures, to facilitate enforcement of new and existing conservation measures, and to simplify the process for informing the public of annual conservation measures.

Importing and/or Re-exporting Toothfish.

CCAMLR requires that all Contracting Parties ensure that their vessels fishing for *Dissostichus* (toothfish) under CCAMLR's purview are equipped with satellite-linked vessel monitoring devices to allow for continuous reporting to the CCAMLR Secretariat of their position while in Convention waters. This requirement is intended to promote the objectives of the Convention, including combating illegal, unreported, and unregulated fishing of AMLR, and to further improve compliance with the relevant conservation measures adopted by CCAMLR. CCAMLR conservation measures call for the transmission of Vessel Monitoring System (VMS) positional data as soon as possible either to the CCAMLR Secretariat directly or to the CCAMLR Secretariat through the relevant Flag State, with positions reported no less than every 4 hours for most *Dissostichus* spp. fisheries.

The NMFS final rule, published in August 2007 (72 FR 48496, August 23, 2007), requires use of C-VMS for U.S. vessels harvesting AMLR and verifiable documentation of real-time centralized VMS (or C-VMS) use for dealers seeking preapproval to import toothfish into the United States. U.S. vessels seeking to harvest *Dissostichus* spp. are required to report their positions, via C-VMS, from the time the vessel leaves port to the time that the vessel returns to port and at all points in between (i.e., port-to-port). Likewise, dealers seeking to import frozen *Dissostichus* spp. into the U.S. market must submit information so that NMFS can verify that the harvesting vessel was reporting its positions, via real-time centralized VMS (or C-VMS), from the time the vessel left port to the time that the vessel returned to port and at all points in between (i.e., port-to-port). These data are fundamental to ensuring the legality of *Dissostichus* spp. harvested by U.S. flagged-vessels as well as fish imported into and/or re-exported from the United States. The use of C-VMS port-to-port allows NMFS to verify the vessel's position associated with the harvest of toothfish no matter where the fish was harvested.

The proposed rule would not change current practices under existing regulations but would add definitions for ''Centralized Vessel Monitoring System (C-VMS)'', ''port-to-port'', and ''real-time'' and further detail the U.S. requirement that importation, re-exportation, and/or exportation of frozen toothfish is allowed only with verifiable documentation that the harvesting vessel participated in real-time C-VMS port-to-port. Shipments of frozen *Dissostichus* spp. are required to have such verifiable documentation except where the *Dissostichus* spp. being shipped was harvested during a fishing trip that began prior to September 24, 2007, when NMFS' final rule became effective (72 FR 48496, August 23, 2007). The preapproval requirement for imports of frozen

toothfish remains unchanged. (See Reporting and recordkeeping requirements § 300.107(c)(5) and (6)). Existing § 300.107(a)(4) and § 300.117(bb)(9) would be revised to use the new terms C-VMS, port-to-port, and real-time.

Also, the existing definition of ''Vessel Monitoring System (VMS)'' would be revised to clarify that the VMS system that uses a mobile transceiver unit on board foreign-flagged vessels does not need to be approved by NMFS. Similarly, the heading for existing § 300.116 ''Requirements for a vessel monitoring system'' would be revised to read ''Requirements for a vessel monitoring system for U.S. vessels''.

Participation in C-VMS that would result in verifiable documentation of use of real-time C-VMS port-to-port entails the harvesting vessel having reported its positions at least every 4 hours, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State, with no more than a 4-hour delay, from the time the vessel leaves port to the time that the vessel returns to port and at all points in between (port-to-port). CCAMLR conservation measures require the use of C-VMS when inside the Convention Area, whereas U.S. regulations for the importation and/or re-exportation of toothfish require C-VMS reporting at least every 4 hours both while inside and outside the Convention waters. In the absence of verifiable documentation of the use of real-time C-VMS port-to-port, imports, exports, re-exports, as well as the shipment, transportation, sale or offer for sale, purchase, custody, control, or possession of frozen *Dissostichus* species are prohibited. Under the proposed rule preapproval would not be issued without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested the *Dissostichus* species except for *Dissostichus* spp. harvested during fishing trips that began prior to September 24, 2007 (see Dealer permits and preapproval § 300.114(d)).

The proposed rule would revise the catch-documentation requirements for re-exporting toothfish by clarifying that the application for a *Dissostichus* species re-export document must identify: (1) the container number for the shipment if the shipment is to be re-exported by vessel; (2) the flight number and airway bill/bill of lading if shipment is to be re-exported by air; (3) the truck registration number and nationality if the shipment is to be re-exported by ground transportation; or (4) the railway transport number if the shipment is to be re-exported by rail. The proposed rule would make clear that the exporter would receive an electronically generated *Dissostichus* species re-export document.

The proposed rule would also add a new paragraph § 300.107(c)(7) identifying reporting and recordkeeping requirements for exports of *Dissostichus* species. These requirements are nearly identical to requirements for re-exports and pertain to U.S. caught toothfish that dealers want to export.

Krill Fishing

At its 25th meeting in Hobart, Tasmania, October 23 to November 3, 2006, CCAMLR adopted a measure requiring that all Contracting Parties with vessels intending to fish for krill in the Convention Area notify the Secretariat no later than 4 months in advance of the regular annual meeting of CCAMLR, immediately prior to the season in which their vessels intend to fish. The krill fishing season runs from December 1 of one year through November 30 of the next year. The proposed rule would require applicants for an AMLR harvesting permit for krill to submit an application to the Assistant Administrator for NMFS no later than June 1 prior to the krill season opening on December 1 of the same year (see Harvesting Permits § 300.112). In addition to the information already required of an applicant for an AMLR harvesting permit, the applicant for a permit to harvest krill would also be required by the proposed rule to identify, to the extent possible, the products to be derived from the anticipated catch of krill.

Framework for Annual Measures

The proposed rule would rescind the existing regulatory framework for annual management measures to ease the administrative burden and cost of publishing conservation measures that are readily available on the CCAMLR website at *http://www.ccamlr.org*. If the United States should formally object to any conservation measure adopted by CCAMLR, notice of that objection will be published in the **Federal Register**. NMFS will publish in the **Federal Register** any regulatory measure that it believes is necessary to implement its responsibilities under the Antarctic Marine Living Resources Convention Act of 1984 and may implement conservation measures adopted by CCAMLR either through the imposition of permit conditions or through rulemaking, as appropriate.

Classification

The Act

This proposed rule is published under the authority of, and consistent with, the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.*

Executive Order 12866

The proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would further detail current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the C-VMS regardless of where the fish was harvested; revise the NMFS catch-documentation requirements for re-exporting toothfish and add requirements for exporting U.S.-caught toothfish; require applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill; and rescind the existing regulatory framework for annual management measures.

During the past several years, there have been 5 vessels (2 for toothfish, 2 for krill, and 1 for crab) and 80 dealers who could fall within the scope of NMFS regulations to implement CCAMLR conservation measures. All U.S. vessels and U.S. dealers are considered small entities under the ''Small Business Size Regulations'' established by the SBA under 13 CFR 121.201. However, the only costs associated with this proposed rulemaking are for: (1) dealers providing mode-of-shipment information on applications for toothfish re-export and export documents; and (2) for applicants for krill harvesting permits to provide information on the products to be derived from krill catch. The costs and time associated with these proposed requirements is de minimis. The C-VMS aspects of the proposed rule would not change current practices and rescinding the framework for annual measures would not impose any economic impact on small business entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act (PRA)

This proposed rule contains two new collection-of-information requirements subject to review and approval by OMB under the PRA: providing mode-of-shipment information on applications for toothfish re-export documents; and providing information, to the extent possible, on the products to be derived from krill catch on applications for krill harvesting permits. These new requirements are not expected to change the currently approved burden under OMB Control Number 0648–0194 of 295 hours.

Public comment is sought regarding: whether this 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 burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: November 20, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart G is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

1. The authority citation for 50 CFR part 300, subpart G, continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

2. In § 300.101, the definitions of ''Centralized Vessel Monitoring System (C-VMS)'', ''Port-to-port'', and ''Real-time'' are added, and the definition of ''Vessel Monitoring System (VMS)'' is revised, in alphabetical order to read as follows:

§ 300.101 Definitions.

* * * * *

Centralized Vessel Monitoring System (C-VMS) means a system that uses satellite-linked vessel monitoring devices to allow for the reporting of vessel positional data, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State.

* * * * *

Port-to-port means from the time the vessel leaves port to the time that the vessel returns to port and at all points in between.

Real-time means as soon as possible, but at least every 4 hours with no more than a 4-hour delay.

* * * * *

Vessel Monitoring System (VMS) means a system that uses a mobile transceiver unit on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels, to receive automatic transmission of positional and other information, consistent with relevant CCAMLR conservation measures.

3. In § 300.107, paragraphs (a)(4), (c)(5)(i) introductory text, (c)(5)(i)(A), (c)(5)(iii), and (c)(6) are revised, and new paragraph (c)(7) is added, to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

* * * * *

(a) * * *

(4) Install a NMFS approved VMS unit on board U.S. vessels harvesting AMLR for use in real-time C-VMS port-to-port reporting to a NMFS-designated land-based fisheries monitoring center or centers. The requirements for the installation and operation of the VMS are set forth in § 300.116.

* * * * *

(c)* * *

(5)* * *

(i) In order to import frozen *Dissostichus* species into the United States, any dealer must:

(A) Submit a preapproval application including the document number and export reference number on the DCD corresponding to the intended import shipment and, if necessary, additional information for NMFS to verify the use of real-time C-VMS port-to-port regardless of where the fish were harvested; and receive preapproval from NMFS.

* * * * *

(iii) Any dealer who imports fresh *Dissostichus* species must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the use of real-time C-VMS port-to-port is not required for imports of fresh *Dissostichus* species.

* * * * *

(6) *Re-export.* (i) In order to re-export *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* re-export document that includes the following information:

(*1*) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(*2*) The number of the original DCD(s);

(*3*) The name and address of the importer and point of import for the original import into the United States, or by submitting a copy of the preapproval issued for the original import;

(*4*) One of the following:

(*i*) The Container Number for the shipment if shipment is to be re-exported by vessel;

(*ii*) The Flight Number and Airway Bill/Bill of Lading if shipment is to be re-exported by air;

(*iii*) The Truck Registration Number and Nationality if shipment is to be re-exported by ground transportation; or

(*iv*) The Railway Transport Number if shipment is to be re-exported by rail.

(*5*) The dealer/exporter's name, address, and AMLR permit number; and

(*6*) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically generated *Dissostichus* re-export document.

(ii) For frozen *Dissostichus* species, re-export documents will be generated upon verification of the use of real-time C-VMS port-to-port except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

(iii) Dealers must include the original validated *Dissostichus* re-export document with the re-export shipment.

(iv) Any dealer who re-exports *Dissostichus* species must retain a copy of the re-export document at his/her place of business for a period of 2 years from the date on the DCD.

(7) *Export.* (i) In order to export U.S.-harvested *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* export document that includes the following information:

(*1*) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(*2*) The number of the original DCD(s);

(*3*) One of the following:

(*i*) The Container Number for the shipment if shipment is to be exported by vessel;

(*ii*) The Flight Number and Airway Bill/Bill of Lading if shipment is to be exported by air;

(*iii*) The Truck Registration Number and Nationality if shipment is to be exported by ground transportation; or

(*iv*) The Railway Transport Number if shipment is to be exported by rail.

(*4*) The dealer/exporter's name, address, and AMLR permit number;

(*5*) For frozen *Dissostichus* species, verification of the use of real-time C-VMS port-to-port except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007; and

(*6*) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically generated *Dissostichus* export document.

(ii) Dealers must include the original validated *Dissostichus* export document with the export shipment.

(iii) Any dealer who exports *Dissostichus* species must retain a copy of the export document at his/her place of business for a period of 2 years from the date on the DCD.

§ 300.111 [Removed and Reserved]

4. Section 300.111 is removed and reserved.

5. In § 300.112 paragraph (c) is revised to read as follows:

§ 300.112 Harvesting permits.

* * * * *

(c) *Application.* Application forms for harvesting permits are available at *www.nmfs.noaa.gov.gpea_forms.htm.*

(1) A separate fully completed and accurate application must be completed and received by NMFS for each vessel for which a harvesting permit is requested.

(2) Applications for permits to harvest species other than krill must be received by NMFS at least 90 days before the date anticipated for the beginning of harvesting.

(3) Applications for a permit to harvest krill must be received by NMFS no later than June 1 immediately prior to the season in which the harvesting would occur. The applications must, to the extent possible, identify the products to be derived from the anticipated krill catch.

* * * * *

6. In § 300.114 paragraph (d) is revised to read as follows:

§ 300.114 Dealer permits and preapproval.

* * * * *

(d) *Issuance.* NMFS may issue a dealer permit or preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure or in violation of any regulation in this subpart. No preapproval will be issued for *Dissostichus* species without verifiable documentation, to include VMS reports with vessel location and messages, of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species, except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

* * * * *

7. In § 300.116 the heading is revised to read as follows:

§ 300.116 Requirements for a vessel monitoring system for U.S. vessels.

* * * * *

8. In § 300.117 paragraph (bb)(9) is revised and paragraphs (gg) and (hh) are added to read as follows:

§ 300.117 Prohibitions.

* * * * *

(bb)* * *

(9) Fail to use real-time C-VMS port-to-port on board U.S. vessels harvesting AMLR in the Convention Area.

* * * * *

(gg) Harvest any AMLR in Convention waters without a harvesting permit required by this subpart.

(hh) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species unless the *Dissostichus* species was harvested during a fishing trip that began prior to September 24, 2007.

[FR Doc. E9–28435 Filed 11–25–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 227

Friday, November 27, 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

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on December 14, 2009 at the US Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held December 14, 2009, beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the US Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION OR TO REQUEST AN ACCOMMODATION (one week prior to meeting date) **CONTACT:** Arla Hams, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda: (1) Aquatic Invasive Species management; (2) Environmental Improvement Program update, (3) presentation on the Forest Service fuels program, (4) update on the Lake Tahoe Restoration Act, and (5) public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: November 18, 2009.

Terri Marceron,

Forest Supervisor.

[FR Doc. E9–28298 Filed 11–25–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; BIS Program Evaluation

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before January 26, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is necessary to obtain feedback from seminar participants. This information helps BIS determine the effectiveness of its programs and identifies areas for improvement. The gathering of performance measures on the BIS seminar program is also essential in meeting the agency's responsibilities under the Government Performance and Results Act (GPRA).

II. Method of Collection

Paper questionnaires.

III. Data

OMB Control Number: 0694–0125.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,050.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 675.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 23, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–28361 Filed 11–25–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 0911161405–91405–01]

New NOAA Cooperative Institute (CI): A CI To Support Satellite Meteorology

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of funding availability.

SUMMARY: The National Environmental Satellite, Data, and Information Service (NESDIS) publishes this notice to provide the general public with a consolidated source of program and application information related to a single competitive cooperative agreement award offering. NOAA is accepting applications for a CI to Support Satellite Meteorology. Applicants should review the CI Interim Handbook prior to preparing a proposal for this announcement (*http://www.nrc.noaa.gov/ci*).

DATES: Proposals must be received no later than February 25, 2010, 5 p.m., E.T. Proposals submitted after that date will not be considered.

ADDRESSES: Applicants are strongly encouraged to apply online through the Grants.Gov Web site (*http://www.grants.gov*). Paper submissions are acceptable only if Internet access is not available. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks, involving multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide that you intend to apply, even if you are not yet ready to submit your proposal. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov.*

If a hard copy application is submitted, the original and two unbound copies of the proposal should be included. Paper submissions should be sent to: Ms. Ingrid Guch, NOAA/NESDIS, 5200 Auth Road, Room 701, Camp Springs, MD 20746; telephone (301) 763–8127 ext. 152. No e-mail or facsimile proposal submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Ms. Ingrid Guch, NOAA/NESDIS, 5200 Auth Road, Room 701, Camp Springs, MD 20746; telephone: (301) 763–8127 ext. 152; e-mail: *Ingrid.Guch@noaa.gov.*

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the Federal Funding Opportunity (FFO) announcement for this CI.

CI Concept/Program Background: A CI is a NOAA-supported, nonfederal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission. CIs are established at research institutions with outstanding graduate degree programs in NOAA-related sciences. CIs provide significant coordination of resources among all non-government partners and promote the involvement of students and postdoctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties. For each CI, NOAA has identified the need to establish a CI to focus on scientific research associated in support of NOAA's Strategic Plan, NOAA's 5-year Research Plan, and NOAA's 20-year Research Vision. (All documents are available at *http://www.nrc.noaa.gov/plans.html*).

CI To Support Satellite Meteorology

The proposed Satellite Meteorology CI should possess outstanding capabilities to provide research under four themes: (1) Satellite Meteorology Research and Applications, (2) Satellite Sensors and Techniques, (3) Environmental Models and Data Assimilation, and (4) Outreach and Education. The CI's primary sponsor will be the NESDIS Center for Satellite Applications and Research (STAR), formerly known as the Office of Research and Applications. Research and development entities with which the proposed CI may work include NOAA programs, laboratories, science centers, other CI and NOAA-owned facilities, Sea Grant Colleges, other extramural NOAA partners, other Federal agencies, academia, and the private sector. The new CI will be expected to work closely with STAR's Advanced Satellite Products Branch currently located in Madison, WI, with seven federal employees. It is NOAA's intent to move these employees to the new CI as funding allows. The CI should have the capacity (computers and technical support, phones, office space) to host these individuals, as they will be a necessary component for successful CI collaborations with NOAA/NESDIS.

A CI may partner with one or more research institutions that demonstrate outstanding performance within one or more established research programs in NOAA-related sciences, including Minority Serving Institutions and universities that can contribute to the proposed activities of the CI. If a CI is awarded to a consortium of institutions, the consortium must propose a governance structure that includes a single director and one award.

CIs will conduct research under approved scientific research themes, listed in this notice and described in detail in Section I.B of the Federal Funding Opportunity announcement. Activities of the CI are usually organized into three Tasks (additional tasks can be proposed by the CI).

i. Task I activities are related to the management of the CI, as well as general education and outreach activities. This task also includes support of postdoctoral and visiting scientists conducting activities within the research themes of the CI that are approved by the CI Director, in consultation with NOAA, and are relevant to NOAA and the CI's mission goals.

ii. Task II activities usually involve on-going direct collaboration with NOAA scientists. This collaboration typically is fostered by the collocation of Federal and CI employees.

iii. Task III activities require minimal collaboration with NOAA scientists and may include research funded by other NOAA competitive grant programs.

Base funding for Task 1 is provided annually by NOAA to the CI, contingent upon the availability of Federal appropriations. Throughout the award period, funding for additional Task I activities, as well as Task II and III (or other tasks by a particular CI) activities, is added to the CI award as research project proposals are submitted by the CI and approved by NOAA.

Request for Applications

Generally, applications must include all relevant Federal Standard Forms, a project description that includes sufficient information to address all the evaluation criteria identified in the FFO announcement, a budget, and a budget justification. The project description must include a thorough explanation of all themes and Tasks. The application should also identify the capability and the capacity of the CI to conduct research in the themes described in the FFO, as well as a summary of clearly stated goals to be achieved, reflecting NOAA's strategic goals and vision. Additional elements may also be requested. Applicants are directed to the FFO for all application information and requirements.

Funding Availability: The award period will be 5 years, and may be renewed for up to an additional 5 years based on the outcome of a CI review in the fourth year. All funding is contingent upon the availability of

Federal appropriations. NOAA anticipates that up to approximately $12M will be available annually for this CI. Of that amount, approximately $290,000 will be available per year for Task I. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. The actual annual funding that the CI receives may be less than the anticipated amount and will depend on the actual projects that are proposed by the CI and approved by NOAA after the main CI award begins, the availability of funding, the quality of the research, the satisfactory progress in achieving the stated goals described in project proposals, and continued relevance to program objectives.

Electronic Access: Applicants can access, download, and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov.* The closing date will be the same as for the paper submissions noted in this announcement. For applicants filing through Grants.gov, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Registration may take up to 10 business days.

Proposals must include elements requested in the FFO announcement on the grants.gov portal. If a hard copy application is submitted, NOAA requests that the original and two unbound copies of the proposal be included. Proposals, electronic or paper, should be no more than 75 pages (numbered) in length, excluding budget, investigators, vitae, and all appendices. Federally mandated forms are not included within the page count. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Authorities: 15 U.S.C. 313, 15 U.S.C. 1540; 15 U.S.C. 2901 et seq., 16 U.S.C. 753a, 33 U.S.C. 1442, Stat. 71 (January 23, 2004).

(Catalog of Federal Domestic Assistance: 11.440, National Environmental Satellite, Data, and Information Service (NESDIS) Joint and Cooperative Institutes)

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences. The lead institution applying for the award is where the CI will be established.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI's commitment under NOAA's standard evaluation criteria for overall qualifications of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of any indirect costs assessed by the awardee on subawards, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students, visiting scientists, or postdoctoral scientists.

Evaluation Criteria and Review and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the official full Federal Funding Opportunity announcement which is only available through the Grants.gov Web site (*http://www.grants.gov*).

Evaluation Criteria for Projects: Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant.

1. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.

- Does the proposal include research goals and projects that address the critical issues identified in NOAA's 5-year Research Plan, NOAA's Strategic Plan, and program priorities (see Section I.B. of the full funding opportunity announcement)?
- Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?
- Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourage student participation in NOAA-related research studies?
- Does the proposal include plans for working closely with NOAA's Advanced Satellite Products Branch (currently located in Madison, Wisconsin) before, during, and after the Branch's transition to the new CI?

2. *Technical/scientific merit (30 percent):* This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

- Does the project description include a summary of clearly stated goals to be achieved during the five year period that reflect NOAA's strategic plan and goals?
- Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities that can contribute to the proposed activities of the CI?

3. *Overall qualifications of applicants (30 percent):* This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

- If the institution(s) and/or principal investigators have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA and/or NOAA scientists on research projects?
- Is there nationally and/or internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?
- Is there a well-developed business plan that includes fiscal and human resource management, as well as strategic planning and accountability?
- Are there any unique capabilities in a mission-critical area of research for NOAA?
- Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution?

4. *Project costs (5 percent):* The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and education (10 percent):* NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Review and Selection Process: An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All

proposals will be evaluated and individually ranked in accordance with the assigned weights of the above-listed evaluation criteria by an independent peer review panel. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers' ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors. The Selecting Official makes the final award recommendation to the Grants Officer authorized to obligate funds.

Selection Factors: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
(a) Geographically;
(b) By type of institutions;
(c) By type of partners;
(d) By research areas;
(e) By project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): National Environmental Policy Act (NEPA). NOAA must analyze the potential environmental impacts, as required by NEPA, for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the NOAA NEPA Web site, *http://www.nepa.noaa.gov,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.corporateservices.noaa.gov/%7Eames/NAOs/Chap_216/naos_216_6.html,* and the Council on Environmental Quality implementation regulations, *http://www.nepa.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by the Office of Management and Budget (OMB) under the respective control numbers 4040–004, 4040–006, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (FEDERALISM): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. E9–28419 Filed 11–25–09; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2009–0040]

Patent Application Backlog Reduction Stimulus Plan

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) has a procedure under which an application will be advanced out of turn (accorded special status) for examination if the applicant files a petition to make special with the appropriate showing. The USPTO is providing an additional temporary basis under which a small entity applicant may have an

application accorded special status for examination if the applicant expressly abandons another copending unexamined application. This procedure will allow small entity applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined while also stimulating a reduction of the backlog of unexamined patent applications pending before the USPTO.

DATES: *Effective Date:* November 27, 2009.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571–272–7726; or by facsimile transmission to 571–273–7726, marked to the attention of Pinchus M. Laufer; or by mail addressed to: Box Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: New patent applications are normally taken up for examination in the order of their United States filing date. *See* section 708 of the *Manual of Patent Examining Procedure* (8th ed. 2001) (Rev. 7, July 2008) (MPEP). The USPTO has a procedure under which an application will be advanced out of turn (accorded special status) for examination if the applicant files a petition to make special with the appropriate showing. *See* 37 CFR 1.102 and MPEP § 708.02. The USPTO is providing an additional basis under which a small entity applicant may have an application accorded special status for examination if the applicant expressly abandons another copending unexamined application. The application for which special status is sought and the expressly abandoned application must either be owned by the same party or name at least one inventor in common. This procedure allows a small entity applicant who has multiple applications currently pending before the USPTO to have one of the applications accorded special status for examination if the applicant is willing to expressly abandon an application that has not been examined. This procedure will allow small entity applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined while also stimulating a reduction of the backlog of unexamined patent applications pending before the USPTO.

The USPTO will accord special status for examination under Patent Application Backlog Reduction Stimulus Plan under the following conditions: (1) The application for which special status is sought is a nonprovisional application that has an actual filing date earlier than October 1, 2009, in which the applicant has established small entity status under 37 CFR 1.27; (2) the applicant has another copending nonprovisional application that has an actual filing date earlier than October 1, 2009, and is complete under 37 CFR 1.53 (*i.e.,* the application contains an executed oath or declaration and the filing fee, search fee, examination fee, any applicable application size fee, and any applicable excess claims fee have been paid); (3) the application for which special status is sought and the other copending nonprovisional application either are owned by the same party as of October 1, 2009, or name at least one inventor in common; (4) the applicant files a letter of express abandonment under 37 CFR 1.138(a), signed in compliance with 37 CFR 1.33(b)(1), (b)(3), or (b)(4) (37 CFR 1.138(b)), in the copending nonprovisional application before it has been taken up for examination, and includes with the letter of express abandonment a statement that the applicant has not and will not file an application that claims the benefit of the expressly abandoned application under any provision of title 35, United States Code, and that the applicant agrees not to request a refund of any fees paid in the expressly abandoned application; and (5) the applicant files a petition under 37 CFR 1.102 in the application for which special status is sought. The petition under 37 CFR 1.102 must identify the basis under which special status is being sought (express abandonment of another copending application), and include a copy of a letter of express abandonment and the statement that accompanies the letter of express abandonment from the copending application that has been expressly abandoned. The $130.00 fee for a petition under 37 CFR 1.102 (other than those enumerated in 37 CFR 1.102(c)) is hereby *sua sponte* waived for petitions to make special based upon the procedure specified in this notice. The express abandonment of an application may not form the basis for more than one petition under 37 CFR 1.102.

Applications that are accorded special status are generally placed on the examiner's special docket throughout its entire course of prosecution before the examiner, and have special status in any appeal to the Board of Patent Appeals and Interferences (BPAI) and also in the patent publication process. *See* MPEP §§ 708.01 and 1309. An application accorded special status under the procedure specified in this notice, however, will be placed on the examiner's amended docket, rather than the examiner's special docket, after the first Office action (which may be an Office action containing only a restriction requirement). Applications that are accorded special status under the procedure specified in this notice will be placed on the examiner's special docket prior to the first Office action, and will have special status in any appeal to the BPAI and also in the patent publication process.

An application that is accorded special status under the procedure specified in this notice will not be subject to the requirements of or the time frames provided for in the accelerated examination program. For an explanation of the accelerated examination program, see MPEP § 708.02(a) and *Changes to Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination,* 71 FR 36323 (June 26, 2006), 1308 *Off. Gaz. Pat. Office* 106 (July 18, 2006) (notice). Any applicant who wants the application to be processed under the time frames provided for in the accelerated examination program must file the application under the accelerated examination program. In addition, continuing applications will not automatically be accorded special status based on papers filed with the petition in the parent application. Each continuing application must on its own meet all requirements for special status.

The procedure specified in this notice is applicable to small entity applicants having multiple applications currently pending before the USPTO and who are willing to expressly abandon one application to have another application accorded special status for examination. The USPTO appreciates that there are small entity applicants who are willing to expressly abandon an application, but who have only a single application pending before the USPTO or no application for which special status for examination is desired. Applicants are reminded that 37 CFR 1.138(d) provides a procedure by which an applicant may obtain a refund of the search fee and excess claims fee paid in an application by submitting a petition (requires no fee) and letter of express abandonment. *See* MPEP § 711. 01. The procedure set forth in 37 CFR 1.138(d), however, is applicable only to applications filed under 35 U.S.C. 111(a) on or after December 8, 2004.

Applicants are cautioned to exercise care in filing a letter of express abandonment in an application. The

USPTO cannot revive an application once the letter of express abandonment is recognized by the USPTO because the application was expressly and intentionally abandoned by the applicant. *See* MPEP §§ 711.01 and 711.03(c).

The procedure for petition under 37 CFR 1.102 to make an application special specified in this notice is being adopted on a temporary basis until February 28, 2010. The USPTO may extend the procedures set forth in this notice to all applicants (on either a temporary or permanent basis), or may also discontinue the procedures set forth in this notice after January 31, 2010, depending upon the results of the Patent Application Backlog Reduction Stimulus Plan. For a petition under 37 CFR 1.102 to be granted under the procedure specified in this notice (unless the Patent Application Backlog Reduction Stimulus Plan is extended by a subsequent notice), the petition under 37 CFR 1.102 and the letter of express abandonment and its accompanying statement must be filed on or before February 28, 2010.

Dated: November 6, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–28373 Filed 11–25–09; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions From Procurement List.

SUMMARY: The Committee is proposing to delete from the Procurement List services previously provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: 12/28/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services:

Service Type/Location: Declassification/Demilitarization of Hardware, Robins Air Force Base, GA.

NPA: Epilepsy Association of Georgia, Warner Robins, GA.

Contracting Activity: Dept of the Air Force, FA8501 WR ALC PKO, Robins AFB, GA.

Service Type/Location: Janitorial/Custodial, USDA, Building 255E, Sanford Airport, Sanford, FL.

NPA: SMA Behavioral Health Services, Inc., Daytona Beach, FL.

Contracting Activity: Dept of Agriculture, Animal and Plant Health Inspection Service, Minneapolis, MN.

Service Type/Location: Food Service Attendant, Fort McPherson Building 61, Consolidated Enlisted Dining Facility, Fort McPherson, GA.

NPA: Bobby Dodd Institute, Inc., Atlanta, GA.

Contracting Activity: Dept of the Army, XR W40M Natl Region Contract OFC, Washington, DC.

Service Type/Location: Janitorial/Mechanical Maintenance, U.S. Federal Building and Post Office, 200 East Washington Street, Greenwood, MS.

NPA: AbilityWorks, Inc. of Greenwood, Greenwood, MS.

Contracting Activity: GSA, Public Buildings Service/Property Management Contracts, Atlanta, GA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–28425 Filed 11–25–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

DATES: *Effective Date:* 12/28/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 9/18/2009 (74 FR 47926–47927), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Document Management, Portland Habilitation Center, 5312 NE 148th Avenue, Portland, OR.

NPA: Portland Habilitation Center, Inc., Portland, OR.

Contracting Activity: Department Of Agriculture, Forest Service, Gifford Pinchot National Forest, Vancouver, WA.

Deletions

On 9/11/2009 (74 FR 46748–46749) and 10/1/2009 (74 FR 50780–50781), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN: 7530–00–989–0697—Card Set, Guide, File.
NSN: 7530–00–989–0683—Card Set, Guide, File.
NPA: Georgia Industries for the Blind, Bainbridge, GA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
NSN: 7520–00–NIB–1579—Tape Refill w/American Flag on the core.
NPA: The Lighthouse f/t Blind in New Orleans, New Orleans, LA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
NSN: 6840–01–378–0447—Air Rite Odor Counteractant, Green.
NSN: 6840–01–378–0412—Air Rite Odor Counteractant, Green Apple Mint.
NSN: 6840–00–NIB–0029—Air Rite Odor Counteractant, Vanilla Bean.
NSN: 6840–00–NIB–0028—Air Rite Odor Counteractant, Citrus.
NSN: 6840–00–NIB–0027—Air Rite Odor Counteractant, Floral.
NSN: 6840–00–NIB–0026—Air Rite Odor Counteractant, Sweet Pine.
NSN: 6840–00–NIB–0025—Air Rite Odor Counteractant, Spice.
NSN: 6840–00–NIB–0023—Air Rite Odor Counteractant, Honeysuckle.
NSN: 6840–00–NIB–0022—Air Rite Odor Counteractant, Spearmint.
NSN: 6840–00–NIB–0021—Air Rite Odor Counteractant, Blue.
NSN: 6840–00–NIB–0019—Air Rite Odor Counteractant, Red.
NSN: 6840–00–NIB–0018—Air Rite Odor Counteractant, Silver.
NSN: 6840–00–NIB–0016—Air Rite Odor Counteractant, Gold.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.
NSN: 7510–01–219–5753, Ribbon, Lift-Off Dry.
NPA: Charleston Vocational Rehabilitation Center, Charleston Heights, SC.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
NSN: 7920–00–292–2368, Broom, Upright.
NPA: Blind and Vision Rehabilitation Services of Pittsburgh, Pittsburgh, PA.
Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

Services

Service Type/Location: Custodial, Griffin Street Auto Park, 404 S. Griffin Street, Dallas, TX.

NPA: The Arc of Caddo-Bossier, Shreveport, LA.

Contracting Activity: GSA/Public Buildings Service, Building Services Team, Fort Worth, TX.

Service Type/Location: Catering Service, Military Entrance Processing Station, Jackson, MS.

NPA: Goodwill Industries of Mississippi, Inc., Ridgeland, MS.

Contracting Activity: Dept of The Army, XR W6BB ACA Knox, FT Knox, KY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–28426 Filed 11–25–09; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

DATE AND TIME: Friday, December 11, 2009, 2:30 p.m.–4 p.m.

PLACE: Room 8312, 8th Floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED: The purpose of the meeting is to update Advisory Board members on program activities, including implications for the program under the Edward M. Kennedy Serve America Act.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodations should notify the Corporation's contact person by 5 p.m. Wednesday, December 9, 2009.

CONTACT PERSON FOR MORE INFORMATION: Erma Hodge, NCCC, Corporation for National and Community Service, 10th Floor, Room 10404A, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3462. TDD: (202) 606–3472. E-mail: *ehodge@cns.gov.*

Dated: November 23, 2009.

Frank R. Trinity,

General Counsel.

[FR Doc. E9–28456 Filed 11–24–09; 11:15 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Preventive Health Allowance Demonstration Project

AGENCY: Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity, Department of Defense.

ACTION: Notice of a Preventive Health Allowance Demonstration Project.

SUMMARY: This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled ''Preventive Health Allowance Demonstration Project for TRICARE Active Duty Personnel and their Family Members''. This demonstration project is designed to evaluate the efficacy of providing a preventive health services allowance to encourage healthy behaviors on the part of eligible MHS beneficiaries.

DATES: *Effective Date:* This demonstration is effective from December 1, 2009, until December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Barry Cohen, Director, Healthcare Operations–TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206; telephone (703) 681–4029.

SUPPLEMENTARY INFORMATION:

A. Background

Studies have been performed in health organizations to assess the effectiveness of waiving co-pays for clinical preventive services, as well as financial incentives for healthy behavioral change. No studies to date have assessed the effects of providing financial incentives for increasing compliance with recommended and, in some instances, mandated clinical preventive services in an Active Duty military population. This demonstration project will be the first such effort among Active Duty military personnel and their family members. The results of this demonstration will have a direct impact on the future utility of this type of intervention.

B. National Defense Authorization Act (NDAA) for Fiscal Year 2009 (FY09) Preventive Health Allowance Directive

Section 714 of the NDAA for FY09 authorizes the Department to conduct a demonstration project designed to evaluate the efficacy of providing an annual allowance to members of the armed forces to increase the use of preventive health services by such members and their dependents. To meet eligibility standards to receive this benefit, the member of the armed forces must be serving on active duty for a period of more than 30 days and meet the medical and dental readiness requirements for their branch of service.

Not more than 1,500 members of each of the Army, Navy, Air Force, and Marine Corps may receive a preventive health services allowance during any year, of which half in each Service shall be members without dependents and half shall be members with dependents. The Secretary of the military department concerned shall pay a preventive health services allowance to a member selected to receive the allowance in an amount equal to $500 per year in the case of a member without dependents, and $1,000 per year in the case of a member with dependents.

C. Description of Demonstration Project

The Preventive Health Allowance demonstration project will be conducted to evaluate whether a preventive health services allowance will increase the utilization of clinical preventive services among Active Duty personnel and their family members. Clinical Preventive Services, with respect to age and gender-specific recommendations included in this study, are screening for colorectal cancer, breast cancer, cervical cancer, and prostate cancer; an annual physical exam; an annual dental exam; weight and body mass screening; and immunizations.

The TRICARE Management Activity (TMA) will establish the methodology, implement the demonstration, and obtain the necessary data to evaluate the outcome effectively. There will be 1,500 Active Duty members enrolled from each Service, with 750 being single Active Duty members, and 750 having family members. The Secretary of the military department concerned shall pay the preventive health allowance at the rate of $500 or $1,000 per year for single Active Duty members or for Active Duty with family members respectively for those in compliance with the appropriate clinical preventive services recommendations. The selected participants will be provided information regarding the nature of the study, their obligations during the study, the incentive that can be achieved with compliance and a toll-free telephone number for enrollment and/or questions.

D. Evaluation

An independent evaluation of the demonstration will be conducted. The evaluation will be designed to determine whether the provision of a preventive health allowance increased the utilization rate of clinical preventive services among TRICARE Active Duty personnel and their family members.

Dated: November 19, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28355 Filed 11–25–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), has obtained emergency approval of an information collection request with the Office of Management and Budget (OMB). In order to obtain OMB's approval for the next three years, comments are now 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 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before January 26, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Tony Johnson, Program Analyst, Department of Energy, 1000 Independence Avenue, Washington, DC 20585 or by fax at 202–586–0573 or by e-mail at *Tony.Johnson@Hq.Doe.Gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tony Johnson as described above in the address section.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5142; (2) *Information*

Collection Request Title: Recovery Act Reviewer Web site; (3) *Type of Review:* New; (4) *Purpose:* This website site uses approximately 30 information fields to ask for the biographical information, educational background, and area of specialty of potential reviewers of financial assistance proposals under the American Recovery and Reinvestment Act of 2009. DOE will then use the information to select reviewers; (5) *Annual Estimated Number of Respondents:* 2000; (6) *Annual Estimated Number of Total Responses:* 2000; (7) *Annual Estimated Number of Burden Hours:* 300; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, Section 5315, title 5, August 4, 1977, which vests the Secretary of Energy with the executive direction and management functions, authority, and responsibilities for the Department.

Issued in Washington, DC on *November 20, 2009.*

Ingrid Kolb,

Director, Office of Management, Office of Management—MA–1.1.

[FR Doc. E9–28395 Filed 11–25–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Charter Re-establishment.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been re-established for a two-year period ending November 6, 2011. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on a continuing basis regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including the environment, labor, research, and academia. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been deemed essential to the conduct of the Department's business and in the public interest in conjunction with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel Samuel at 202/586–3279.

Issued at Washington, DC on November 20, 2009.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E9–28408 Filed 11–25–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Federal Loan Guarantee to Support the Construction and Startup of the Medicine Bow Fuel & Power Coal-to-Liquid Facility in Carbon County, WY

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting, and Notice of Proposed Floodplain and Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA implementing procedures (10 CFR part 1021) to assess the potential environmental impacts for its proposed action of issuing a Federal loan guarantee to Medicine Bow Fuel & Power LLC (MBFP) (DOE/EIS–0432). MBFP, a wholly-owned subsidiary of DKRW Advanced Fuels LLC, submitted an application to DOE under the Federal loan guarantee program pursuant to the Energy Policy Act of 2005 (EPAct 2005) to support the construction and startup of the MBFP coal-to-liquids (CTL) facility, a coal mine and associated coal handling facilities in Carbon County, Wyoming (the Facility).

MBFP proposes to develop the Facility in eastern Carbon County north of I–80 between Rawlins and Laramie, Wyoming. The CTL facility and coal-handling facility would be located near the mouth of the Saddleback Hills Mine, located approximately 6 miles northeast of the Town of Elk Mountain and approximately 13 miles southwest of the Town of Medicine Bow. The CTL facility would use an advanced industrial gasification and liquefaction (IGL) process to convert coal into approximately 21,000 barrels per day (bpd) of low-sulfur, low-benzene regular gasoline. The Facility would capture at least 50 percent of the CO_2 and over 99 percent of the sulfur compounds that would be otherwise be emitted. The CO_2 stream would be compressed and delivered at the fenceline to another party for pipeline transportation to enhanced oil recovery operations and geologic storage at a location to be determined by the offtaker.

The EIS will evaluate the potential impacts of the issuance of a DOE Loan Guarantee for MBFP's proposed project and reasonable alternatives.

The purpose of this Notice of Intent is to inform the public about DOE's proposed action, invite public participation in the EIS process, announce plans for a public scoping meeting, solicit public comments for consideration in establishing the scope and content of the EIS, and provide notice of proposed floodplain and wetlands involvement. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies. The Bureau of Land Management has expressed interest in becoming a cooperating agency for this EIS.

DATES: To ensure that all of the potential environmental issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be postmarked or e-mailed by December 28, 2009 to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving written comments (see **ADDRESSES** below), DOE will conduct a public scoping meeting in the vicinity of the proposed project at which government agencies, private-sector organizations, and the general public are invited to provide comments or suggestions with regard to the alternatives and potential impacts to be considered in the EIS. Further details about the public scoping meeting will be announced through local news media and on the DOE Loan Guarantee Program Office Web site

(*http://www.lgprogram.energy.gov/NEPA–2.html*) at least 15 days prior to the meeting. Advance requests to speak at the public scoping meeting may be sent to Ms. Lynn Alexander at the address indicated below prior to the meeting. Requests to speak may also be made at the time of registration for the meeting. However, persons who submitted advance requests to speak will be given priority if time should become limited during the meeting.

ADDRESSES: Written comments on the proposed EIS scope and questions regarding the public scoping meeting should be addressed to: Ms. Lynn Alexander, Loan Guarantee Program Office (CF–1.3), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Electronic submission of comments is encouraged due to processing time required for regular mail. Comments can be submitted electronically by e-mail to: *MBFP–EIS@hq.doe.gov*. All comments should reference Project No. DOE/EIS–0432.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the MBFP project, this EIS, the public scoping meeting, or to receive a copy of the draft EIS when it is issued, contact Ms. Lynn Alexander by telephone at 202–287–5656, toll-free telephone at 800–832–0885, ext. 75656, or e-mail at *MBFP–EIS@hq.doe.gov*. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–4600; facsimile: 202–586–7031; e-mail: *askNEPA@hq.doe.gov* or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

EPAct 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of EPAct 2005 authorizes the Secretary of Energy to make loan guarantees for a variety of types of projects, including those that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' A principal goal of the loan guarantee program is to encourage commercial use in the United States of new or significantly improved energy-related technologies. DOE believes that accelerated commercial use of these new or improved technologies will help sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply.

Purpose and Need for Agency Action

MBFP submitted applications to DOE for a loan guarantee to support construction and startup of the Facility. The purpose and need for agency action is to comply with DOE's mandate under EPAct 2005 by selecting eligible projects that meet the goals of the Act. DOE is using the NEPA process to assist in determining whether to issue a loan guarantee to MBFP to support the proposed project.

Proposed Action

The DOE proposed action is to issue a loan guarantee to MBFP to support construction and startup of the MBFP Facility and coal mine near Medicine Bow, Wyoming. The CTL facility and coal mine surface facilities would be constructed near the mouth of the Saddleback Hills Mine, which is located in eastern Carbon County north of I–80 between Rawlins and Laramie, Wyoming, approximately 6 miles northeast of the Town of Elk Mountain and 13 miles southwest of the Town of Medicine Bow. The MBFP project would be located within the boundary of the Carbon Basin Coal Project, which the U.S. Department of the Interior's Bureau of Land Management and Office of Surface Mining analyzed in an EIS issued in January 1999. The Carbon Basin Coal Project EIS analyzed potential environmental impacts and assessed necessary mitigation measures for an area that encompasses an Arch Coal, Inc., surface mine (The Elk Mountain Mine) that began operations in 2006, and the yet-to-be-constructed underground Saddleback Hills Mine that MBFP is proposing to purchase and construct to supply the bituminous coal needed by the MBFP project. The CTL facility would require approximately 200 acres and the coal mine surface facilities would require approximately 205 acres for a total of 405 acres. During construction of the CTL facility, there would also be an approximately 338-acre equipment and construction laydown area north of the CTL site. All of these parcels are within the existing boundaries of the Arch Coal mine property. MBFP also proposes to construct two or three short access roads (approximately 1 mile total of access roads) from County Road #3 to the proposed CTL site and use the area between the county road and the site as additional temporary construction lay-down area of approximately 100 acres, resulting in a total 438 acres of the site used as temporary construction lay-down areas.

As proposed, the CTL facility would use an advanced IGL process to convert coal into regular gasoline while capturing and sequestering CO_2. A total of 450 employees would be required for operations at both the CTL facility and the underground Saddleback Hills coal mine. The CTL facility would use approximately 9,500 short tons (wet basis) per day of bituminous coal to produce approximately 21,000 bpd of gasoline. The gasoline produced would be delivered to a pipeline which would be constructed, owned and operated by a third party for transportation to a location near Cheyenne, Wyoming. From this location, the gasoline would be transported through an existing pipeline to the Denver, Colorado, gasoline market. MBFP would purchase the 180 million ton recoverable coal reserve in the Saddleback Hills mine, including all existing permits and approximately 18,000 acres of land. The project would include construction of a long-wall underground coal mine, which has a current mining permit from the Wyoming Department of Environmental Quality's Land Quality Division, and coal surface facilities, as well as the CTL facility. The coal would be transported from the mine via an approximately 1-mile-long conveyor system. During construction the peak water use would be less than 1,000 gallons per minute. During operation the Facility would use approximately 300 gallons per minute which would be supplied by wells located on the MBFP property or in the northern utility corridor. The water source would be the Mesaverde Aquifer which contains non-potable water. The raw water would be treated prior to use at the Facility.

Steam and tail gas produced from the IGL process, as well as purchased natural gas, would be used onsite to provide electric power for internal Facility use. If additional power is required, it would be purchased from the grid. Power would not be sold to the grid. Other by-products for sale in the market would be elemental sulfur, slag, and possibly other chemicals such as propane and butane. Any slag not sold for re-use would be sent to a solid waste landfill in the area for disposal. An acid gas removal unit removes sulfur compounds from the syngas and recovers most of the CO_2. The Facility would capture at least 50 percent of the CO_2 and over 99 percent of the sulfur compounds that would be otherwise be emitted.

Regular-grade gasoline would be the primary product of the Facility. The

gasoline produced at the Facility would be transported offsite to an interstate pipeline owned and operated by third parties for delivery to the Denver, Colorado, market. A third party would construct, own, and operate the gasoline pipeline from the Facility to a location near Cheyenne, Wyoming.

The proposed action would include: construction of a lateral pipeline spur to connect to an existing natural gas pipeline; the construction of a pipeline from the Facility to Cheyenne for the transportation of the gasoline product; one spur pipeline to transport the CO_2 to a pipeline of the company purchasing the CO_2 for EOR projects in the state of Wyoming; and several interconnects for utilities. The Facility would need to connect to the existing power grid for electricity supply, and to route a fiber optics cable to an interconnection at the Town of Medicine Bow. All utilities would be routed from the Facility through a northern utility corridor.

For the natural gas supply pipeline, the gasoline product sales pipeline, and the CO_2 pipeline, there are two optional corridor routes that MBFP is considering for the proposed action. In option 1, the natural gas, gasoline, and CO_2 pipelines would be constructed in a western corridor that would cross the MBFP property from the Facility going west to connect to an existing pipeline corridor parallel to I–80. The natural gas and CO_2 pipelines would be approximately 8 miles long in option 1, and would connect to an existing natural gas pipeline and a proposed CO_2 pipeline located in the I–80 pipeline corridor. In option 1, the gasoline pipeline would be approximately 128 miles long going through the western corridor and then along the existing I–80 pipeline corridor to Cheyenne. In option 2, the natural gas, gasoline, and CO_2 pipelines would be constructed in an eastern corridor that would go southeast from the Facility. The option 2 corridor for the natural gas and CO_2 pipelines would be approximately 12 miles long and would also connect to the existing natural gas pipeline and a proposed CO_2 pipeline located in the I–80 pipeline corridor. The gasoline pipeline in option 2 would be approximately 118 miles long going from the Facility, along the eastern corridor, and then along the existing I–80 pipeline corridor to Cheyenne.

A portion of the proposed MBFP site may affect a 100-year floodplain. There are also wetlands on the site. Therefore, DOE will include in the EIS a floodplain and wetland assessment prepared in accordance with the DOE Regulations for Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR part 1022). The 100-year floodplain is located along Medicine Bow River at the southeast boundary of the Carbon Basin Coal Project EIS boundary. One wetland is located near where temporary construction lay-down areas may be sited.

Alternatives

In determining the range of reasonable alternatives to be considered in the EIS for the proposed MBFP Facility, DOE identified the reasonable alternatives that would satisfy the underlying purpose and need for agency action. DOE currently plans to analyze in detail the project as proposed by MBFP and the no action alternative. DOE will also analyze mitigation measures as appropriate.

Under the no action alternative, DOE would not provide the loan guarantee for the MBFP project and the project would not be constructed with the backing of a DOE loan guarantee.

Preliminary Identification of Environmental Issues

The following environmental resource areas have been tentatively identified for consideration in the EIS. This list is neither intended to be all-inclusive nor imply a predetermined set of potential environmental impacts:

- Air quality
- Greenhouse gas emissions and climate change
- Energy use and production
- Water resources, including groundwater and surface waters
- Wetlands and floodplains
- Geological resources
- Ecological resources, including threatened and endangered species and species of special concern
- Cultural resources, including historic structures and properties; sites of religious and cultural significance to Tribes; and archaeological resources
- Land use
- Visual resources and aesthetics
- Transportation and traffic
- Noise and vibration
- Hazardous materials and solid waste management
- Human health and safety
- Accidents and terrorism
- Socioeconomics, including impacts to community services
- Environmental justice.

DOE invites comments on whether other resource areas or potential issues should be considered in the EIS.

Public Scoping Process

To ensure that all issues related to the DOE proposed action are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will begin with publication of the NOI and end on December 28, 2009. Interested government agencies, private sector organizations, and the general public are encouraged to submit comments concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Comments must be postmarked or e-mailed by December 28, 2009 to ensure consideration. (See **ADDRESSES**). Late comments will be considered to the extent practicable. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

A public scoping meeting will be held in the vicinity of the proposed project at a date and time to be determined. Notice of this meeting will be provided through local news media and on the DOE Loan Guarantee Program Office Web site (*http://www.lgprogram.energy.gov/NEPA-2.html*) at least 15 days prior to the date of the meeting. Members of the public and representatives of groups and Federal, State, local, and Tribal agencies are invited to attend. Displays and other forms of information about the proposed agency action, the EIS process, and the MBFP proposed Facility will be available. DOE personnel will also be available at the meeting for discussions with attendees. DOE requests that anyone who wishes to present oral comments at the meeting contact Ms. Lynn Alexander by phone or e-mail (see **ADDRESSES**). Individuals who do not make advance arrangements to speak may register at the meeting. Speakers who need more than five minutes should indicate the length of time desired in their request. DOE may need to limit speakers to five minutes initially, but will provide additional opportunities as time permits. Written comments regarding the scoping process can also be submitted to DOE officials at the scoping meeting.

Issued in Washington, DC, on November 20, 2009.

Steve Isakowitz,

Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. E9–28389 Filed 11–25–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–20–000]

Venice Gathering System, L.L.C.; Notice of Application for Abandonment

November 19, 2009.

Take notice that on November 13, 2009, Venice Gathering System, L.L.C. (VGS), 1000 Louisiana, Suite 4300, Houston, Texas 77002 filed in Docket No. CP10–20–000 an application under section 7(b) of the Natural Gas Act and Part 157 of the Commission's regulations. VGS seeks authorization to abandon in place 25 miles of 26-inch pipeline from offshore Louisiana South Timbalier Block 265 and West Delta Block 41 to an onshore interconnection with Venice Energy Services Company, L.L.C.'s natural gas processing plant near the town of Venice in Plaquemines Parish, Louisiana. In addition, a former production platform in West Delta Block 20 currently serving solely as a pipeline riser will also be abandoned. VGS states that the United States Minerals Management Service (MMS) approved a portion of the segment of an application to decommission and relinquish effective September 8, 2009, and is currently reviewing the remainder of the application. The total cost associated with the abandonment project is estimated at $4,800,000 with no salvage realized or equipment sold.

Copies of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Elizabeth B. Hawkins, 1000 Louisiana, Suite 4300, Houston, TX 77002; telephone (713) 584–1123.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents Docket No. CP09–439–000 filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. 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.

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.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. 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.

Comment Date: 5 p.m. Eastern Time on December 10, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28340 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–16–000]

Cadeville Gas Storage LLC; Notice of Application

November 19, 2009.

Take notice that on November 6, 2009, Cadeville Gas Storage LLC (Cadeville), Three Riverway, Suite 1350, Houston, Texas 77056, filed with the Commission an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 and 284 of the Commission's regulations, requesting a certificate of public convenience and necessity authorizing Cadeville to construct, own and operate a new natural gas storage facility in the James Sand, a depleted natural gas reservoir, and related facilities to be located in Ouachita Parish, Louisiana. The Project will provide approximately 16.4 Bcf of working gas, utilizing approximately 5.4 Bcf of base gas and will involve natural gas pipeline interconnections to three existing interstate pipelines. Project has been designed to accommodate injections of natural gas into storage at a maximum rate of approximately 420 million standard cubit feet per day (MMscf/d) and withdrawals of natural gas from storage at a maximum rate of approximately 420 MMscf/d, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to counsel for Cadeville, David Hayden, Senior Vice President and Chief Operating Officer, Cadeville Gas Storage LLC, Three River Way, Suite 1350, Houston, Texas 77056 or via telephone at (713) 350–2500, facsimile number (713) 350–2550, or e-mail *David.hayden@cardinalgs.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28341 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13613–000]

Coastal Hydropower, LLC; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

November 20, 2009.

On November 2, 2009, Coastal Hydropower, LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Menasha-Neenah Hydroelectric Project, to be located on the Fox River, in Winnebago County, Wisconsin. The proposed Menasha-Neenah Project would be located at the U.S. Army Corps of Engineers (Corps) Fox River Menasha Locks Dam near Menasha, Wisconsin and at the Neenah Paper Company's Neenah Dam near Neenah, Wisconsin.

Coastal Hydropower, LLC, permit application is filed in competition with Lock+TM Hydro Friends Fund XXVII, LLC's proposed Redd Foxx Hydroelectric Project No. 13533–000, which was publicly noticed September 4, 2009. The deadline for filing competing applications was November 4, 2009. Coastal Hydropower's competing permit application is timely filed.

The proposed project would consist of: (1) Modifying the fixed weir section of Menasha Locks Dam to incorporate eight very low head (VLH) turbine-generators with a total installed capacity of about 4 megawatts (MW); (2) a new 300-foot-long transmission line (TL) which would deliver power from the turbines at Menasha Locks Dam to a tie-in at an existing overhead 12.0 kilovolt (kV) TL owned by Menasha Public Works and located along Anhaip Street in Menasha, Wisconsin; (3) modifying the spillway of Neenah Dam to install four VLH turbine-generators with a total installed capacity of about 2 MW; (4) a new 700-foot-long TL, which would deliver power from the turbines at Neenah Dam to a tie-in with an existing underground 12.0 kV TL owned by We Energies located at W. Wisconsin Avenue in Neenah, Wisconsin; and (5) appurtenant facilities. The Menasha-Neenah Project would have an estimated average annual generation of about 31.5 gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Neil Anderson, Coastal Hydropower, LLC, Key Centre, 601 108th Avenue, NE., Suite 1900, Bellevue, WA 98004, 452–943–7690.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13613) in the docket number field to access the document.

For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28390 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13603–000]

Hydro Energy Technologies LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 18, 2009.

On October 20, 2009, Hydro Energy Technologies LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Hap Cremean Water Treatment Plant Hydroelectric Project, located in Franklin County, in the state of Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) An existing Hap Cremean Water Treatment Plant; (2) a proposed 66'' raw water supply line; (3) a proposed powerhouse containing one or more turbine generating units having a combined nominal capacity of 720-kilowatt; (4) a new tailrace; (5) an existing electrical substation; (6) a new 200 foot 480 volt power supply line and (7) appurtenant facilities. The proposed development would have an average annual generation of 4,000 megawatt-hours.

Applicant Contact: Anthony J. Marra Jr., President, Hydro Energy Technologies LLC, 31300 Solon Rd., Suite 12, Solon, OH 44139; phone: (440) 498–1000.

FERC Contact: Mary Greene, 202–502–8865.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13603) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28346 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13604–000]

Hydro Energy Technologies LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 18, 2009.

On October 20, 2009, Hydro Energy Technologies LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Newton Falls East Hydroelectric Project, located in Trumball County, in the State of Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) An existing 151-feet-long, 17-feet-high concrete gravity Lowery Dam; (2) an existing reservoir having a surface area of 146 acres and a storage capacity of 843 acre-feet and normal water surface elevation of 895 feet mean sea level; (3) a proposed reconstructed powerhouse containing one or more vertical open flume turbine generating units having a combined nominal capacity of 200-megawatt; (4) an existing tailrace; (5) a proposed 75-feet-long, 480–VAC transmission line and transformer; and (6) appurtenant facilities. The proposed development would have an average annual generation of 1,300 megawatt-hours.

Applicant Contact: Anthony J. Marra Jr., President, Hydro Energy Technologies LLC, 31300 Solon Rd., Suite 12, Solon, OH 44139; phone: (440) 498–1000.

FERC Contact: Mary Greene, 202–502–8865.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13604) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28342 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 18, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–114–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Co., LLC submits a negotiated rate capacity release agreement.
Filed Date: 10/30/2009.
Accession Number: 20091102–0109.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: RP10–146–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits Fifth Revised Sheet 37A *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 12/1/09.
Filed Date: 11/13/2009.
Accession Number: 20091116–0213.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: CP10–11–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC., joint application for certificate to abandon capacity lease.
Filed Date: 10/28/2009.
Accession Number: 20091028–5111.
Comment Date: 5 p.m. Eastern Time on Friday, November 27, 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 dockets(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. E9–28401 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

November 20, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP02–361–079.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System submits Second Revised Sheet 192A to its FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/09.
Filed Date: 11/13/2009.
Accession Number: 20091118–0101.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: RP99–480–027.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits Original Sheet 121F *et al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 12/1/08.
Filed Date: 11/13/2009.
Accession Number: 20091118–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: RP10–118–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits capacity release agreements containing negotiated rate provisions.
Filed Date: 11/17/2009.
Accession Number: 20091119–0052.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9–28400 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

November 20, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–150–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. Annual OFO Refund Report.
Filed Date: 11/18/2009.
Accession Number: 20091118–5045.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–151–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits request for temporary delivery point changes during force majeure service outage and for limited waivers.
Filed Date: 11/18/2009.
Accession Number: 20091119–0003.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–152–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Second Revised Sheet 66B.01c *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1 to be effective 11/19/09.
Filed Date: 11/18/2009.
Accession Number: 20091119–0004.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–153–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Eighth Revised Sheet 374 *et al.* to its FERC Gas Tariff, Second Revised Volume 1A to be effective 1/1/2010.
Filed Date: 11/18/2009.
Accession Number: 20091119–0002.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–154–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits for acceptance First Revised Sheet 92 *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1 to be effective 12/17/09.
Filed Date: 11/18/2009.
Accession Number: 20091119–0001.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–155–000.
Applicants: Hardy Storage Company LLC.
Description: Hardy Storage Company submits certain amendments to its Credit Annexes as a follow up to the 10/18/2007 informational filing.
Filed Date: 11/16/2009.
Accession Number: 20091119–0055.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–156–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits First Revised Sheet 66B.01c *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1.
Filed Date: 11/17/2009.
Accession Number: 20091119–0054.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–157–000.
Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits for acceptance Fourth Revised Sheet 7 to its FERC Gas Tariff, Fourth Revised Volume 10, to be effective 1/1/10.
Filed Date: 11/17/2009.
Accession Number: 20091119–0053.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–158–000.
Applicants: Ozark Gas Transmission, LLC.
Description: Ozark Gas Transmission, LLC submits First Revised Sheet 11 to its FERC Gas Tariff, First Revised Volume 1, to be effective 12/18/09.
Filed Date: 11/18/2009.
Accession Number: 20091119–0051.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–159–000.
Applicants: Hardy Storage Company LLC.
Description: Hardy Storage Company LLC submits amendments to Credit Annexes.
Filed Date: 11/16/2009.
Accession Number: 20091116–5147.
Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP10–160–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits Fourth Revised Sheet 97 *et al.* of its FERC Gas Tariff, Second Revised Volume 2, to be effective 12/19/09.
Filed Date: 11/19/2009.
Accession Number: 20091119–0063.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: RP10–161–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmissions, Inc submits report of 13 non-conforming service agreements relating to storage service provided to former Texas Eastern Rate Schedule.
Filed Date: 11/19/2009.
Accession Number: 20091119–0064.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 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. E9–28399 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–1051–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC explanation of non-conforming nature of agreement.

Filed Date: 11/16/2009.

Accession Number: 20091116–5144.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: RP09–548–002.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Original Sheet No 3705 *et al.*. to FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 11/12/2009.

Accession Number: 20091116–0242.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Secretary.

[FR Doc. E9–28398 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–011]

Independent Energy Producers Association v. California Independent System Operator Corporation; Notice of Compliance Filing

November 18, 2009.

Take notice that on November 16, 2009, Calpine Corporation filed a compliance refund report pursuant to the Commission's order issued on August 18, 2009, 128 FERC ¶ 61,165 (2009) (Order on Remand).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 7, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28347 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Western Area Power Administration

Interconnection of the Buffalo Ridge III Wind Project, Brookings and Deuel Counties, SD

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meetings; Notice of Potential Floodplain and Wetlands Involvement.

SUMMARY: The Western Area Power Administration (Western), an agency of the DOE, intends to prepare an environmental impact statement (EIS) on the proposed interconnection of the Buffalo Ridge III Wind Project (Project) in Brookings and Deuel counties, near the cities of White and Toronto, South Dakota. Heartland Wind, LLC (Heartland), a wholly owned subsidiary of Iberdrola Renewables, Inc., has applied to Western to interconnect their proposed Project to Western's power transmission system. Western is issuing this notice to inform the public and interested parties about Western's intent to prepare an EIS, conduct a public scoping process, and invite the public to comment on the scope, proposed action, alternatives, and other issues to be addressed in the EIS.

This EIS will address Western's Federal action of interconnecting the proposed Project to Western's transmission system and making any necessary modification to Western facilities to accommodate the interconnection. The EIS will also include a review of the potential environmental impacts of Heartland constructing, operating, and maintaining a 170-megawatt (MW) wind power generating facility, consisting of wind turbine generators, access roads, an electrical collection system, a collection substation, permanent meteorological tower(s), a sonic detection and ranging (SODAR) unit, an operations and maintenance building and yard, a transmission line, temporary laydown areas, and other ancillary facilities.

DATES: The public scoping period begins with the publication of this notice and closes on December 31, 2009. A public

scoping meeting will be held on December 16, 2009.

ADDRESSES: A public scoping meeting will be held at the Clear Lake Community Center, 216 Third Avenue, South, Clear Lake, SD 57226. Written comments on the scope of the EIS should be addressed to Mr. Rod O'Sullivan, Document Manager, Western Area Power Administration, P.O. Box 35800, 2900 4th Avenue, North, Billings, MT 59107, fax (406) 247–7408 or e-mail *BuffaloRidge3EIS@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Rod O'Sullivan, Document Manager, Western Area Power Administration, P.O. Box 35800, 2900 4th Avenue, North, Billings, MT 59107, telephone (406) 247–7492, or e-mail *BuffaloRidge3EIS@wapa.gov*. For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, irrigation districts, Federal and State agencies, and Native American tribes. Western's service territory covers 15 western states, including South Dakota. Western owns and operates more than 17,000 miles of high-voltage transmission lines. Heartland has applied to Western to interconnect the proposed Project to Western's transmission system. The interconnection would be facilitated with a 15 to 20-mile, 115-kilovolt (kV), above-ground transmission line, running from the proposed Project substation to Western's White Substation. Western offers capacity to deliver electricity on its transmission system, when such capacity is available, under Western's Open Access Transmission Service Tariff.

The proposed Project is subject to State and local approvals prior to Project construction. These approvals include an Energy Facility and Transmission Siting Permit from the South Dakota Public Utilities Commission and a Wind Energy System Permit from Deuel County.

Project Description

Heartland proposes to construct a 170–MW wind energy project, in Brookings and Deuel counties in eastern South Dakota. The Project area would occupy about 30 square miles. The proposed wind turbines would be located predominantly around and to the north of the city of Toronto, South Dakota. The majority of the project area lies within Blom and Scandinavia townships in Deuel County, with smaller portions of the project extending through Argo, Oak Lake, Sherman, and Richland townships in Brookings County.

Heartland proposes to build up to 113 wind turbines. Permanent disturbance for each turbine would be 0.5 to 1.0 acres. Heartland is considering a variety of turbine types, with capacities ranging from 1.5 to 2.4 MW. Each wind turbine generator would be mounted on a single steel tower 262 to 328 feet high. Turbine blades would be 128 to 156 feet long, for a total height, at the blade's highest point, of 390 to 484 feet.

Approximately 40 to 50 miles of aboveground and underground, electrical collector cable would be required to carry generated power from each turbine to a single project collection substation. The underground collector cables would be buried to a depth that would not interfere with farming operations. The collection substation would occupy about 5 to 10 acres of land.

Heartland proposes to add a second circuit, about 15 miles long, to their 115-kV Buffalo Ridge Transmission Line. Additionally, they propose to build about 5 miles of new 115-kV transmission line from the collection substation to the northern point of the Buffalo Ridge Transmission Line and the southern point of the same line to Western's White Substation.

Heartland proposes to build about 25 to 35 miles of new roads and upgrade 20 to 40 miles of existing roads for construction and maintenance access to all turbines and Project facilities. Other facilities would include one or more permanent meteorological towers, a SODAR unit, and an operations and maintenance building.

Heartland would site wind turbine generators and supporting infrastructure to optimize wind and land resources in the area while minimizing environmental impacts to the extent practicable. The proposed Project would be located on privately-owned lands, consisting of mostly rural cropland and some grazing land. Heartland would comply with local zoning requirements, including setbacks from residences, roads, and existing transmission and distribution lines. Heartland proposes to begin construction as early as fall 2010. The life of the project is anticipated to be a minimum of 20 years.

Agency Proposed Action and Alternatives

Western's proposed action is to interconnect the proposed Project to the Federal transmission system at its White substation. Western will also consider the no-action alternative in the EIS. Under the no-action alternative, Western would not interconnect the proposed Project. If additional alternatives are identified, they will be analyzed in the EIS.

Agency Responsibilities

Because interconnection of the proposed Project would incorporate a major new generation resource into Western's power transmission system, Western has determined that an EIS is required under DOE NEPA implementing procedures, 10 CFR part 1021, Subpart D, Appendix D, class of action D6.[1] Western is the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. Western invites other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may also make a request to Western to be a cooperating agency by contacting Mr. O'Sullivan at the address listed above in the **ADDRESSES** section.

Western's proposed action may affect floodplains or wetlands. This notice also serves as notice of proposed floodplain or wetland action, in accordance with 10 CFR part 1022.

Environmental Issues

This notice is to inform agencies and the public of Western's intent to prepare an EIS and solicit comments and suggestions for consideration in the EIS. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants.
2. Impacts on migratory birds.
3. Impacts from noxious weeds, invasive and non-native species.
4. Impacts on recreation and transportation.
5. Impacts on land use and farmland.
6. Impacts on cultural or historic resources and tribal values.
7. Impacts on human health and safety.

[1] On October 4, 1999, DOE's Assistant Secretary for Environmental, Safety and Health delegated to Western's Administrator the authority to approve EISs for integrating transmission facilities with Western's transmission grid.

8. Impacts on air, soil, and water resources (including air quality and surface water impacts).

9. Visual impacts.

10. Socio-economic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

The EIS process includes a public scoping period; public review and hearing on the draft EIS; publication of a final EIS; and publication of a record of decision (ROD). The public scoping period begins with publication of this notice and closes December 31, 2009. At the conclusion of the NEPA process, Western would prepare a ROD. Persons interested in receiving future notices, Project information, copies of the EIS, and other information on the NEPA review process should contact Mr. O'Sullivan at the address listed above in the **ADDRESSES** section.

Western will hold a public scoping meeting on December 16, 2009, at the Clear Lake Community Center, 216 Third Avenue, South, Clear Lake, SD. The meeting is scheduled for 6 to 8 p.m. with a short presentation followed by an open-house meeting, during which attendees are invited to speak one-on-one with agency and Project representatives. Attendees are welcome to come and go at their convenience throughout the meeting. If inclement weather prohibits the scoping meeting, an alternate meeting date and location will be publicized locally.

The purpose of the scoping meeting is to provide information about the proposed Project, review Project maps, answer questions, and take written comments from interested parties. All meeting locations are handicapped-accessible. Anyone needing special accommodations should contact Mr. O'Sullivan to make arrangements.

The public will have the opportunity to provide written comments at the public scoping meetings. Written comments may also be sent to Mr. O'Sullivan by fax, U.S. Postal Service mail, or e-mail. To help define the scope of the EIS, comments should be received by Western no later than December 31, 2009.

Dated November 17, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–28409 Filed 11–25–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09–14–000]

Turtle Bayou Gas Storage Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Turtle Bayou Natural Gas Storage Project, and Request for Comments on Environmental Issues

November 20, 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 Turtle Bayou Natural Gas Storage Project involving construction and operation of facilities by Turtle Bayou Gas Storage Company, LLC (Turtle Bayou) in Liberty County, Texas. 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 the Commission staff will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on December 21, 2009.

This notice is being sent to the Commission's current environmental mailing list for this project, which includes 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 a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company 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 Web site (*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 Planned Project

Turtle Bayou plans to construct and operate a new natural gas storage facility in a solution-mined salt dome in Liberty County, Texas. The Turtle Bayou Natural Gas Storage Project would provide about 12.0 billion cubic feet of working gas storage and would be integrated into the regional gas transmission system through interconnects with existing and planned interstate pipelines. According to Turtle Bayou, its project would store natural gas from Gulf Coast producers, liquefied natural gas import terminals, and new gas pipeline projects through interconnects with Natural Gas Pipeline Company of America (NGPA) and Texas Eastern Transmission Company (Texas Eastern). The planned storage facility would provide needed deliverability to end users in the eastern United States. Additionally, Turtle Bayou's planned project would provide its customers with flexibility to contract for varying levels of deliverability by interconnecting with other pipeline systems throughout the region.

The Turtle Bayou Natural Gas Storage Project would consist of the following facilities:

- Two salt storage caverns, wells, and well pads;
- A 17,000-horsepower compressor station;
- Two meter stations and tie-in facilities (one for NGPA and one for Texas Eastern);
- Two sections of 24-inch-diameter natural gas pipeline totaling about 13 miles (8 and 5 miles); and
- Three sections of 18-inch-diameter water and brine pipeline totaling about 1.8 miles (1.6, 0.1, and 0.1 miles).

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Land Requirements for Construction

Construction of the planned facilities would disturb about 375 acres of land for the aboveground facilities and the pipeline. Following construction, about 27 acres would be maintained for permanent operation of the aboveground facilities and 102 acres would be maintained for the pipeline facilities. The remaining acreage would be restored and allowed to revert to former uses. The planned pipeline route generally parallels existing utility rights-of-way.

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 [2] 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, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Hazardous waste; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some Federal and State agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to those on our environmental mailing list (see discussion of how to remain on our mailing list on page 5). 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 notice, we are asking 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. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

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 written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 21, 2009.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located at *http://www.ferc.gov* under the link called ''*Documents and Filings.''* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the ''eFiling'' feature that is listed under the ''*Documents and Filings''* link. 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 to your submission. New eFiling users must first create an account by clicking on the links called ''*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 file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A,Washington, DC 20426.

In all instances, please reference the project docket number (*i.e.,* PF09–14–000) with your submission. Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

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 planned project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities (as defined in the Commission's regulations).

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

Once Turtle Bayou files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's 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 the 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 website. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs,

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

at 1–866–208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field (*i.e.,* PF09–14). 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 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.*

Further, any public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Turtle Bayou has established a Web site for its project at *http://www.turtlebayougasstorage.com* and a toll-free number at (877) 558–4521. The Web site includes a description of the project, frequently asked questions, and other information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28394 Filed 11–25–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–8–003]

Washington Gas Light Company; Notice of Filing

November 19, 2009.

Take notice that on October 29, 2009, Washington Gas Light Company (Washington Gas) filed its annual actual lost and unaccounted for volumes (LAUF) adjustment to comply with Paragraph IV.F. of its Firm Interstate Transportation Service Operating Statement (FITSOS) effective May 1, 2009. Washington Gas states the actual LAUF applicable to the firm transportation service provided to Mountaineer Gas Company effective from November 1, 2009 will be 1.18%.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28338 Filed 11–25–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–16–000]

Manitowoc Public Utilities; Notice of Filing

November 18, 2009.

Take notice that on November 17, 2009, Manitowoc Public Utilities, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d and section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, filed revised pages to its Rate Schedule FERC No. 2, to become effective October 1, 2009, modifying the stated revenue requirement to reflect retirement of their Diesel #1 generating unit.

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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28344 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–276–000]

Rolling Thunder I Power Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 20, 2009.

This is a supplemental notice in the above-referenced proceeding of Rolling Thunder I Power Partners, 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 December 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28392 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–269–000]

3Degrees Group, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 20, 2009.

This is a supplemental notice in the above-referenced proceeding of 3Degrees Group, Inc.'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 December 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28391 Filed 11–25–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–15–000]

California Independent System Operator Corporation; Notice of Institution of Proceeding and Refund Effective Date

November 18, 2009.

On November 17, 2009, the Commission issued an order that instituted a proceeding in Docket No. EL10–15–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2005), to consider the justness and reasonableness of the California Independent System Operator Corporation's tariff provisions, particularly section 9.2, as they relate to the financial security obligation following a customer's election to switch from Full Capacity deliverability to Energy-Only deliverability service. *California Independent System Operator Corporation,* 129 FERC ¶ 61,124 (2009).

The refund effective date in Docket No. EL10–15–000, established pursuant to section 206(b) of the FPA, will be the

date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28343 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–256–000]

FPL Energy Stateline II, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 20, 2009.

This is a supplemental notice in the above-referenced proceeding of FPL Energy Stateline II, Inc.'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 December 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28393 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR08–14–000; OR10–1–000]

Cimmarron Gathering, L.P.; Parnon Gathering, Inc.; Notice of Request for Temporary Waiver of Tariff Filing and Reporting Requirements, and for Termination of Existing Waiver

November 18, 2009.

Take notice that on October 22, 2009, Cimmarron Gathering, LP, notified the Commission that it had sold to Parnon Gathering, Inc., (Parnon) the interstate crude oil pipeline subject to the Commission's grant of temporary waiver of sections 6 and 20 of the Interstate Commerce Act in Docket No. OR08–14–000.[1] Cimmarron requests that the Commission terminate, effective October 1, 2009, (i) the temporary waiver granted to Cimmarron in the Waiver Order and (ii) all further conditions and obligations imposed upon Cimmarron under the terms of the Waiver Order.

Also take notice that on October 22, 2009, Parnon Gathering, Inc. (Parnon), tendered for filing an application to be effective October 1, 2009, for temporary waiver of the filing and reporting requirements of section 6 and section 20 of the Interstate Commerce Act for the interstate crude oil pipeline that Cimmarron previously operated under the Waiver Order and that Parnon acquired from Cimmarron.

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.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28345 Filed 11–25–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Cimmarron Gathering, L.P.,* 126 FERC ¶ 61,017 (2009) (Waiver Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–19–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

November 19, 2009.

Take notice that on November 13, 2009, Great Lakes Gas Transmission Limited Partnership (Great Lakes), 717 Texas Street, Houston, Texas 77002, filed in Docket No. CP10–19–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon a compressor unit, located in Charlevoix County, Michigan, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Great Lakes proposes to abandon a 4,000 horsepower compressor unit, Unit 1103, located on Great Lakes' system at the Boyne Falls Compressor Station. Great Lakes states that continued use of this compressor unit is unnecessary due to a rearrangement of station facilities whereby the remaining compressor units now operate in parallel instead of in a series. Great Lakes declares that this rearrangement was made to eliminate piping vibrations, component failures, and other operating concerns. Great Lakes avers that there is no significant impact on throughput from the proposed abandonment of Unit 1103 due in part because the other compressor units at the station have upgraded aerodynamic assemblies to accommodate parallel operation of the compressor units. Great Lakes asserts that no service to existing customers will be terminated or otherwise adversely impacted as a result of the proposed abandonment. Great Lakes proposes to maintain Unit 1103 in a salable condition for eventual resale.

Any questions regarding the application should be directed to M. Catharine Davis, Associate General Counsel, Great Lakes Gas Transmission Limited Partnership, Texas Street, Houston, Texas 77002–2761, telephone (832) 320–5509, or fax (832) 320–6509.

Any person may, within 60 days after the 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. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file 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 protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28339 Filed 11–25–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8985–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 11/16/2009 through 11/20/2009

Pursuant to 40 CFR 1506.9.

EIS No. 20090398, Final EIS, BPA, WA, Chief Joseph Hatchery Program, Construction, Operation and Maintenance of a Chinook Salmon Hatchery Production Program, Confederated Tribes of the Colville Reservation (Colville Tribes), Okanogan River and Columbia River, Okanogan County, WA, Wait Period Ends: 12/28/2009, Contact: Mickey Carter 503–230–5885.

EIS No. 20090399, Final EIS, NPS, 00, PROGRAMMATIC—Servicewide Benefits Sharing Project, To Clarify the Rights and Responsibilities of Researchers and National Park Service (NPS) Management in Connection with the Use of Valuable Discoveries, Inventions, and Other Developments, across the United States, Wait Period Ends: 12/28/2009, Contact: Susan M. Mills 307–344–2515.

EIS No. 20090400, Draft EIS, AFS, WI, Twin Ghost Project, Proposes to Implement Vegetation and Transportation Management Activities, Great Divide Ranger District, Chequamegon-Nicolet National Forest, Ashland, Bayfield, Sawyer Counties, WI, Comment Period Ends: 01/11/2010, Contact: Debra Proctor 715–634–4821.

EIS No. 20090401, Final EIS, IBR, CA, Delta-Mendota Canal/California Aqueduct Intertie Project, Construction and Operation of a Pumping Plant and Pipeline Connection, San Luis Delta-Mendota Water Authority Project, Central Valley Project, Alameda and San Joaquin Counties, CA, Wait Period Ends: 12/28/2009, Contact: Erika Kegel 916–978–5081.

EIS No. 20090402, Draft EIS, NRC, MN, Generic—License Renewal of Nuclear Plants for the Prairie Island Nuclear Generating Plant, Units 1 and 2, Supplement 39, NUREG–1437, Implementation, City of Red Wing, Dakota County, MN, Comment Period Ends: 01/29/2010, Contact: Elaine M. Keegan 301–415–8517.

EIS No. 20090403, Draft EIS, IBWC, TX, Presidio Flood Control Project, Flood Control Improvements and Partial Levee Relocation, Presidio, TX, Comment Period Ends: 01/12/2010, Contact: Daniel Borunda 915–832–4767.

EIS No. 20090404, Final EIS, FAA, CA, ADOPTION—BART-Oakland International Airport Connector, extending South from the existing Coliseum BART Station, about 3.2 miles, to the Airport Terminal Area, Alameda County, CA, Wait Period Ends: 12/28/2009, Contact: Peter F. Ciesla 310–725–3612.

The U.S. Department of Transportation, Federal Aviation Administration has adopted the U.S. Department of Transportation, Federal Transit Administration's FEIS #20020140 filed 04/05/2002. Federal Aviation Administration was not a Cooperating Agency on the above FEIS. Under Section 1506.3(b) of the CEQ Regulations, the FEIS must be Recirculated for a 30-day Wait Period.

EIS No. 20090405, Draft EIS, AFS, SD, Norbeck Wildlife Project, Proposing to Manage Vegetation to Benefit Game Animals and Birds, Black Hills National Forest, Custer and

Pennington Counties, SD, Comment Period Ends: 01/11/2010, Contact: Kelly Honors 605–673–4853.

Amended Notices

EIS No. 20090378, Draft EIS, COE, MN, NorthMet Project, Proposes to Construct and Operate an Open Pit Mine and Processing Facility, Located in Hoyt Lakes—Babbitt Area of St. Louis County, MN, Comment Period Ends: 02/03/2010, Contact: Jon K. Ahlness 651–290–5381 Revision to FR Notice Published 11/06/2009: Correction to Comment Period from 02/02/2010 to 02/03/2010.

EIS No. 20090394, Draft EIS, USN, GU, Guam and Commonwealth of the Northern Mariana Islands (CNMI) Military Relocation, Proposed Relocating Marines from Okinawa, Visiting Aircraft Carrier Berthing, and Army Air and Missile Defense Task Force, Implementation, GU, Comment Period Ends: 02/17/2010, Contact: Kyle Fujimoto 808–472–1442. Revision to FR Notice Published 11/20/2009: Correction to Comment Period from 02/18/2010 to 02/17/2010.

Dated: November 23, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–28414 Filed 11–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8986–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/*.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090225, ERP No. D–AFS–J65543–ND, North Billings County Allotment Management Plan Revisions, Proposes to Continue to Permit Livestock Grazing on 43 Allotments, Medora Ranger District, Dakota Prairie Grasslands, Billings County, ND.

Summary: EPA expressed environmental concerns about impacts to riparian areas and water quality, and requested adding water quality monitoring to the adaptive management plan. Rating EC2.

EIS No. 20090230, ERP No. D–AFS–J65544–CO, North San Juan Sheep and Goat Allotments, Proposal to Permit Domestic Livestock Grazing Management, Conejos Peak Ranger District, Rio Grande National Forest, Conejos, Rio Grande and Archuleta Counties, CO.

Summary: EPA expressed environmental concerns about water quality, riparian stream bank, and forage impacts. Rating EC1.

EIS No. 20090277, ERP No. D–AFS–J65547–CO, Hermosa Park/Mitchell Lakes Land Exchange Project, Proposed Land Exchange between Federal and Non-Federal Lands, Implementation, Federal Land in LaPlata County and Non-Federal Land in San Juan County, CO.

Summary: EPA expressed environmental concerns about direct and indirect impacts from the development of the Chris Park Parcel. EPA also requested that the FEIS analyze the relative impacts of future development of the Hermosa Park, Mitchell Lake, and the Iron Clad parcels versus the proposed development of the Chris Park Parcel. Rating EC2.

EIS No. 20090279, ERP No. D–BLM–L65577–ID, Blackfoot Bridge Mine Project, Developing Three Mine Pits, Haul Roads, Water Management Structures, and Overburden Disposal Areas, Implementation, Caribou County, ID.

Summary: EPA expressed environmental objections to the Preferred Alternative because of potentially significant water quality impacts. Rating EO2.

EIS No. 20090287, ERP No. D–AFS–J65548–CO, Willow Creek Pass Fuel Reduction Project, Implementation, Hahns Peak/Bear Ears Ranger District, Medicine Bow-Routt National Forests, Routt County, CO.

Summary: While EPA has no objection to the proposed action, we requested additional information on air quality impacts and mitigation. Rating LO.

EIS No. 20090295, ERP No. D–FRC–J03023–00, Bison Pipeline Project (Docket No. CP09–161–000), Construction, Operation, and Maintenance of Interstate Natural Gas Pipeline Facilities, Application for Right-of-Way Grant and Temporary Use Permit, NPDES Permit and US COE 404 Permit, WY, MT, and ND.

Summary: EPA expressed environmental concerns about air quality, water quality and hydrostatic testing impacts. Rating EC2.

EIS No. 20090317, ERP No. D–USA–D11046–VA, Fort Monroe U.S. Army Garrison Base Realignment and Closure (BRAC) 2005 Disposal and Reuse of Surplus Nonreverting Property, Fort Monroe, VA.

Summary: EPA expressed environmental concerns about the early transfer disposal alternative that will allow the reuse of the surplus property to occur before environmental remedial action has been completed. Rating EC2.

EIS No. 20090330, ERP No. D–USN–K11125–CA, Marine Corps Base Camp Pendleton Basewide Utilities Infrastructure Construct and Operate Six Utility Infrastructure Project, San Diego County, CA.

Summary: EPA expressed environmental concerns about water resources and offered suggestions to mitigate air toxics emissions, improve energy efficiency, and generate renewable energy. Rating EC2.

EIS No. 20090345, ERP No. D–AFS–F65078–WI, Honey Creek-Padus Project, Proposes to Harvest Timber, Regenerate Stands, Plant and Protect Tree Seedlings and Manage Access on Approximately 6,702 Acres, Lakewood-Laona Ranger District, Chequamegon-National Forest, Forest County, WI.

Summary: EPA does not object to this project. Rating LO.

EIS No. 20090259, ERP No. DS–AFS–D65036–PA, Allegheny National Forest, Updated Information for the 2007 Land and Resource Management Plan, Implementation, Elk, Forest, McKean and Warren Counties, PA.

Summary: EPA continues to have environmental concerns that the proposed Standards and Guidelines may not sufficiently mitigate impacts to water quality and wildlife resources. Rating EC2.

Final EISs

EIS No. 20090289, ERP No. F–FTA–J53009–CO, Gold Line Corridor Project, Development of Fixed-Guideway Transit Improvements, from Denver Union Station to Ward Road in Wheat Ridge, Implementation, City and County of Denver, Adams, Arvada, Wheat Ridge, and Jefferson Counties, CO.

Summary: EPA expressed environmental concerns about increased

pollutant discharges to impaired surface waters.

EIS No. 20090299, ERP No. F–FHW–J40187–UT, Geneva Road, Center Street/1600 West (Provo) to Geneva Road/SR–89 (Pleasant Grove), Improvements, U.S. Army COE 404 Permit, Utah County, UT.

Summary: EPA continues to have environmental concerns about construction air quality impacts and their mitigation, and recommends 10 additional mitigation measures to address emissions from on-road and non-road construction equipment.

EIS No. 20090326, ERP No. F–USN–E11065–FL, Naval Surface Warfare Center Panama City Division (NSWC PCD), Capabilities to Conduct New and Increased Mission Operations for the Department of Navy (DON) and Customers within the three Military Operating Areas and St. Andrew Bay (SAB), Gulf of Mexico, FL.

Summary: EPA does not object to the proposed action.

EIS No. 20090333, ERP No. F–COE–F39042–MN, Mississippi River Headwaters Reservoir Operating Plan Evaluation (ROPE), Proposed Revision to the Operating Plan for the Reservoirs, Upper Mississippi River Headwaters, Bemidji to St. Paul, MN.

Summary: While EPA has no objection to the proposed action, EPA did request that the Corps of Engineers work with recreational users of the reservoirs to institute measures to improve water quality.

EIS No. 20090341, ERP No. F–IBR–K65356–CA, Grassland Bypass Project 2010–2019 Project, Proposed new Use Agreement, San Joaquin River, CA.

Summary: EPA continues to have environmental concerns about the treatment of agriculture runoff to meet selenium objectives by 2019 and minimize the increase of selenium in groundwater. EPA continues to recommend that the Bureau of Reclamation and Delta-Mendota Water Authority consider a long-term option if feasible methods to adequately treat agricultural drain water are not found.

EIS No. 20090342, ERP No. F–AFS–K65355–CA, Sequoia National Forest Motorized Travel Management Project, Prohibit Cross-Country Travel for Managing Motorized Travel, Kern River, Western Divide Ranger Districts, Sequoia National Forest, Tulare County, CA.

Summary: EPA expressed environmental concerns about the continued use of routes in areas that may contain naturally occurring asbestos.

EIS No. 20090350, ERP No. F–AFS–F65044–WI, Grub Hoe Vegetation and Transportation Management Project, Proposes to Implement Vegetation Management Activities, Eagle River Florence Ranger District, Chequamegon-Nicolet National Forest, Florence County, WI.

Summary: EPA does not object to the proposed action.

Dated: November 23, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–28415 Filed 11–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8985–8]

EPA Science Advisory Board Staff Office; Notification of a Meeting of the Health Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis (Council)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the Health Effects Subcommittee (HES) of the Advisory Council on Clean Air Compliance Analysis (Council). The HES, supplemented with additional members from the Council, will review technical assessments related to health benefits analyses and uncertainty analyses to support of the Office of Air and Radiation's Second Section 812 Benefit-Cost Analysis of the Clean Air Act.

DATES: The meeting dates are Tuesday, December 15, 2009, from 8:30 a.m. to 5 p.m. and Wednesday, December 16, 2009, from 8:30 a.m. to 3 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the SAB Conference Center at 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Dr. Marc Rigas, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail: (202) 343–9978 or at *rigas.marc@epa.gov.* General information about the Council may be found on the Council Web site at: *http://www.epa.gov/advisorycouncilcaa.*

SUPPLEMENTARY INFORMATION: *Background:* Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the Health Effects Subcommittee (HES) of the Advisory Council on Clean Air Compliance Analysis (Council) will hold a public meeting to evaluate draft documents regarding Human Health Benefits and Uncertainty Analyses to Support the Second Section 812 Benefit-Cost Analysis of the Clean Air Act. The Council was established in 1991 pursuant to the Clean Air Act (CAA) Amendments of 1990 (see 42 U.S.C. 7612) to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a Federal Advisory Committee chartered under FACA. The HES will provide advice through the Council and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Pursuant to Section 812 of the 1990 Clean Air Act Amendments, EPA conducts periodic studies to assess benefits and costs of the EPA's regulatory actions under the Clean Air Act. The Council has provided advice on an EPA retrospective study published in 1997 and an EPA prospective study completed in 1999. EPA initiated a second prospective study to evaluate the costs and benefits of EPA Clean Air programs for years 1990–2020. The Council has previously provided advice on analytic blueprints for this study. EPA's Office of Air and Radiation is now nearing completion of the analytical work for the second prospective study. The December 15–16, 2009 meeting will provide the HES the opportunity to review the technical documents pertaining to human health benefits as well as uncertainty in the benefits and costs estimates.

Technical Contacts: The Office of Air and Radiation technical contact for the Second Section 812 Benefit-Cost Analysis of the Clean Air Act is Mr. Jim DeMocker at (202) 564–1673 or *democker.jim@epa.gov.*

Availability of Meeting Materials: EPA draft documents (Benefits Analyses to Support the Second Section 812 Benefit-Cost Analysis of the Clean Air Act—Draft (Chapter 1: Introduction and Chapter 2: Human Health Benefits) and Uncertainty Analyses to Support the Second Section 812 Benefit-Cost Analysis of the Clean Air Act—Draft)

may be found at: *http://www.epa.gov/oar/sect812/prospective2.html.*

The meeting agenda for December 15–16, 2009 and any background materials will be posted on the Council Web site (*http://www.epa.gov/advisorycouncilcaa*) prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the HES to consider on the topics of this advisory activity and/or the group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Dr. Rigas at the contact information provided above by December 8, 2009, to be placed on the public speaker list for the December 15–16, 2009 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by December 8, 2009, so that the information may be made available to the HES for their consideration prior to this meeting. Written statements should be supplied to Dr. Rigas via e-mail to *rigas.marc@epa.gov* (acceptable file format: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files). Submitters are requested to provide two versions of each document submitted with and without original signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Marc Rigas at (202) 343–9978, or via e-mail at *rigas.marc@epa.gov,* preferably at least ten (10) days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 19, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–28407 Filed 11–25–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission For Extension Under Delegated Authority, Comments Requested

November 19, 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 January 26, 2010. 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 them 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: 3060–1048.

Title: Section 1.929(c)(1), Composite Interference Contour (CIC).

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: 50 respondents; 50 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Section 309(j) of the Communications Act of 1934, as amended.

Total Annual Burden: 100 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: Under section 1.929(c)(1) of the Commission's rules, any increase in the composite interference contour (CIC) of a site–based licensee in the Paging and Radiotelephone Service, Rural Radiotelephone Service, or 800 MHz Specialized Mobile Radio Service (SMRS) is a major modification of a license that requires prior Commission approval.

However, on February 22, 2005, the Commission released a Report and Order in WT Docket No. 03–103 (70 FR 19293), in which it amended section 1.929(c)(1) to specify that expansion of a composite interference contour (CIC) of a site–based licensee in the Paging and Radiotelephone Service – as well as the Rural Radiotelephone Service and 800 Specialized Mobile Radio Service – over water on a secondary, non–interference basis should be classified as a minor (rather than a major) modification of a license. Such reclassification has eliminated the filing

requirements associated with these license modifications, but requires site–based licensees to provide the geographic area licensee (on the same frequency) with the technical and engineering information necessary to evaluate the site–based licensee's operations over water.

The purpose of this collection is to guard against unacceptable interference to its own operation(s).

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–28354 Filed 11–25–09 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension under Delegated Authority, Comments Reque

November 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 January 26, 2010. 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 them 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: 3060–1130.

Title: National Broadband Plan Survey of Businesses.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit and not–for–profit institutions.

Number of Respondents: 3,500 respondents; 3,500 responses.

Estimated Time Per Response: 16 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authorities for this information collection is the Broadband Data Improvement Act of 2008, Pub. L. No. 110–385 and the American Reinvestment and Recovery Act of 2009, Pub. L. No. 111–5.

Total Annual Burden: 2,770 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The survey contractor, as a matter of general practice, does not provide clients with information that directly identifies survey respondents, whether they are individuals or organizations. This includes telephone numbers, names, addresses, and other information. The vendor also informs respondents of the nature of the vendor's commitments in terms of handling their information. Generally, the promise is that the respondent will not be individually identified and that all analyses of the data will be of aggregate statistics, rather than an individual's answers.

Any information that the survey contractor obtains – whether in purchased sample or through the interview process – that could directly identify the company or the individual responding on behalf of the company will not be provided to the Commission by the survey contractor as a matter of vendor policy. The respondents will be told that such information will not be provided by the survey contractor to the Commission or any other third party.

Need and Uses: The Commission sought and obtain emergency processing of this information collection by the Office of Management and Budget (OMB) on November 19, 2009. Emergency requests to OMB are approved for only six months. The Commission is now seeking an extension (no change in the reporting requirement) in order to obtain the full three year clearance from the OMB.

To assist in developing the Broadband Plan that must be submitted to congress by February 17, 2010, the Omnibus Broadband Initiative within the Commission's Office of Strategic Planning plans to conduct a survey of businesses that focus on adoption and usage of broadband internet service. For the Broadband Plan, the focus on usage in the survey is crucial to formulating policy recommendations on how broadband can increase business productivity and economic growth in the United States. The business survey is being conducted pursuant to the Broadband Data Improvement Act. This is authorized under the American Reinvestment and Recovery Act of 2009.

Federal Communications Commission.

William F. Caton,

Deputy Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–28374 Filed 11–25–09 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, November 19, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Notice of Proposed Rulemaking on Federal Officeholder's and Candidates' Participation in Certain Non-Federal Fundraising Events.

Final Rules on Campaign Travel.

Consideration of Policy to Place First General Counsel's Reports on the Public Record.

Adoption of Policy to Prepare and Publish a Guidebook for Complainants and Respondents in Enforcement Matters.

Co-sponsorship of 2010 COGEL Annual Meeting.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–27976 Filed 11–25–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

[File No. 091 0053]

Pfizer Inc. and Wyeth; Analysis of Agreement Containing Consent Order To Aid Public Comment and Statement of the Federal Trade Commission

AGENCY: Federal Trade Commission.

ACTION: Notice of acceptance of 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 settle these allegations.

ADDRESSES: Copies of the Statement of the Commission, the Agreement Containing Consent Orders, the Decision and Order (Redacted Public Version), the Order To Maintain Assets, the Complaint, the Analysis To Aid Public Comment, and other materials may be found on the Federal Trade Commission Web site, at *http://www.ftc.gov/os/caselist/0910053/index.shtm*, and may also be secured from the following address: Federal Trade Commission, Consumer Response Center, Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael R. Moiseyev, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3106.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, 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 14, 2009), on the World Wide Web, at *http://www.ftc.gov/opa/2009/10/pfizer.shtm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') with Pfizer Inc. (''Pfizer''), which is designed to remedy the anticompetitive effects of its proposed acquisition of Wyeth. Under the terms of the Consent Agreement, Pfizer must divest to Boehringer Ingelheim Vetmedica, Inc. (''BI'') Wyeth's U.S. animal health business (''Fort Dodge'') in all areas of overlap, except for equine tapeworm parasiticides and equine herpesvirus vaccines. In the area of equine tapeworm parasiticides, the consent order requires Pfizer to return to Virbac S.A. (''Virbac'') Pfizer's exclusive distribution rights for these products. In the area of equine herpesvirus vaccines, Pfizer is ordered to divest to BI Pfizer's equine herpesvirus products. The assets for each of the divestitures include all of the relevant intellectual property, customer lists, research and development information, and regulatory materials, as well as two of Fort Dodge's three U.S. manufacturing facilities. These divestitures fully preserve the competition that the proposed acquisition would otherwise eliminate.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received to decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the accompanying Decision and Order (''Order'').

Pursuant to an Agreement and Plan of Merger dated as of January 25, 2009, Pfizer proposes to acquire all of the issued and outstanding shares of Wyeth, whereby each outstanding share of Wyeth common stock will be converted into the right to receive $33 in cash and 0.985 share of Pfizer common stock. Both parties manufacture human and animal health biological and pharmaceutical products. The combined firm would have projected worldwide revenues of almost $72 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in U.S. markets for the manufacture and sale of: (1) Killed cattle respiratory vaccines; (2) modified-live cattle respiratory vaccines; (3) cattle reproductive vaccines; (4) cattle pasteurella vaccines; (5) lactating-cow mastitis treatments; (6) dry-cow mastitis treatments; (7) dairy cattle broad-spectrum antibiotics with low milk-withholding times; (8) cattle macrocyclic lactone parasiticides; (9) cattle benzimidazole parasiticides; (10) canine combination vaccines; (11) canine monovalent parvovirus vaccines; (12) canine monovalent coronavirus vaccines; (13) canine monovalent leptospira vaccines; (14) canine bordetella vaccines; (15) feline combination vaccines; (16) feline leukemia vaccines; (17) companion animal rabies vaccines; (18) companion animal cephalosporin antibiotics; (19) equine tapeworm parasiticides containing praziquantel; (20) equine herpesvirus vaccines; and (21) equine joint-injected steroids. The proposed Consent Agreement remedies the alleged violations by replacing in each of the relevant markets the lost

competition that would result from the acquisition.

II. The Products and Structure of the Markets

The proposed acquisition of Wyeth by Pfizer would combine two of the largest animal health suppliers in the United States. The companies overlap in several animal health markets, and, if consummated, the transaction likely would lead to anticompetitive effects in each of the relevant markets. More specifically, the transaction would decrease the number of competing suppliers in the overlap markets, which number has a direct and substantial effect on the prices of animal health products. The evidence shows that customers are able to obtain lower prices by threatening to switch to another supplier or presenting the incumbent supplier with a rival's lower offer. Customers have stated that they generally can negotiate lower prices in markets with more participants and that, historically, they have seen prices rise in markets in which the number of market participants has declined.

Pfizer and Fort Dodge are the market leaders in the area of cattle health products. After the transaction, Pfizer would have over 60 percent of several of the relevant cattle product markets. In the cattle vaccines area, Pfizer and Fort Dodge have broad and significantly overlapping portfolios of respiratory, reproductive, and pasteurella vaccines. Customers choose the specific vaccine products that most closely match their needs based on several factors, including, among others, disease risk assessments and relative prices.

Killed cattle respiratory vaccines prevent respiratory diseases in pregnant cattle without the risk of causing abortion. Pfizer and Fort Dodge account for over 50 percent of all killed respiratory vaccine sales in the United States. The most commonly used killed respiratory vaccine is the 5-way vaccine, which prevents infectious bovine rhinotracheitis, types 1 and 2 of bovine virus diarrhea, parainfluenza 3, and bovine respiratory syncytial virus. As a result of the acquisition, Pfizer would have 61 percent of the market for killed 5-way respiratory vaccines, leaving Novartis Animal Health (''Novartis'') as Pfizer's only significant competitor.

Modified-live cattle respiratory vaccines prevent the same diseases as killed respiratory vaccines, but contain modified-live rather than killed antigens to stimulate greater protection. Because modified-live respiratory vaccines induce stronger immunities, most customers will use modified-live vaccines for non-pregnant cattle. Pfizer and Fort Dodge account for over 53 percent of all modified-live respiratory vaccine sales in the United States. As with killed respiratory vaccines, the 5-way modified-live respiratory vaccine is the most commonly used modified-live cattle respiratory vaccine. As a result of the proposed acquisition, Pfizer would control over 68 percent of the 5-way modified-live respiratory vaccine market.

Cattle reproductive vaccines are used to prevent early- and late-stage abortions in pregnant cattle. The markets for cattle reproductive vaccines include, most significantly: (1) The market for modified-live 10-way vaccines, which contain modified-live viral respiratory and *Leptospira* antigens; (2) the market for killed 10-way vaccines, which contain killed viral respiratory and *Leptospira* antigens; and (3) the market for lepto/vibrio vaccines, which contain *Leptospira* and *Campylobacter fetus* antigens. After the acquisition, Pfizer would have 83 percent of the $13 million modified-live 10-way market in the United States, with Intervet/Schering-Plough Animal Health (''ISP''), AgriLaboratories, Ltd. (''AgriLabs''), and BI accounting for 11 percent, 4 percent, and 2 percent, respectively. Pfizer also would control 76 percent of sales in killed 10-way vaccines, leaving Novartis with 18 percent and AgriLabs with 6 percent of this $9 million market. Finally, in the lepto/vibrio vaccine market, Pfizer and Fort Dodge collectively account for almost 39 percent of this $2.6 million market, and Novartis leads with 41 percent.

Cattle pasteurella vaccines are used to prevent pneumonia as well as lesser respiratory infections in cows caused by *Pasteurella multocida* and *Mannheimia haemolytica* bacteria. Pfizer, Fort Dodge, BI, ISP, and Merial are the only significant suppliers of products in these markets in the United States. The proposed acquisition would reduce the number of competitors in these markets, leaving Pfizer significantly larger than any of its remaining competitors.

Lactating-cow and dry-cow mastitis treatments are used to treat infections of the udder that occur during either lactation or the dry period between pregnancies. The markets for lactating-cow and dry-cow mastitis treatments are highly concentrated, with Pfizer and Fort Dodge together accounting for more than 90 percent of sales in each of these markets.

Broad-spectrum antibiotic products with low milk-withholding times can be used to treat a large variety of infections that affect dairy cows.[1] Pfizer's products are considered the most effective antibiotics for dairy cows and have a zero-day withholding period, while Fort Dodge's product has a low withholding period of two to four days. A generic version of one of Pfizer's products was recently introduced. As a result of the proposed acquisition, Pfizer would have a near monopoly in this $162 million market.

Cattle macrocyclic lactone parasiticides are the newest and most effective class of cattle parasiticides in the United States. They are effective against both internal and external parasites. There are only three branded players in the $118 million U.S. market: Pfizer, Fort Dodge, and Merial. Although generic versions of Merial's product are available, there are no generic versions of Pfizer's or Fort Dodge's products currently on the market. The proposed acquisition would significantly increase the concentration in this market, leaving Pfizer with approximately 42 percent of the market.

Cattle benzimidazole parasiticides are an older generation of parasiticides used primarily by cattle breeders to treat internal parasites, such as lungworms, tapeworms, and liver flukes. Pfizer, Fort Dodge, and ISP are the only suppliers to offer cattle benzimidazole parasiticides in the United States. After the proposed acquisition, ISP would be the only remaining constraint on Pfizer's ability to raise prices, accounting for 67 percent of this $16 million market. Pfizer would control the remaining 33 percent of the market.

Beyond cattle health products, Pfizer and Fort Dodge are also two of only four major suppliers in the relevant companion animal vaccines and pharmaceuticals markets. In the majority of these markets, the transaction would reduce the number of competitors from four to three and give Pfizer between 50 and 100 percent of the market. As in the cattle vaccines area, Pfizer and Fort Dodge have broad and significantly overlapping portfolios of companion animal vaccines. Customers can choose the specific vaccine products that most closely match their needs based on several factors, including, among others, vaccination protocols recommended by

[1] To ensure that antibiotic-contaminated milk is not distributed, the United States Food and Drug Administration (''FDA'') has set ''withholding times'' for each antibiotic product and mandates that any milk that is produced during the withholding period be discarded. A principal consideration for dairy farmers in purchasing antibiotics, therefore, is how quickly they can resume milk production after treatment.

veterinarians and disease risk assessments.

Canine combination vaccines prevent common canine diseases, such as those caused by canine distemper, adenovirus (types 1 and 2), parainfluenza, parvovirus, coronavirus, and *Leptospira*. Pfizer, Fort Dodge, Merial, and ISP are the four significant companies that supply canine combination vaccines in the United States. Total U.S. sales of canine combination vaccines are $126 million. The proposed acquisition would reduce the number of significant suppliers of canine combination vaccines from four to three.

While parvovirus, coronavirus, and leptospira vaccines are all available as part of canine combination vaccines, the monovalent forms are administered as booster shots for puppies that have a particularly high risk of exposure to the disease. Pfizer, Fort Dodge, Merial, and ISP are the only four companies that supply canine monovalent parvovirus vaccines in the United States, a $2.1 million market. The proposed acquisition would give Pfizer control of 66 percent of the canine monovalent parvovirus vaccine market.

The same four players-Pfizer, Fort Dodge, Merial, and ISP-are also the only four companies that supply canine monovalent coronavirus vaccines in the United States. The proposed acquisition would further entrench Pfizer as the dominant supplier with an 81 percent share of the $2.3 million market for canine monovalent coronavirus vaccines.

In the market for canine monovalent leptospira vaccines, the proposed acquisition would combine the only two companies that currently supply such vaccines in the United States. Pfizer currently has a 53 percent share, and Fort Dodge controls the remaining 47 percent of this $9.2 million market. The proposed acquisition would grant Pfizer complete control over the market for canine monovalent *leptospira* vaccines.

Canine bordetella vaccines are used primarily to prevent infectious tracheobronchitis, which is the most prevalent upper respiratory infection contracted by dogs in the United States. There are five suppliers of canine bordetella vaccines in the United States: Pfizer, Fort Dodge, ISP, Merial, and BI. Total U.S. sales of canine bordetella vaccines amount to $53.3 million. The proposed acquisition would reduce the number of suppliers of canine bordetella vaccines from five to four, leaving Pfizer significantly larger than its three remaining competitors.

Feline combination vaccines are used to prevent common feline diseases, such as feline panleukopenia, rhinotracheitis, chlamydia, and calicivirus. Pfizer, Fort Dodge, ISP, and Merial are the only significant suppliers of feline combination vaccines in the United States. Total U.S. sales of feline combination vaccines are $28 million. The proposed acquisition would reduce the number of significant suppliers of feline combination vaccines from four to three, with Pfizer's sales considerably greater than those of its two remaining competitors.

Feline leukemia vaccines can provide effective protection against feline leukemia, a fatal disease that breaks down a cat's immune system to such an extent that it can no longer defend against otherwise harmless invasions by bacteria, viruses, or other sources of disease. Pfizer, Fort Dodge, Merial, and ISP are the only companies that supply feline leukemia vaccines in the United States, sales of which are $38 million. The proposed acquisition would reduce the number of suppliers from four to three, with Pfizer significantly larger than its two remaining competitors.

Companion animal rabies vaccines are used to prevent rabies, a fatal and incurable neurological disease. Pfizer, Fort Dodge, Merial, and ISP are the only companies that offer companion animal rabies vaccines in the United States. U.S. sales of such vaccines total approximately $60 million, and the proposed acquisition would reduce the number of suppliers of companion animal rabies vaccines from four to three.

Companion animal cephalosporins are a recent generation of broad-spectrum antibiotics that are effective against both gram-positive and gram-negative organisms and can be used to treat a wide range of infections. Pfizer and Fort Dodge are the only two suppliers of branded companion animal cephalosporins in the United States. The only other companion animal cephalosporins are generic human and animal cephalosporin products. These products, however, have limited competitive significance because of dosing differences found in the generic human products and a relative lack of technical and research support offered with the generic animal products. As a result of the proposed acquisition, Pfizer would have 70 percent of this $52 million market.

In addition to cattle and companion animal products, the proposed acquisition also poses competitive concerns in three equine product markets: tapeworm parasiticides; herpesvirus vaccines; and joint-injected steroids. The market for equine tapeworm parasiticides containing praziquantel consists of products used to treat tapeworms and other internal parasites, which are the leading cause of equine colic in the United States. Currently, Pfizer has a 33 percent share of this approximately $22 million market; Fort Dodge has a 31 percent market share; and Merial has a 36 percent market share. The proposed acquisition would give Pfizer 64 percent of the market for equine tapeworm parasiticides, leaving Merial as its only remaining competitor.

Equine herpesvirus vaccines are used primarily for the prevention of equine rhinopneumonitis, an upper respiratory disease, which can cause abortion in pregnant mares. Pfizer, Fort Dodge, ISP, and BI are the only suppliers of equine herpesvirus vaccines in the United States, sales of which total $30 million. The proposed acquisition would reduce the number of suppliers from four to three, with Pfizer significantly larger than its two remaining competitors.

Equine joint-injected steroids can be used to reduce joint inflammation, treat osteoporosis, and prevent lameness in horses. Pfizer has a 60 percent share of this $7.3 million market, while Fort Dodge has a 40 percent share. The proposed acquisition would create a monopoly in the market for equine joint-injected steroids in the United States.

III. Entry

Entry into the manufacture and sale of the relevant animal health vaccine and pharmaceutical markets would not be timely, likely, or sufficient in its magnitude, character, or scope to deter or counteract the anticompetitive effects of the proposed acquisition. Developing and obtaining United States Department of Agriculture approval (in the case of vaccines) for the manufacture and sale of each of the relevant products can take as many as five years due to substantial regulatory, technological, and intellectual property barriers. Similarly, obtaining FDA approval (in the case of pharmaceutical products) can take five to seven years for a currently developed product and as many as ten or more years for an entirely new product.

In addition to the regulatory, developmental, and manufacturing hurdles facing a potential entrant, many of the markets at issue are characterized by particular conditions that make new entry unlikely. For example, some products, such as vaccines for cattle, equine, and companion animals, are particularly difficult to manufacture, have relatively small profit opportunities, and have a high potential for adverse reactions and product failure. In other markets, such as those for companion animal vaccines, a

substantial initial investment is necessary because veterinarians tend to purchase all their vaccines from a single supplier; as a result, a new entrant must develop a large portfolio of vaccines in order to be a significant competitor.

IV. Effects of the Acquisition

The proposed acquisition would cause significant competitive harm to consumers in the relevant U.S. markets for cattle, companion animal, and equine health products by eliminating actual, direct, and substantial competition between Pfizer and Wyeth. The transaction would increase the likelihood that Pfizer will be able to unilaterally exercise market power, increase the likelihood of coordinated interaction between or among suppliers, reduce Pfizer's incentives to pursue further research and development, and increase the likelihood that consumers will pay higher prices. In each of the relevant markets, the evidence shows that consumers have experienced lower prices, increased research and development, and better service due to the competitive rivalry that exists between market participants—particularly that which currently exists between Pfizer and Wyeth. The evidence also shows that, when any of the competitors experienced supply problems, the remaining competitors increased their prices, and, conversely, that consumers were able to negotiate lower prices when new rivals entered the relevant markets.

V. The Consent Agreement

The proposed Consent Agreement preserves competition in each of the relevant markets alleged in the complaint by requiring that Pfizer divest the following assets to BI no later than ten days after the acquisition: All of the Fort Dodge assets relating to killed cattle respiratory vaccines, modified-live cattle respiratory vaccines, cattle reproductive vaccines, cattle pasteurella vaccines, lactating-cow and dry-cow mastitis treatments, dairy cattle broad-spectrum antibiotic products with low milk-withholding times, cattle macrocyclic lactone parasiticides, cattle benzimidazole parasiticides, canine combination vaccines, canine monovalent parvovirus vaccines, canine monovalent coronavirus vaccines, canine monovalent leptospira vaccines, canine bordetella vaccines, feline combination vaccines, feline leukemia vaccines, companion animal rabies vaccines, companion animal cephalosporins, and equine joint-injected steroids, as well as the Pfizer assets relating to equine herpesvirus vaccines.

The proposed Consent Agreement contains several provisions designed to ensure that these divestitures are successful. Pfizer must provide various transitional services to enable BI to compete against Pfizer immediately following the acquisition, including any technical assistance that BI may need. Pfizer also must provide BI with the regulatory approvals, brand names, marketing materials, customer contracts, and other assets associated with marketing and selling the divested products in the United States.

BI is a reputable supplier of animal health products and is well positioned to manufacture and market the divested assets and to compete effectively in the relevant markets. In the United States, BI's animal health revenues totaled approximately $215 million in 2008. Moreover, the acquisition by BI does not present competitive problems in any of the relevant markets because it currently has either a very limited presence or no presence at all in each of those areas. With its resources, capabilities, and experience marketing animal and human health products, BI is well placed to replicate the competition that would be lost with the proposed acquisition.

The proposed Consent Agreement also preserves the existing competition in the equine tapeworm parasiticides market by requiring Pfizer to return to Virbac Pfizer's distribution rights for the relevant parasiticide products no later than ten days after the acquisition. In 2000, Virbac entered into a 15-year licensing agreement with Pfizer, under which Virbac grants Pfizer exclusive distribution rights to market and sell the equine tapeworm parasiticide products in the United States. Virbac is particularly well suited to acquire these assets because it currently manufactures the products and has the resources, technical capabilities, and experience to be successful in restoring the competition that would be lost if the proposed Pfizer/Wyeth transaction were to proceed unremedied.

If the Commission determines that either BI or Virbac is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, Pfizer must unwind the sale(s) and divest the assets within six months of the date the Order becomes final to another Commission-approved acquirer. If Pfizer fails to divest within the six months, the Commission may appoint a trustee to divest the relevant assets.

The proposed remedy also allows for the appointment of an Interim Trustee, experienced in obtaining regulatory approval and the manufacture of biologics, to oversee the required technology transfers. As part of the proposed remedy, Pfizer is required to execute an agreement conferring all rights and powers necessary for the Interim Trustee to satisfy his responsibilities under the Order to assure successful divestitures. The Commission has appointed Dr. Stephen J.D. Bell of Tunnell Consulting to be the Interim Monitor and it is anticipated that he will obtain support and assistance from his colleague, Mr. Arlo Millen. The monitors will ensure that the Commission remains informed about the status of the proposed divestitures and asset transfers.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

Statement of the Federal Trade Commission

The Federal Trade Commission has voted to accept a Consent Order in its investigation of Pfizer Inc.'s proposed acquisition of Wyeth. The Consent Order remedies the anticompetitive effects that the Commission believes are likely to result from the transaction in numerous markets for animal health products. After a thorough investigation, the Commission has concluded that the transaction does not raise anticompetitive concerns in any human health product markets. We write here to explain our decision, provide greater visibility into this important investigation, and, in the event that there are future such transactions, describe the framework that we used in our analysis.

The Commission allocated extensive resources to the investigation.[2] The price, quality, and availability of prescription pharmaceutical products has a tremendous impact on health care costs, and a significant part of the investigation focused on ascertaining whether the proposed transaction would adversely affect competition in human pharmaceutical markets. The Commission is dedicated to promoting competition in health care markets to ensure that costs are contained and to

[2] During the course of its comprehensive investigation, Bureau of Competition staff conducted nearly 200 interviews, and reviewed hundreds of thousands of documents produced by the parties and third parties. The investigation also involved close cooperation with foreign competition authorities, including those from Australia, Canada, the European Union, Mexico, New Zealand, and South Africa.

protect incentives for pharmaceutical companies to develop new medications.

I. Background

Pfizer is the largest prescription pharmaceutical company in both the United States and the world, with $48.4 billion in worldwide revenues for 2008. In addition to manufacturing and selling pharmaceutical products, Pfizer also researches and develops new pharmaceutical products. At the end of 2008, Pfizer had 114 products in various stages of clinical development. Based on the evidence gathered during the investigation, Pfizer's overall market share of pharmaceutical and biotech products totals about 9 percent in the United States.

At the time of the acquisition, Wyeth was the twelfth-largest prescription pharmaceutical company in the United States. Wyeth's worldwide annual revenue totaled about $22.2 billion in 2008, $16.8 billion of which was from pharmaceutical and biological sales. Like Pfizer, Wyeth also researches, develops, manufactures, and sells pharmaceutical products and is also a significant participant in the biologic and vaccine areas of human pharmaceuticals. Wyeth is the fourth largest biotechnology company by revenue in the world and has 18 biologic products in clinical development.

Although both Pfizer and Wyeth are substantial suppliers of human pharmaceutical products, their respective product portfolios are highly complementary. Staff's investigation evaluated numerous potential overlaps where the companies may compete against each other, either now or in the future. In particular, the investigation included significant analysis of four markets—treatments for renal cell carcinoma, *Methicillin-resistant Staphylococcus aureus* (or ''MRSA'' infections), osteoporosis, and Alzheimer's disease—to determine whether the transaction would undermine competition in those markets. Beyond these specific overlaps, the staff thoroughly investigated whether the transaction could have an impact on competition in human pharmaceutical markets more broadly, whether on innovation, the intellectual property landscape, clinical development, or marketing. The evidence demonstrates that it will not.

II. Competitive Effects Analysis

Beyond the areas addressed by the Consent Order, the Commission analyzed three principal theories of potential competitive harm.

First, we assessed whether the merger might substantially reduce competition in any relevant human health market in which Pfizer and Wyeth currently compete. We conclude that it does not.

With respect to a small number of diseases or conditions, including renal cell carcinoma and MRSA infections, Pfizer and Wyeth both market treatments. Evidence gathered in the investigation showed that, although Pfizer and Wyeth produce drugs that target the same indications, their products are not close substitutes for—or indeed competitive with—each other. In addition, it appears that in these markets a sufficient number of other competitors will remain after consummation of the Pfizer/Wyeth transaction. Moreover, the products that these other companies offer are closer competitors to either the Pfizer or Wyeth products than the Pfizer and Wyeth products are to each other. Accordingly, Pfizer and Wyeth's consolidation is unlikely to facilitate the exercise of market power in any of these markets.

Second, we assessed whether the evidence supported a challenge based upon a theory that the transaction threatened to eliminate potential future competition in any relevant market. We conclude that it does not.

There are a small number of diseases or conditions for which Pfizer or Wyeth markets a product where the other company is developing a potentially competitive product, or both companies are developing products that could compete against each other in the future. Here, we considered not only the products that Pfizer and Wyeth are directly developing, but also products that other companies are developing in which Pfizer or Wyeth have a financial interest. For example, both Pfizer and Wyeth are developing products to treat osteoporosis. After careful investigation, though, we conclude that the transaction is not likely to affect competition in this market, based on non-public information that Pfizer's and Wyeth's products are unlikely to be close competitors.

We also extensively investigated Alzheimer's disease treatments. Alzheimer's disease is a progressive and terminal neurodegenerative disorder of the brain that is the sixth-leading cause of death in the United States, affecting approximately five million people. The number of Americans suffering from Alzheimer's disease is expected to grow exponentially, and expenditures on drugs to treat Alzheimer's disease are expected to more than double in the next ten years. The future competitiveness of this market, for both economic and therapeutic reasons, is critical. Consequently, the Commission staff dedicated much of its time to investigating the competitive landscape in this market, and how the proposed transaction would affect it, if at all. Pfizer currently markets a product called Aricept, the leading drug on the market today to treat Alzheimer's disease, and has several other products to treat Alzheimer's disease in clinical development. Wyeth currently does not offer a product to treat Alzheimer's disease, but does have several products in development.

The explosive growth of the Alzheimer's disease patient population has caused the market for treatments to attract considerable attention. Besides Pfizer and Wyeth, a significant number of other companies, including both large and small pharmaceutical companies and biotechnology companies, have products in development for the treatment of the disease. As of today, there are approximately 50 companies with at least 66 products in various phases of development. Among those companies are 14 of the largest pharmaceutical companies in the world, as well as numerous small- and medium-sized pharmaceutical and biotechnology firms. While there are several different therapeutic approaches being pursued for Alzheimer's disease, Pfizer and Wyeth overlap in only a small number of these areas. In those therapeutic areas where they do overlap, there are several other companies also developing products.

Overall, the evidence demonstrates that Pfizer and Wyeth's products are unlikely to be sufficiently close competitors that the elimination of competition between them would affect the competitiveness of any relevant human health market. Rather, the most likely outcome is that they each will compete more closely with products from other companies.

Third, we assessed whether a combined Pfizer/Wyeth would have a greater ability to engage in anticompetitive bundling, block new drug development with a merger-created patent thicket, or adversely impact the market for basic research and innovation in any human health markets, but with a particular focus on Alzheimer's disease, the area of most significant overlap. We conclude that the proposed transaction is unlikely to affect the market(s) in any of these ways.

As part of its investigation, staff evaluated whether the acquisition would change the negotiating power between Pfizer and its customers such that consumers would be harmed because of unlawful tying, bundling, or

exclusive dealing by Pfizer. Prescription pharmaceutical customers (*e.g.,* insurance companies) set up bid processes for purchasing pharmaceutical products on a product-by-product (or category-by-category) basis and have generally resisted efforts by large pharmaceutical companies to bundle products across categories, unless the bundle is in the customer's best interest. We found no evidence that this acquisition would undermine customers' ability to prevent anticompetitive bundling. As a result, we conclude that the addition of the Wyeth portfolio of products to Pfizer's portfolio is not likely to enhance the merged entity's ability to engage in anticompetitive bundling, especially because the combined portfolio would contain few blockbuster drugs.

Staff also investigated whether the acquisition would create a patent thicket by virtue of the breadth of the combined companies' patent portfolio. A merger-created patent thicket could reduce or eliminate competition in human pharmaceutical products by enabling the combined firm to prevent other pharmaceutical companies from developing products through the enforcement of intellectual property rights. After evaluating the parties' respective patent portfolios in a number of areas where both firms are active, including, most notably, Alzheimer's disease, the evidence showed that the combination of the intellectual property of Pfizer with that of Wyeth would not pose any greater barrier to entry to third-party companies than the intellectual property held by the companies individually.

Finally, staff evaluated whether the transaction would decrease basic research or the pace of innovation in pharmaceutical markets by eliminating a leader in pharmaceutical research and development; changing the incentives of companies performing pharmaceutical research and development; or reducing the number of potential research, marketing, or funding partners. Pharmaceutical research and development is a dynamic field with multiple participants including both large and small traditional pharmaceutical companies, specialty pharmaceutical companies, biotechnology companies, and contract research organizations. The evidence does not indicate that the combination raises antitrust concerns in these respects.

Even within the discrete product areas where both Pfizer and Wyeth are actively pursuing research and development, such as treatments for Alzheimer's disease, we conclude that the transaction is not likely to affect competition in basic research or innovation. Within Alzheimer's disease specifically, fundamental information about the disease, including its cause, how to diagnose it prior to the appearance of symptoms, and when intervention must occur to modify the disease, is still unknown. There is no scientific consensus about the most promising track for the treatment of Alzheimer's disease. As a result, it is a dynamic area of drug development, and the many companies working in this disease area are pursuing many different pathways with compounds that can have different effects and risk factors.

Although Pfizer and Wyeth are two of the most active companies pursuing research and development activities in the Alzheimer's disease area, it is unlikely that the combination of the Pfizer and Wyeth's Alzheimer's disease pipelines will diminish the incentives of Pfizer or any other company to compete in the research and development of Alzheimer's disease treatments. Further, the combination of Pfizer and Wyeth is not likely to affect the ability of other companies to continue to develop and ultimately introduce new products to treat Alzheimer's disease.

The Commission's extensive investigation and commitment of resources in this matter reflects its dedication to ensuring that pharmaceutical markets are competitive and that consumers have access to innovative and affordable medications. Although the Commission, based on the evidence gathered, determined that this transaction did not raise anticompetitive concerns in the markets for human pharmaceuticals, the Commission remains dedicated to ensuring that pharmaceutical markets are competitive. We will closely monitor these markets and continue to evaluate future transactions under the framework explained here to determine their effect on competition in the health care market, and, where appropriate, take action to ensure that any merger or acquisition does not undermine the pharmaceutical industry's competitiveness.

By direction of the Commission, Commissioner Harbour and Commissioner Kovacic recused.

Donald S. Clark,

Secretary.

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BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2010 through September 30, 2011

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages (FMAP) and Enhanced Federal Medical Assistance Percentages (eFMAP) for Fiscal Year 2011 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2010 through September 30, 2011. This notice announces the calculated FMAP and eFMAP rates that the U.S. Department of Health and Human Services (HHS) will use in determining the amount of Federal matching for State medical assistance (Medicaid) and Children's Health Insurance Program (CHIP) expenditures, Temporary Assistance for Needy Families (TANF) Contingency Funds, Child Support Enforcement collections, Child Care Mandatory and Matching Funds of the Child Care and Development Fund, Foster Care Title IV–E Maintenance payments, and Adoption Assistance payments. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Programs under title XIX of the Act exist in each jurisdiction. Programs under titles I, X, and XIV operate only in Guam and the Virgin Islands, while a program under title XVI (Aid to the Aged, Blind, or Disabled) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for most medical services and medical insurance services, and assistance payments for certain social services. The Act provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of HHS to publish the FMAP rates each year. The Secretary calculates the percentages, using formulas in sections 1905(b) and 1101(a)(8)(B), and calculations by the Department of Commerce of average income per person in each State and for the Nation as a whole. The percentages must fall within the upper and lower limits given in section 1905(b) of the Act. The percentages for the District of

Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 States.

Section 1905(b) of the Act specifies the formula for calculating FMAPs as follows:

''Federal medical assistance percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725(b) of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia for purposes of titles XIX and XXI shall be 70 percent. For the District of Columbia, we note under the table of FMAPs that other rates may apply in certain other programs. In addition, we note the rate that applies for Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands in certain other programs pursuant to section 1118 of the Act.

Section 2105(b) of the Act specifies the formula for calculating the eFMAP rates as follows:

The ''enhanced FMAP'', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

The eFMAP rates are used in the Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1905(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the eFMAP rates. We include them in this notice for the convenience of the States.

DATES: *Effective Dates:* The percentages listed will be effective for each of the four quarter-year periods beginning October 1, 2010 and ending September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Carrie Shelton, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D–Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93.596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act (TWWIIA) Demonstrations to Maintain Independence and Employment; 93.778: Medical Assistance Program; 93.767: Children's Health Insurance Program)

Dated: November 20, 2009.

Kathleen Sebelius,

Secretary.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2010–SEPTEMBER 30, 2011

[Fiscal year 2011]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
Alabama	68.54	77.98
Alaska	50.00	65.00
American Samoa *	50.00	65.00
Arizona	65.85	76.10
Arkansas	71.37	79.96
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	53.15	67.21
District of Columbia **	70.00	79.00
Florida	55.45	68.82
Georgia	65.33	75.73
Guam *	50.00	65.00
Hawaii	51.79	66.25
Idaho	68.85	78.20
Illinois	50.20	65.14
Indiana	66.52	76.56
Iowa	62.63	73.84
Kansas	59.05	71.34
Kentucky	71.49	80.04
Louisiana	63.61	74.53
Maine	63.80	74.66
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	65.79	76.05
Minnesota	50.00	65.00
Mississippi	74.73	82.31
Missouri	63.29	74.30
Montana	66.81	76.77
Nebraska	58.44	70.91
Nevada	51.61	66.13
New Hampshire	50.00	65.00
New Jersey	50.00	65.00

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2010–SEPTEMBER 30, 2011—Continued

[Fiscal year 2011]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
New Mexico	69.78	78.85
New York	50.00	65.00
North Carolina	64.71	75.30
North Dakota	60.35	72.25
Northern Mariana Islands *	50.00	65.00
Ohio	63.69	74.58
Oklahoma	64.94	75.46
Oregon	62.85	74.00
Pennsylvania	55.64	68.95
Puerto Rico *	50.00	65.00
Rhode Island	52.97	67.08
South Carolina	70.04	79.03
South Dakota	61.25	72.88
Tennessee	65.85	76.10
Texas	60.56	72.39
Utah	71.13	79.79
Vermont	58.71	71.10
Virgin Islands *	50.00	65.00
Virginia	50.00	65.00
Washington	50.00	65.00
West Virginia	73.24	81.27
Wisconsin	60.16	72.11
Wyoming	50.00	65.00

* For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI will be 75.00 per centum.

** The values for the District of Columbia in the table were set for the State plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, the percentage for DC is 50.00 per centum, unless otherwise specified by law.

[FR Doc. E9–28438 Filed 11–25–09; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Evaluation of In Vitro Estrogen Receptor Transcriptional Activation and In Vitro Cell Proliferation Assays for Endocrine Disruptor Chemical Screening: Request for Nominations for an Independent Expert Peer Review Panel and Submission of Relevant In Vitro and In Vivo Data

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request nominations for an independent expert panel and submission of relevant data.

SUMMARY: NICEATM, in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), is planning to convene an independent scientific peer review panel (hereafter, Panel) to assess the validation status of an *in vitro* stably-transfected estrogen receptor (ER) transcriptional activation (TA) Assay (LUMI–CELL® ER assay) and an *in vitro* cell proliferation assay (CertiChem MCF–7 Cell Proliferation assay) for their usefulness and limitations in determining whether and to what extent chemicals can interact with estrogen receptors *in vitro.*

Validated assays that can detect the interaction of chemicals with specific hormone receptors including the ER are included in the U.S. Environmental Protection Agency (EPA) Endocrine Disruptor Screening Program (EDSP) (*http://www.epa.gov/endo/pubs/assayvalidation/status.htm*). The two assays that will undergo peer review are currently undergoing validation studies to determine their usefulness and limitations for the EDSP. Any other existing data from these two assays are requested to ensure that all available relevant data are considered by the Panel. Data from other existing *in vitro* and *in vivo* assays for the 78 reference substances used for the validation studies (available at *http://iccvam.niehs.nih.gov/docs/endo_docs/EDAddendFinal.pdf*) are requested for use in characterizing the expected *in vitro* and *in vivo* activity of these 78 reference substances. At this time NICEATM requests:

- Nominations of expert scientists for consideration as potential Panel members.
- Submission of existing data from the LUMI–CELL® ER and the CertiChem MCF–7 Cell Proliferation assays.
- Submission of data from *in vivo* or other *in vitro* assessments for the 78 reference substances recommended by ICCVAM for the validation of *in vitro* ER and AR binding and TA test methods (available at *http://iccvam.niehs.nih.gov/docs/endo_docs/EDAddendFinal.pdf*).

DATES: Submit nominations and data by January 11, 2010. Data submitted after this date will be considered in the evaluation, where feasible.

ADDRESSES: Submit nominations and data electronically by e-mail to *niceatm@niehs.nih.gov,* or via the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm.* Nominations and data may also be sent by mail or fax to Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail). Courier address: NIEHS, NICEATM, 530 Davis Drive, Room 2034, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, (telephone) 919–541–2384, (fax) 919–541–0947 and (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

In April 2000, the EPA requested that ICCVAM evaluate the validation status of *in vitro* ER and AR binding and TA assays for potential use in the proposed EPA EDSP. ICCVAM and NICEATM compiled available relevant data for 137 existing assays and compiled data were submitted to an independent expert panel for review. This panel concluded that there were no adequately validated *in vitro* ER- or AR-based test methods (the panel's report is available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/endocrine/end_EPrpt.htm*). Based on these conclusions and recommendations, along with comments from the public, ICCVAM recommended minimum procedural standards and a list of 78 reference substances that should be used to standardize and validate *in vitro* ER and AR binding and TA test method protocols. These recommendations were made publicly available in the report: *ICCVAM Evaluation of the In Vitro Methods for Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays* (available at: *http://iccvam.niehs.nih.gov/methods/endocrine/end_TMER.htm*). The list of 78 reference substances was subsequently modified because of cost and availability considerations and published in a separate Addendum (available at: *http://iccvam.niehs.nih.gov/docs/endo_docs/EDAddendFinal.pdf*).

Two *in vitro* assays to detect ER agonists and antagonists were subsequently nominated to ICCVAM for validation studies in response to an ICCVAM request (69 FR 21564): The LUMI–CELL® ER assay developed by Xenobiotic Detection Systems, Inc. (XDS) and the CertiChem MCF–7 Cell Proliferation assay developed by CertiChem, Inc. (CertiChem). Based on preliminary results provided for these test methods and comments from the public and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM; 69 FR 21564 and 71 FR 60748, respectively), ICCVAM and its Endocrine Disruptor Working Group recommended a high priority for validation studies for the LUMI–CELL® ER and CertiChem MCF–7 Cell Proliferation assays.

An international interlaboratory validation study of the LUMI–CELL® ER assay is currently nearing completion. The study includes three laboratories sponsored by NICEATM, the European Centre for the Validation of Alternative Methods, and the Japanese Center for the Validation of Alternative Methods. An intralaboratory validation study of the MCF–7 Cell Proliferation assay has been completed by CertiChem in conjunction with NICEATM, and an interlaboratory study is planned.

NICEATM will prepare draft background review documents (BRDs) following completion of the validation studies that will provide comprehensive summaries of available data, analyses of test method accuracy and reliability, and related information characterizing the current validation status of each of the assays. The draft BRDs will form the basis for draft ICCVAM test method recommendations on usefulness and limitations, standardized test method protocols, future studies, and performance standards that will subsequently be provided to the Panel and made available to the public. The Panel will meet in public session to review the validation status of the LUMI–CELL® ER, MCF–7 Cell Proliferation assays, and any of the other assays for which there are adequate data available. The Panel will comment on the extent to which the BRD supports draft ICCVAM test method recommendations. The Panel may also consider the results for other assays with incomplete validation databases to determine their current validation status and to identify data gaps that need to be addressed in order to further characterize their usefulness and limitations for the EDSP. Meeting information, including dates, locations, and public availability of the BRDs will be announced in future **Federal Register** notices and will also be posted on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov/methods/endocrine/end_eval.htm*).

Request for Nominations of Scientific Experts

NICEATM requests nominations of scientists with relevant knowledge and experience to serve on the Panel. Areas of relevant expertise include, but are not limited to, biostatistics, cellular biology, endocrinology, molecular genetics, regulatory toxicology, reproductive toxicology, and test method validation. Each nomination should include the nominee's name, affiliation, contact information (*i.e.,* mailing address, email address, telephone, and fax numbers), *curriculum vitae,* and a brief summary of relevant experience and qualifications.

Request for Data

NICEATM invites the submission of relevant *in vitro* and *in vivo* data and information for reference substances on the list of 78 substances recommended by ICCVAM for standardizing and validating *in vitro* ER and AR binding and TA test methods (available at *http://iccvam.niehs.nih.gov/docs/endo_docs/EDAddendFinal.pdf*) or other substances for which data exists from the two *in vitro* test methods described in this notice. Relevant *in vivo* data may include, but are not limited to: Multi-generational reproductive and developmental toxicity studies, uterotrophic bioassays, and short term assays assessing changes in phenotypic parameters such as anogenital distance, time of vaginal opening, nipple retention, and preputial separation delays in males.

Although data can be accepted at any time, data received by January 11, 2010 will ensure consideration during the ICCVAM evaluation process. Relevant data received after this date will be considered during the ICCVAM evaluation process where feasible. All information submitted in response to this notice will be made publicly available and may be incorporated into future NICEATM and ICCVAM reports and publications as appropriate.

When submitting data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers that data be submitted as copies of pages from study notebooks and/or study reports, if available. Laboratory data and analyses available in electronic format may also be submitted. Each submission for a substance should preferably include the following information, as appropriate:

- Common and trade name
- Chemical Abstracts Service Registry Number (CASRN)
- Commercial source
- *In vivo* or *in vitro* test protocol used
- Individual animal or *in vitro* responses at each observation time (*i.e.,* laboratory data)
- The extent to which the data were collected in accordance with national/international Good Laboratory Practice guidelines
- Date and testing organization
- Physical and chemical properties (*e.g.,* molecular weight, pH, water solubility, *etc.*)

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3, available at *http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM is available on the NICEATM–ICCVAM Web site: *http://iccvam.niehs.nih.gov*.

SACATM was established January 9, 2002 and is composed of scientists from the public and private sectors (67 FR 11358). SACATM provides advice to the Director of the NIEHS, ICCVAM, and NICEATM regarding the statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167*.

Dated: November 16, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9–28278 Filed 11–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Screening Framework Guidance for Synthetic Double-Stranded DNA Providers

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: To reduce the risk that individuals with ill intent may exploit the commercial application of nucleic acid synthesis technology to access genetic material derived from or encoding Select Agents or Toxins, the U.S. Government has developed recommendations for a framework for synthetic nucleic acid screening. This document is intended to provide guidance to producers of synthetic genomic products regarding the screening of orders so that these orders are filled in compliance with current U.S. regulations and to encourage best practices in addressing potential biosecurity concerns. Following this guidance is voluntary, though many specific recommendations serve to remind providers of their obligations under existing regulations. The target audience for this guidance is the gene and genome synthesis industry, because the technical hurdles for *de novo* synthesis of Select Agents and Toxins from double-stranded DNA are much lower than for *de novo* synthesis of these agents from single-stranded oligonucleotides. This guidance proposes a screening framework for commercial providers of synthetic double-stranded DNA 200 base pairs (bps) or greater in length to address concerns associated with the potential for misuse of their products. The framework includes customer screening and sequence screening, follow-up screening as necessary, and consultation with U.S. Government contacts, as needed.

This guidance is submitted for public consideration and comment for a period of 60 days. The Office of the Assistant Secretary of Preparedness and Response (ASPR) within the Department of Health and Human Services (HHS) is submitting this document for public consideration as the lead agency in a broad interagency process to draft the guidance.

DATES: The public is encouraged to submit written comments on this proposed action. Comments may be submitted to HHS/ASPR in electronic or paper form at the HHS/ASPR e-mail address, mailing address, and fax number shown below under the heading **FOR FURTHER INFORMATION CONTACT.** All comments should be submitted by January 26, 2010. All written comments received in response to this notice will be available for review by request.

FOR FURTHER INFORMATION CONTACT: Jessica Tucker, Ph.D., Office of Medicine, Science, and Public Health, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 330 C Street, SW., Room 5008B, Washington, DC 20201; phone: 202–260–0632; fax: 202–205–8494; e-mail address: *asprfrcorrespondence@hhs.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Public Health Service Act, 42 U.S.C. 241, Section 301; HSPD–10.

Screening Framework Guidance for Synthetic Double-Stranded DNA Providers

I. Summary

Synthetic biology, the developing interdisciplinary field that focuses on both the design and fabrication of novel biological components and systems as well as the re-design and fabrication of existing biological systems, is poised to become the next significant transforming technology for the life sciences and beyond. Synthetic biology is not constrained by the requirement of using existing genetic material. Thus, technologies that permit the directed synthesis of polynucleotides have great potential to be used to generate organisms, both currently existing and novel, including pathogens that could threaten public health, agriculture, plants, animals, the environment, or material. To reduce the risk that individuals with ill intent may exploit the commercial application of nucleic acid synthesis technology to access genetic material derived from or encoding Select Agents or Toxins, the U.S. Government has developed recommendations for a framework for synthetic nucleic acid screening. This document is intended to provide guidance to producers of synthetic genomic products regarding the screening of orders so that these orders are filled in compliance with current U.S. regulations and to encourage best practices in addressing potential biosecurity concerns.

Following this guidance is voluntary, though many specific recommendations serve to remind providers of their obligations under existing regulations. The target audience for this guidance is the gene and genome synthesis industry, because the technical hurdles for *de novo* synthesis of Select Agents and Toxins from double-stranded DNA are much lower than for *de novo* synthesis of these agents from single-stranded oligonucleotides. This guidance proposes a screening framework for commercial providers of synthetic double-stranded DNA 200 base pairs (bps) or greater in length to address concerns associated with the potential for misuse of their products. The framework includes customer screening and sequence screening, follow-up screening as necessary, and consultation with U.S. Government contacts, as

needed. Briefly, upon receiving an order for synthetic double-stranded DNA, the U.S. Government recommends that the provider perform *customer screening.* If the information provided by the customer raises any 'red flags,' providers should perform *follow-up screening.* If no customer identity concerns or other 'red flags' are raised in *customer screening, sequence screening* is recommended. If *sequence screening* raises any concerns, providers should pursue *follow-up screening* to clarify the end-use of the ordered sequence. If *follow-up screening* does not resolve concerns about the order or there is reason to believe a customer may intentionally or inadvertently violate U.S. laws, providers should contact designated entities within the U.S. Government for further information. This guidance also provides recommendations regarding proper records retention protocols and screening software.

II. Introduction

Synthetic biology is distinct from traditional recombinant DNA technology in some key aspects: (1) It is not constrained by the requirement for using existing genetic material, and (2) it is an interdisciplinary field that includes biologists, engineers, chemists, and computer modelers. It is the former novel feature, along with rapid advances in DNA synthesis technology and the open availability of pathogen genome sequence data, that has raised concerns in the scientific community, the nucleic acid synthesis industry, the U.S. Government, and the general public.

Within the U.S., microbial organisms and toxins that have been determined to have the potential to pose a severe threat to public health and safety, animal health, plant health, or animal or plant products are regulated through the Select Agent Regulations (SAR), administered by the Department of Health and Human Services/Centers for Disease Control and Prevention (CDC) and the U.S. Department of Agriculture/Animal and Plant Health Inspection Service (USDA/APHIS). The SAR sets forth requirements for the possession, use, and transfer of listed agents. Technologies that permit the directed synthesis of polynucleotides, which underlie synthetic biology and more specifically synthetic genomics, could enable individuals not authorized to possess Select Agents to gain access to them through their *de novo* synthesis. Such synthesis obviates the need for access to the naturally occurring agents or naturally occurring genetic material from these agents, thereby greatly expanding the potential availability of these agents.

The National Science Advisory Board for Biosecurity (NSABB) was charged with identifying the potential biosecurity concerns raised by the ability to synthesize Select Agents and providing advice on whether current U.S. Government policies and regulations adequately cover the *de novo* synthesis of Select Agents. Their report entitled *Addressing Biosecurity Concerns Related to the Synthesis of Select Agents* was formally transmitted to the U.S. Government in March 2007. Federal Departments and Agencies with equities relevant to life science research and/or security deliberated over the NSABB recommendations and identified a series of relevant policy actions targeted to promote risk management, while seeking to minimize negative impacts upon scientific progress or industrial development.

One of the formal policy actions in regard to Synthetic DNA and Biological Security charged Federal Departments and Agencies to ''engage stakeholders in industry and academia to identify, evaluate and support the establishment of a screening infrastructure for use by commercial providers and users of synthetic nucleic acids.'' Toward this end, this document provides guidance to synthetic nucleic acid providers regarding a screening framework for synthetically derived double-stranded DNA orders that are 200 bps or greater in length. Specific recommendations are in bold type throughout the text.

III. Goals of Guidance

The primary goal in developing guidance for synthetic nucleic acid providers is to minimize the risk that unauthorized individuals or individuals with malicious intent will gain access to toxins and organisms of concern through the use of nucleic acid synthesis technologies, while at the same time minimizing any negative impacts on the conduct of research and business operations. These guidelines were developed to be easily integrated within providers' existing protocols with minimal cost, and to be globally extensible, both for U.S.-based firms operating abroad and for international companies.

Providers of synthetic nucleic acids have two overriding responsibilities in this context:

- Providers should know to whom they are selling a product
- Providers should know if the nature and identity of the product that they are selling poses a hazard to public health, agriculture, or security

To help providers meet these responsibilities, this guidance outlines a screening framework that addresses both customer screening (customer identity) and sequence screening (product identity). Though certain guidance provided in this document is necessarily framed by U.S. policy and regulations, the guidelines were composed so that fundamental goals, provider responsibilities, and the screening framework could be considered for application by the international community. In particular, though the Select Agents and Toxins that are a primary focus of these guidelines may not be relevant for all countries, the sequence screening framework has been developed so that it could be applied to other categories of agents that may be relevant for other regions.

IV. Overall Process: Synthetic Nucleic Acid Screening Framework

Providers should consider establishing a comprehensive and integrated screening framework that includes both customer screening and sequence screening.

- Customer Screening—The purpose of customer screening is to establish the legitimacy of customers ordering synthetic nucleic acid sequences, both at the level of the individual and the organization. Providers should develop customer screening mechanisms to verify customer identities, to identify potential 'red flags,' and to conform to U.S. trade restrictions and export control regulations.
- Sequence Screening—The purpose of sequence screening is to identify when sequences of concern are ordered. Identification of a sequence of concern does not necessarily imply that the order itself is of concern. Rather, when a sequence of concern is ordered, further customer screening procedures should be used to determine if filling the order would raise cause for concern. Sequence screening is currently being recommended for all double-stranded DNA 200 bps or greater in length.

Many customers will likely volunteer information about their identity or the sequence they are ordering. Providers should corroborate this information as part of their screening framework.

The following overall screening methodology is recommended:

1. Upon receiving an order for synthetic double-stranded DNA, the U.S. Government recommends reviewing the information provided by the customer to verify their identity and identify potential 'red flags' (referred to as *customer screening*). If the information provided raises any

concerns, providers should ask the customer for additional information to clarify the customer's need for the order and its intended end-use (referred to as *follow-up screening*). Providers should also check customers and their affiliated organizations against lists of denied or blocked persons and entities maintained by the Departments of Commerce, State, and Treasury.

2. If no concerns or 'red flags' are raised during *customer screening,* the U.S. Government recommends screening the ordered sequence to identify sequences derived from or encoding Select Agents and Toxins [1] (referred to as *sequence screening*). For international customers, providers should also screen the ordered sequence to identify sequences derived from or encoding the agents and toxins on the Export Administration Regulation's (EAR's) Commerce Control List (CCL).[2] Scenarios of concern may include:

a. If an ordered nucleic acid can be classified as a Select Agent or Toxin based on the SAR [3] or is identified as a sequence of concern (defined in Section V.B.1.), additional customer verification steps should be performed and may in some cases be required.

b. If an ordered nucleic acid can be classified as a Select Agent or Toxin based on the SAR, providers must be registered under the SAR to possess the nucleic acid. Transfer of the material from the producer must be done in accordance with USDA APHIS and CDC procedures using the APHIS/CDC Form 2 to obtain authorization for and to document the transfer. Additional information on the transfer of select agents and toxins is available at *http://www.selectagents.gov.*

c. If an order is defined as a genetic element that is listed on the CCL, additional restrictions or licensing requirements may exist for international orders.

3. If *sequence screening or customer screening* raises any concerns, providers should pursue *follow-up screening* to clarify the end-use of the ordered sequence. The goal of *follow-up screening* is to assist the provider in determining whether to fill the order. If the provider encounters a scenario where they would benefit from additional assistance in assessing an order, the provider is encouraged to seek advice from the relevant U.S. Government Departments and Agencies by contacting the nearest FBI Field Office Weapons of Mass Destruction (WMD) Coordinator. The WMD Coordinator can be reached by contacting the local FBI Field Office and asking to be connected to the FBI WMD Coordinator.

V. Pertinent Screening Definitions and Details

This section reviews pertinent definitions and provides details of the steps involved in the recommended screening framework. These steps include *customer screening, sequence screening*, and *follow-up screening.*

A. Customer Screening

Customer screening encompasses two overarching responsibilities of providers: Customer verification and identification of any 'red flags.'

1. Customer Verification

To ensure compliance with U.S. regulations concerning exports and sanctioned individuals and countries, the U.S. Government recommends that, for every order, synthetic nucleic acid providers:

(1) Gather the following information to verify a customer's identity:

- Customer's (and end-user's, if different) full name and contact information
- Billing address and shipping address (if not the same)
- Customer's institutional or corporate affiliation (if applicable)
- Name of institution's Biological Safety Officer (if applicable)

(2) Screen customers against several lists of proscribed entities (described in Section VI).

Lack of affiliation with an institution or firm does not automatically indicate that a customer's order should be denied. In such cases, the U.S. Government recommends conducting *follow-up screening.*

The U.S. Government recommends that companies retain electronic copies of customer orders for at least eight years based on the statute of limitations set forth by U.S. Code Title 18 Section 3286.[4]

The U.S. Government recommends archiving the following information: Customer (and end-user, if different) information (name, organization, address, and phone number), order sequence information, and order information (date placed and shipped, shipping address, and receiver name).

2. 'Red Flags'

In reviewing the customer's order information, providers should take into account any circumstances in the proposed transaction that may indicate that the order may be intended for an inappropriate end-use, end-user or destination. These are known as 'red flags.'

The following is an illustrative list of indicators that can help in identifying suspicious orders of synthetic double-stranded DNA:

- A customer whose identity is not clear, who appears evasive about their identity or affiliations, or whose information cannot be confirmed or verified (*e.g.,* addresses do not match, not a legitimate company, no Web site, cannot be located in trade directories, etc.).
- A customer or intermediary agent who would not be expected in the course of their normal business to place such an order (*e.g.,* no connection to life science research, biotechnology or requirement for DNA synthesis services).
- An unusually large order of DNA sequences, including larger than normal quantities, the same order placed several times, or several orders of the same sequence made in a short timeframe.
- A customer that requests unusual labeling or shipping procedures (*e.g.,* requests to misidentify the goods on the packaging, requests to deliver to a private address, or requests to change the customer's name after the order is placed, but before it is shipped).
- A customer proposing an unusual method of payment (*e.g.,* arranging payment in cash, personal credit card or through a non-bank third party) or offering to pay unusually favorable payment terms, such as a willingness to pay a higher than expected price.
- A customer that requests unusual confidentiality conditions regarding the order, particularly with respect to the final destination or the destruction of transaction records.

[1] Please see *http://www.selectagents.gov* to access the most recent Select Agents and Toxins List.

[2] Visit *http://www.access.gpo.gov/bis/ear/ear_data.html* to access the most recent Commerce Control List and review the Export Administration Regulations.

[3] The CDC/APHIS national Select Agent registry Web site (*http://www.selectagents.gov*) contains a guidance document entitled ''Applicability of the Select Agent Regulations to Issues of Synthetic Genomics'' to assist providers in identifying synthetically derived Select Agent materials that would fall under the current regulations. The regulation of Select Agents and Toxins currently includes (1) Nucleic acids that can produce infectious forms of any Select Agent viruses and (2) Recombinant nucleic acids that encode for the functional form(s) of any of the regulated toxins if the nucleic acids: (i) Can be expressed in vivo or in vitro, or (ii) Are in a vector or recombinant host genome and can be expressed in vivo or in vitro.

[4] The eight-year statute of limitations in Section 3286 applies to the offense defined by Title 18 Section 175(b) (possession of biological agents with no reasonable justification).

If a review of customer information reveals one or more 'red flags,' the U.S. Government recommends that providers exercise due diligence, inquire regarding the circumstances, and verify the end-use and end-user (*see follow-up screening*). If providers are unsure about whether to fill an order, they should contact the U.S. Government for further information.

B. Sequence Screening

Sequence screening is intended to elicit information detailing the characteristics of the ordered nucleic acid sequence and to determine whether the customer has placed an order for a sequence of concern, based on the product identity. Providers should screen ordered sequences that are 200 bps in length or greater.

1. Identifying Sequences of Concern

The U.S. Government recommends that nucleic acid sequences be screened for nucleic acids derived from or encoding Select Agents and Toxins and, for foreign orders, for nucleic acids derived from or encoding pathogens and toxins on the Commerce Control List. The U.S. Government chose the agents and toxins identified by HHS and USDA as ''Select Agents and Toxins'' as the most appropriate list of agents of concern against which providers should screen orders since:

- The list is comprised of high consequence pathogens and toxins that have the potential to pose a severe threat to human, animal, or plant health or to animal or plant products
- Their possession, use, and transfer are managed through Federal regulations.

A list of biological agents and toxins that affect humans has been promulgated by HHS/CDC (HHS Select Agents and Toxins, 42 CFR 73.3). A list of biological agents that affect animals and animal products has been promulgated by USDA/APHIS/Veterinary Services (USDA Select Agents and Toxins, 9 CFR 121.3). A list of agents that affect plants and plant products has been promulgated by USDA/APHIS/Plant Protection and Quarantine (USDA Select Agents and Toxins, 7 CFR 331.3). Additionally, HHS and USDA promulgated a list of ''overlap'' agents that affect both humans and animals (42 CFR 73.4 and 9 CFR 121.4). The Select Agent and Toxins lists are reviewed biennially and updated as needed to include additional agents or toxins that may pose a biosecurity concern. Therefore, for the purposes of this guidance, ''agents of concern'' are classified as Select Agents and Toxins, and ''sequences of concern'' are sequences derived from or encoding Select Agents and Toxins. For foreign orders, ''agents of concern'' also include pathogens and toxins on the EAR's CCL, and ''sequences of concerns'' includes those nucleic acids derived from or encoding those pathogens and toxins.[5]

If a customer orders a synthetic nucleic acid that can be classified as a Select Agent or Toxin, the provider must abide by the CDC and USDA/APHIS Select Agent Regulations (42 CFR 73, 7 CFR 331, and 9 CFR 121). The CDC/APHIS national Select Agent registry Web site (*http://www.selectagents.gov*) contains a guidance document developed by the national Select Agent regulatory programs to assist providers in identifying synthetically derived Select Agent materials that would fall under the current regulations. Providers of regulated nucleic acids must be registered with CDC or APHIS in order to synthesize these materials.

The U.S. Government acknowledges that there are synthetic nucleic acid sequences from non-Select Agents or Toxins that may pose a biosecurity concern. Synthetic nucleic acid providers may choose to investigate such sequences as part of their best practices. However, due to the complexity of determining pathogenicity and because research in this area is ongoing, a list of additional non-Select Agent or Toxin sequences or organisms to screen against would not be comprehensive and consequently are not provided by the U.S. Government in this guidance. Because the CCL and the Select Agents and Toxins list are not identical, separate screening for those sequences on the CCL is recommended for international orders.

2. Technical Goals and Recommendations for Sequence Screening

The reliable and accurate detection of synthetic nucleic acid sequences derived from or encoding sequences or agents of concern is the primary goal of sequence screening. In considering various sequence screening methodologies, the U.S. Government developed the following list of specific technical goals and recommendations for a sequence screening methodology:

The U.S. Government recommends that the sequence screening method should identify sequences *unique* to Select Agents and Toxins. Many DNA sequences encode genes that are required to maintain normal cellular physiology, otherwise known as ''house-keeping genes.'' These ''house-keeping genes'' are highly conserved between pathogenic and non-pathogenic species. Screening methodologies that recognize highly conserved sequences such as ''house-keeping genes'' as positive hits for sequences of concern not only offer little to no biosecurity benefit, but may impede the screening efforts. Such methodologies would produce a larger number of hits adding extra burden for screeners and potentially resulting in actual sequences of concern being overlooked. Additionally, such a system may hamper scientific research by falsely assigning sequences from closely related microbes as sequences of concern.

The U.S. Government recommends that sequence screening be performed for both DNA strands and the resultant polypeptides derived from translations using the three alternative reading frames on each DNA strand (or six-frame translation). Each amino acid is encoded by a codon, a three nucleotide sequence of DNA. The correspondence from codon to amino acid is not unique. A given amino acid may be encoded by one to six distinct codons, which means that an amino acid polypeptide can be encoded by many different DNA sequences. Consequently, to determine whether a nucleotide sequence encodes for a sequence or agent of concern, it is necessary to screen the six-frame translation polypeptides encoded by the DNA sequences in addition to the DNA sequences themselves.

The U.S. Government recommends that sequence alignment methods should permit the detection of ''sequences of concern'' of 200 bps that may be hidden within larger sequence orders. Genes vary widely in length. If a sequence screening system assesses only the overall sequence length without any local checks, a sequence of concern can go undetected if inserted within a larger, benign sequence. The screening routine should be capable of local sequence alignments to ensure that potentially harmful sequences, embedded within larger sequences, are not overlooked. 200 bps is set as the limit for sequences of concern since synthetic nucleic acids smaller than 200 bps can be readily ordered as oligonucleotides, and gene synthesis companies are the target audience for this guidance.

3. Sequence Screening Methodology

The U.S. Government considered two distinct screening approaches, one based on a curated database of known sequences of concern and another utilizing a method called ''Best Match.''

[5] The EAR provisions are subject to change, as they are regularly updated pursuant to multilateral agreements.

The first approach requires the creation of databases identifying specific features such as known pathogenic sequences, virulence factors, house-keeping genes, etc. While the acquisition of such knowledge is progressing, at this time customized database approaches are unable to provide a robust solution that can be implemented by DNA synthesis providers.

Consequently, the U.S. Government recommends a ''Best Match'' approach for sequence screening. In this approach, a query sequence is deemed to be unique to a Select Agent or Toxin if the sequence (amino acid) is more closely related to a Select Agent or Toxin sequence than to a non-Select Agent or Toxin sequence. Sequences that are equally related to both a Select Agent or Toxin and a non-Select Agent or Toxin will not produce a sequence hit. As a result, the number of hits for sequences that can be obtained from non-Select Agents and Toxins will be reduced. To meet the goals and recommendations stated above, the U.S. Government recommends that each sequence be broken into a six-frame translation of 200 bp nucleotide segments. Each resulting 66 amino acid sequence should be compared to the GenBank protein sequence database using a sequence alignment tool. The ''Best Match'' is the sequence or sequences with the greatest percent identity over the entire 66 amino acid sequence. If the ''Best Match'' is to a Select Agent or Toxin sequence, with no equivalent hits to a non-Select Agent or Toxin, the order should be further investigated by the provider as a potential sequence hit.

The ''Best Match'' approach is intended to minimize the number of sequence hits due to genes that are shared among both Select Agents or Toxins and non-Select Agents or Toxins. Nonetheless, some harmless sequences in Select Agents or Toxins or those that are routinely used in scientific research may result in a hit during this sequence screen.

The U.S. Government recommends that providers develop, maintain, and document protocols to determine if a sequence hit qualifies as a true sequence of concern. Additionally, providers should keep records of all hits even if the order is deemed acceptable. In cases where the provider is unable to make the determination, advice can be sought from the relevant U.S. Government Departments and Agencies by contacting the nearest FBI Field Office Weapons of Mass Destruction Coordinator.

The provider may deem some sequences from non-Select Agents and Toxins to be a biosecurity concern. The U.S. Government recommends that providers continue to exercise their due diligence in the investigation of screening hits against non-Select Agents and Toxins that may raise a biosecurity concern.

These sequence screening methodology recommendations do not preclude the use of curated databases in addition to the ''Best Match'' approach. The development of such databases is encouraged as an additional screening tool that will improve with time as additional data becomes available. Providers may choose to use other screening approaches that they assess to be equivalent or superior to the ''Best Match'' approach. The U.S. Government recommends that providers develop, maintain, and document their sequence screening protocol within company records.

The U.S. Government recognizes that continued research and development may lead to new and improved screening methodologies. As new methods are developed, U.S. guidance may change accordingly.

C. Follow-Up Screening

Follow-up screening may be warranted if *customer screening* reveals any 'red flags' or *sequence screening* results in a hit. In any case where there are abnormal circumstances surrounding the order or the customer has ordered a sequence of concern, the U.S. Government recommends that providers ask for information regarding the customer's proposed end-use of the order to help assess their need and the scientific legitimacy of their work. Sample end-uses of ordered synthetic nucleic acids could include, but are not limited to:

- Identification of pathogenicity genes via marker-deletion mutagenesis
- Training for threat agent detection
- Production of organism for experimental research studies

If the customer is associated with an institution or firm, providers should also contact the customer's biological safety officer, supervisor, lab director or director of research in order to verify the customer's identity and need. If the customer is not affiliated with an institution or firm, providers should also conduct a literature review of the customer's past research to verify his or her identity and need.

VI. Recommended Processes for Domestic and International Orders

This section outlines recommendations for specific screening processes for orders from domestic and international customers. The *customer screening*, *sequence screening*, and *follow-up screening* protocols that are referenced in this section are defined and described in Section V. Most of the information provided in this section serves as a reminder to providers to ensure they are meeting their legal obligations not to conduct unapproved business transactions with certain proscribed entities.

A. Domestic Orders

Once a domestic customer order is received, the provider should conduct *customer screening.*

In addition to verifying the customer identity and identifying any 'red flags,' providers should be aware of regulatory and statutory prohibitions for U.S. persons from dealing with certain foreign persons, entities and companies. In order to avoid violating U.S. law, providers are encouraged to check the individual placing the order and the individual's affiliated institution (when applicable) against several lists of proscribed entities before filling each order, including the:

- Department of Treasury Office of Foreign Assets Control (OFAC) list of Specially Designated Nationals and Blocked Persons (SDN List).
- Department of State list of persons engaged in proliferation activities.
- Department of Commerce Denied Persons List (DPL).

According to U.S. regulations, no U.S. persons or entities may conduct business transactions with individuals or entities on the SDN List without a license from OFAC. This list is maintained by OFAC. OFAC only provides a license to deal with individuals on the SDN List in extremely limited circumstances.[6]

According to U.S. regulations, no U.S. persons or entities may conduct business transactions with individuals sanctioned by the Department of State for engaging in proliferation activities.[7]

Additionally, the U.S. Government recommends that providers screen customers against the DPL for domestic orders. This list includes those firms and individuals whose export privileges have been denied. While the Department of Commerce only regulates exports and therefore does not require that companies screen their domestic customers against the list, it recommends that they do so, to avoid

[6] Additional information, including the SDN List, is available at: *http://www.treas.gov/offices/enforcement/ofac/sdn/*.

[7] Announcements of such sanctions determinations are printed in the **Federal Register** and are maintained on the Department of State's Web site (*http://www.state.gov/t/isn/c15231.htm*).

unwittingly passing on sensitive technology or materials to U.S. residents known to be involved in proliferation activities.[2]

Because the updated lists are available online, providers should ensure they are using the most recently updated lists when screening customers against these lists.

If no concerns are raised after consulting these lists, the provider should proceed to *sequence screening.* If a sequence of concern is identified, providers should conduct *follow-up screening.* If there are concerns after consulting these lists, providers should consider seeking assistance from the U.S. Government as outlined in Section VII.

B. Foreign Orders

Once an order from a foreign customer is received, the provider should conduct *customer screening.*

In addition to complying with the rules described for domestic orders, all providers who export products from the United States to international customers must comply with the U.S. export laws, including the International Emergency Economic Powers Act,[8] the Trading with the Enemy Act,[9] and any implementing U.S. Government regulations or Presidential Executive orders. Certain transactions with sanctioned countries may be permitted but may require a license from OFAC and/or the Department of Commerce's Bureau of Industry and Security (BIS). Most transactions involving Cuba, Iran, and Sudan are prohibited. In order to comply with the U.S. export laws and regulations, providers must first determine whether a given transaction with a sanctioned country is permitted, and, if not permitted, obtain any appropriate export licenses or other U.S. Government permissions prior to exporting any product to sanctioned countries.

According to U.S. regulations, no U.S. persons or entities may conduct transactions with individuals or entities on the SDN List without a license from OFAC. This list is maintained by OFAC. OFAC only provides a license to deal with individuals on the SDN List in extremely limited circumstances.[6]

According to U.S. regulations, no U.S. persons or entities may conduct business transactions with individuals sanctioned by the Department of State for engaging in proliferation activities.[7]

If no concerns are identified during *customer screening* or the checks against the lists delineated above, the provider should perform *sequence screening.* In addition to performing sequence screening for Select Agents and Toxins, providers are also encouraged to perform sequence screening of orders from foreign customers to determine whether they are governed by the EAR. As a member of the Australia Group, the United States requires exporters through the EAR to obtain export licenses for exports of reading-frame length nucleic acid sequences from pathogens listed under Export Control Classification Numbers (ECCNs) 1C351, 1C352, 1C353, and 1C354. The EAR also requires exporters to obtain licenses for exports of reading-frame length nucleic acid sequences from pathogens on the Select Agent list not listed elsewhere on the CCL (ECCN 1C360). The EAR requirements specifically apply to genetic elements that encode toxins or sub-units of controlled toxins or genetic elements associated with pathogenicity of controlled microorganisms. Because the EAR's CCL and the Select Agents and Toxins list are not identical, separate screening for those sequences on the CCL is necessary for international orders. The U.S. Government recommends that in addition to screening for Select Agents and Toxins, providers use a ''Best Match'' approach to identify pathogens and toxins on the CCL when an order is placed by an international customer. If the ordered synthetic nucleic acid is controlled under ECCN 1C353 and is capable of encoding a protein, an export license is necessary for all international orders, according to the EAR.[2]

Even for exported items that do not have a specific entry on the CCL and are considered under EAR 99 (for which a license is not required to most destinations), certain individuals and organizations are prohibited from receiving U.S. exports and others may only receive goods if they have been licensed. As a result, before filling an international order for *any* synthetic nucleic acid that cannot be classified under an ECCN, providers must consult several lists of such individuals and organizations according to the EAR. If the customer appears on any of these lists, additional action is required and an export license may be necessary, depending on the list.[10] These lists include the DPL, the Entity List (EL), and the Unverified List (UL).

In addition to the SDN List and proliferation sanctions notifications, providers must not conduct business with persons and entities on the DPL based on the EAR.[2] The DPL includes parties that have been denied export and reexport privileges.

In accordance with the EAR, exports to persons or entities on the EL require an export license.[2] The EL contains a list of names of certain foreign persons—including businesses, research institutions, government and private organizations, individuals, and other types of legal persons—that are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items. On an individual basis, the persons on the EL are subject to licensing requirements and policies supplemental to those found elsewhere in the EAR.

The presence of a party on the UL in a transaction is a ''red flag'' that should be resolved before proceeding with the transaction.[2] The UL includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check (PLC) or a post-shipment verification (PSV) for reasons outside of the U.S. Government's control. Additional ''red flags'' can be found in Supplement No. 3 to Part 732 of the EAR.

To avoid violating U.S. laws and regulations, providers should consult these lists whenever an international customer places an order. Because the updated lists are available online, providers should ensure they are using the most recently updated lists when screening customers against these lists. The U.S. Government recommends that the provider check the individual placing the order and the individual's affiliated institution (when applicable) against these lists.

Additionally, U.S. persons or entities may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) the exporter knows that the item will be used in the design, development, production, stockpiling, or use of biological weapons in or by any country or destination, worldwide.

If any of these checks reveals cause for concern, the provider should proceed according to the details provided in Section VII. Additionally, if a sequence of concern is identified after *sequence screening, follow-up screening* should occur.

If an order involves an export, according to the EAR, both the provider

[8] Visit *http://www.treas.gov/offices/enforcement/ofac/legal/statutes/ieepa.pdf* for additional information.

[9] Visit *http://www.treas.gov/offices/enforcement/ofac/legal/statutes/twea.pdf* for additional information.

[10] A general review of export control basics is available at *http://www.bis.doc.gov/licensing/exportingbasics.htm.*

and customer are required to maintain documentary evidence of the transaction and are prohibited from misrepresenting or concealing material facts in licensing processes and all export control documents.[2]

VII. Contacting the U.S. Government

In cases where *follow-up screening* cannot resolve an issue raised by either *customer screening* or *sequence screening,* the U.S. Government recommends that providers contact one of the following agencies for further information:

Federal Bureau of Investigation (FBI)

If an order turns up 'red flags' or includes a sequence of concern and *follow-up screening* does not sufficiently clarify the customer's identity and the order's intended end-use, providers should contact the Weapons of Mass Destruction (WMD) Coordinator at their nearest FBI Field Office. Providers should also contact the WMD Coordinator if the *follow-up screening* reveals that the customer has no legitimate need for the order.

CDC and APHIS Select Agent Regulatory Programs (Select Agent Programs)

If necessary, the CDC and APHIS Select Agent regulatory programs can be contacted through the national Select Agent Web site (*http://www.selectagents.gov*). The CDC program can be contacted directly via e-mail at *lrsat@cdc.gov* or by fax at 404–718–2096. The APHIS program can be contacted directly via e-mail at *Agricultural.Select.Agent.Program@aphis.usda.gov* or by fax at 301–734–3652.

Department of Commerce

If *sequence screening* reveals that an order from an international customer contains a Select Agent or sequence of concern, providers should contact the nearest field office of the Department of Commerce's Office of Export Enforcement. Providers should also contact the Office of Export Enforcement if they receive an international order from a country currently subject to a U.S. trade embargo or a customer that is on one of the proscribed lists described in Section VI. The Department of Commerce will contact other U.S. Government agencies as necessary. The supervisory office is in Washington, DC and the phone number is 202–482–1208. Locations and contact information for all field offices are available at *http://www.bis.doc.gov/about/programoffices.htm.* Assistance from an export counselor at the Department of Commerce is available by calling 202–482–4811.

Scenarios

If providers encounter one of the following scenarios and are unable to resolve issues raised by customer screening or sequence screening, they can contact one of the following U.S. Government agencies for assistance, using the contact information provided above:

1. Provider receives double-stranded synthetic DNA order and a customer flag (suspicious customer) is identified in *customer screening*. Recommend the provider contact the nearest FBI Field Office WMD Coordinator. FBI contacts other Departments and Agencies, as appropriate.

2. Provider receives a double-stranded synthetic DNA order that is for a Select Agent or Toxin. Provider should refer to the Select Agent Regulations and follow necessary protocols. If necessary, the provider should contact the appropriate Select Agent Program (CDC or USDA/APHIS).

a. CDC or APHIS may contact FBIHQ as appropriate.

3. Provider receives a double-stranded DNA order that incorporates a sequence of concern; *follow-up screening* reveals no legitimate purpose [11] for order or research requirement. Provider contacts the FBI WMD Coordinator. FBI contacts the CDC or APHIS as appropriate.

4. Provider receives an international double-stranded DNA order incorporating a Select Agent or Toxin or a sequence of concern and DOC denies the export license. DOC contacts the FBI as appropriate.

5. Provider receives a double-stranded DNA order from a customer that is listed on one or more restricted lists, which prohibits the fulfillment of the order. Provider contacts the FBI WMD Coordinator. FBI contacts DOC as appropriate.

VIII. Customer and Sequence Screening Software and Expertise

There are a variety software packages that can assist with the verification of customers and screening against the necessary lists of proscribed entities. Providers should be aware that commercially available software packages may not necessarily address all aspects of customer screening recommended by the U.S. Government.

In addition to a sequence database and screening method, appropriate sequence screening software must be selected by synthetic nucleic acid providers. The U.S. Government recommends that synthetic nucleic acid providers select a sequence screening software tool that utilizes both a global and local sequence alignment technique; the most popular algorithm that meets both requirements is the BLAST search tool. BLAST is available for download for free at the NCBI site. Similar tools are also freely or commercially available, or could be designed by the provider to meet their sequence screening needs. By utilizing such a tool, similarity over the length of the sequence being screened and the identification of regions that are similar within longer segments that are not alike are both encompassed in the sequence screening approach. Specific criteria for the statistical significance of the hit (BLAST's e-values) or percent identity values will not be recommended because these details depend on the specific screening protocol. By utilizing the ''Best Match'' approach, the sequence with the greatest percent identity over the entire 66 amino acid sequence should be considered the ''Best Match,'' regardless of the statistical significance or percent identity.

The U.S. Government recommends that synthetic nucleic acid providers have the necessary expertise in-house to perform the sequence screenings, analyze the results and conduct the appropriate follow-up research to evaluate the significance of dubious sequence matches. Such follow-up research could include comparing the ordered sequence to information found in the published literature about Select Agents and Toxins or with information found in other databases of Select Agents and Toxins.

The U.S. Government recognizes that continued research and development on new and improved bioinformatics tools is desirable. As new methods are developed, U.S. guidance may change accordingly.

IX. Records Retention

The U.S. Government recommends that companies retain electronic copies of customer orders for at least eight years based on statutory limitations set forth by U.S. Code of Federal Crimes and Procedures, Title 18 Section 3286.[4]

The U.S. Government recommends archiving the following information: Customer (and end-user, if different) information (name, organization, address, and phone number), order sequence information, and order

[11] 18 U.S.C. 175(b) defines criminal prohibitions with respect to biological weapons as ''Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both.''

information (date placed and shipped, shipping address, and receiver name).

The U.S. Government recommends that providers develop, maintain, and document their sequence screening protocol within company records.

The U.S. Government recommends that providers develop, maintain, and document protocols to determine if a sequence hit qualifies as a true sequence of concern.

The U.S. Government recommends that providers keep records of any *follow-up screening*, even if the order was ultimately filled.

If an order involves an export, according to the EAR, both the provider and customer are required to maintain documentary evidence of the transaction and are prohibited from misrepresenting or concealing material facts in licensing process and all export control documents.[2]

X. Appendix to Screening Framework Guidance for Synthetic Double-Stranded DNA Providers

Summary of Recommendations

The field of synthetic genomics is evolving rapidly. This document is intended to provide guidance to producers of synthetic genomic products regarding the screening of orders to ensure that these orders are filled in compliance with current U.S. regulations and encourage best practices in addressing any potential biosecurity concerns. The U.S. Government recommends that all orders for synthetic double-stranded DNA 200 base pairs (bps) in length or greater be subject to a screening framework that incorporates both sequence screening and customer screening.

Customer Screening

The U.S. Government recommends that, for every order, synthetic nucleic acid providers:

(1) Gather the following information to verify a customer's identity:

- Customer's (and end-user's, if different) full name and contact information
- Billing address and shipping address (if not the same)
- Customer's institutional or corporate affiliation (if applicable)
- Name of institution's Biological Safety Officer (if applicable)

(2) Screen customers against several lists of proscribed entities (described under the *Domestic Orders* and *Foreign Orders* sections).

In cases where the customer is not affiliated with an institution or firm, the U.S. Government recommends that the provider conduct *follow-up screening*.

If a review of customer information reveals one or more 'red flags,' the U.S. Government recommends that providers exercise due diligence, inquire regarding the circumstances, and verify the end-use and end-user (see the *Follow-Up Screening* section).

Sequence Screening

The U.S. Government recommends that:

- Nucleic acid sequences be screened using a ''Best Match'' approach to identify nucleic acids that are unique to Select Agents and Toxins.
- For foreign orders, nucleic acids be screened using a ''Best Match'' approach to identify nucleic acids that are unique to pathogens and toxins on the Commerce Control List.
- Sequence screening be performed for both DNA strands and the resultant polypeptides derived from translations using the three alternative reading frames on each DNA strand (or six-frame translation).
- Sequence alignment methods should permit the detection of hidden ''sequences of concern'' as small as 200 bps.

If a customer orders a synthetic nucleic acid that can be classified as a Select Agent or Toxin, the provider should consult and must abide by the CDC and USDA/APHIS Select Agent Regulations (42 CFR 73, 7 CFR 331, and 9 CFR 121). In order to produce a regulated Select Agent or Toxin nucleic acid, the producer must be registered with CDC or USDA/APHIS.[12]

The U.S. Government recommends that providers continue to exercise their due diligence in the investigation of screening hits against non-Select Agents and Toxins that may raise a biosecurity concern.

Follow-up Screening

When customer screening reveals any 'red flags' or sequence screening identifies a sequence of concern, the U.S. Government recommends that providers ask for information regarding the customer's proposed end-use of the order to assess their need and the scientific legitimacy of their work. If the customer is associated with an institution or firm, providers should also contact the customer's biological safety officer, supervisor, lab director or director of research to verify their identity and need. If the customer is not affiliated with an institution or firm, providers should also conduct a literature review of the customer's past research to verify his or her identity and need.

Domestic Orders

The U.S. Government reminds providers of the following:

- According to U.S. regulations, no U.S. persons or entities may conduct transactions with individuals or entities on the list of Specially Designated Nationals and Blocked Persons (SDN List) without a license from the Department of the Treasury Office of Foreign Assets Control (OFAC).[13]
- According to U.S. regulations, no U.S. persons or entities may conduct business transactions with individuals sanctioned by the Department of State for engaging in proliferation activities.[14]

The U.S. Government recommends that providers check domestic customers against the most recent Department of Commerce Denied Persons List (DPL).[15]

In order to avoid violating U.S. law, providers are encouraged to check the individual placing the order and the individual's affiliated institution (when applicable) against the most recent versions of these lists of proscribed entities before filling each order.

Foreign Orders

The U.S. Government reminds providers of the following:

- All providers who export products from the United States to international customers must comply with the U.S. export laws, including the International Emergency Economic Powers Act (IEEPA),[16] the Trading with the Enemy Act,[17] and any implementing U.S. Government regulations or Presidential Executive Orders. Certain transactions with sanctioned countries may be permitted, but most require a license from OFAC and/or the Department of Commerce's Bureau of Industry and Security (BIS). Most transactions involving Cuba, Iran, and Sudan are prohibited. In order to comply with the U.S. export laws and regulations, providers must first determine whether a given transaction with a sanctioned

[12] Additional information regarding the CDC and USDA/APHIS Select Agent Regulations is available at *http://www.selectagents.gov.*

[13] Additional information, including the SDN List, is available at: *http://www.treas.gov/offices/enforcement/ofac/sdn/*.

[14] Announcements of such sanctions determinations are printed in the **Federal Register** and are maintained on the Department of State's Web site (*http://www.state.gov/t/isn/c15231.htm*).

[15] Visit *http://www.access.gpo.gov/bis/ear/ear_data.html* to access the most recent Commerce Control List and review the Export Administration Regulations.

[16] Visit *http://www.treas.gov/offices/enforcement/ofac/legal/statutes/ieepa.pdf* for additional information.

[17] Visit *http://www.treas.gov/offices/enforcement/ofac/legal/statutes/twea.pdf* for additional information.

country is permitted, and, if not permitted, obtain any appropriate export licenses or other U.S. government permissions prior to exporting any product to sanctioned countries.

• According to U.S. regulations, no U.S. persons or entities may conduct business transactions with individuals and entities on the SDN List without a license from OFAC.[13]

• According to U.S. regulations, no U.S. persons or entities may conduct business transactions with individuals sanctioned by the Department of State for engaging in proliferation activities.[14]

• The Export Administration Regulations (EAR) require that providers have an export license from BIS prior to exporting a synthetic nucleic acid that is controlled by an Export Control Classification Number (ECCN) and is capable of encoding a protein.[15]

• U.S. persons or entities may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) the exporter knows that the item will be used in the design, development, production, stockpiling, or use of biological weapons in or by any country or destination, worldwide.[15]

• In accordance with the EAR, providers must not conduct business with persons and entities on the DPL.[15]

• In accordance with the EAR, exports to persons or entities on the Entity List are subject to licensing requirements and policies in addition to those elsewhere in the EAR.[15]

• The presence of a party on the UL in a transaction is a ''red flag'' that should be resolved before proceeding with the transaction.[15]

In order to avoid violating U.S. laws and regulations, providers are encouraged to check the individual placing the order and the individual's affiliated institution (when applicable) against the most recent versions of these lists of proscribed entities before filling each order.

The U.S. Government recommends that providers utilize a ''Best Match'' approach to identify sequences of pathogens and toxins on the Commerce Control List for international orders. This screen is in addition to the ''Best Match'' sequence screen for Select Agent and Toxin sequences.

Contacting the U.S. Government

In cases where *follow-up screening* cannot resolve concerns raised by *customer screening* or *sequence screening, or when providers are otherwise unsure about whether to fill an order*, the U.S. Government recommends that providers contact relevant agencies as described in Section VII of ''Screening Framework Guidance for Synthetic Nucleic Acid Providers.''

Customer and Sequence Screening Software and Expertise

Providers should be aware that commercially available customer screening software packages may not necessarily address all aspects of customer screening recommended by the U.S. Government.

The U.S. Government recommends that:

• Synthetic nucleic acid providers select a sequence screening software tool that utilizes both a global and local sequence alignment technique.

• Synthetic nucleic acid providers have the necessary expertise in-house to perform the sequence screenings, analyze the results, and conduct the appropriate follow-up research to evaluate the significance of dubious sequence matches.

Records Retention

The U.S. Government recommends that:

• Companies retain electronic copies of customer orders for at least eight years based on the statute of limitations set forth by U.S. Code Title 18 Section 3286.[18] The following information should be archived: Customer (and end-user, if different) information (name, organization, address, and phone number), order sequence information, and order information (date placed and shipped, shipping address, and receiver name).

• Providers develop, maintain, and document their sequence screening protocols within company records.

• Providers develop, maintain, and document protocols to determine if a sequence hit qualifies as a true sequence of concern.

• Providers keep records of hits that required follow-up screening, even if the order was ultimately filled.

If an order involves an export, according to the EAR, both the provider and customer are required to maintain documentary evidence of the transaction and are prohibited from misrepresenting or concealing material facts in licensing processes and all export control documents.[15]

[18] Section 3286 specifies that no person shall be prosecuted, tried, or punished for any noncapital offense involving certain violations unless the indictment is found or the information is instituted within 8 years after the offense was committed. This statute of limitations applies to Title 18 Section 175(b) (possession of biological agents with no reasonable justification).

Dated: November 19, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. E9–28328 Filed 11–25–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Evaluation of the GuideLines Into Decision Support (GLIDES).'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 26, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the GuideLines Into Decision Support (GLIDES)

With this project AHRQ proposes to evaluate how the translation of clinical knowledge into clinical decision support can be routinized in practice and taken to scale in ways that improve the quality of healthcare delivery for children in the U.S. Previously in the GLIDES project, AHRQ designed and implemented decision support tools based on guidelines for the prevention of pediatric overweight and obesity and the management of chronic asthma in

the pediatric population (publication forthcoming). In this phase of the project, conducted for AHRQ through a contract with Yale University and Nemours, physicians will be surveyed about their experiences with the decision support tools developed in the previous phase. The participating study institutions (Yale University and Nemours) are geographically and organizationally diverse, and include a wide range of patients from a variety of social, economic and ethnic backgrounds. This project directly addresses AHRQ's mission of improving health systems practices, in particular for priority populations, including low-income groups, minority groups, women, children, and individuals with chronic diseases. See 42 U.S.C. 299(c)(1)(B).

The evaluation plan includes a physician survey component and an extraction of electronic medical record data. Participating physicians will be surveyed about their experiences with the decision support tools developed for this project. This will allow AHRQ to evaluate the fulfillment of knowledge transformation goals and the effectiveness of the decision support tools in improving the quality of health care at the chosen sites. Without such an evaluation, it would be difficult to determine whether this project has met AHRQ's goals of enhancing the ''quality, appropriateness and effectiveness of health services.'' *See* 42 U.S.C. 299(b); 42 U.S.C. 299a(a)(1). Consequently, it is necessary to collect this information to fulfill AHRQ's mission.

Method of Collection

Self-administered questionnaires will be used to elicit physicians' general opinions of guideline-based care and clinical decision support tools on a five point Likert-type scale. Results from low-utilizing physicians will be compared to high-utilizing physicians to determine whether general opinions of guidelines and technology correlate with actual practice. Results will also be analyzed by demographic characteristics included in the survey questionnaire to determine whether opinions vary by age, degree of computer experience and skill, level of training and professional degree. These analyses will be important to future studies and decision support designers because they will help us understand whether interventions need to be targeted differently to different audiences. For example, senior level specialists may have less desire or need for clinical decision support tools than novice generalists have. In-person qualitative interviews lasting approximately 30 minutes will be conducted with key personnel at each site (including physicians, nurse practitioners, and respiratory therapists). Participants will remain anonymous in the transcribed interviews. The interviews will be analyzed using standard qualitative techniques to explore barriers and facilitators to using the clinical decision support tool. The Human Investigation Committee (HIC) at Yale University has reviewed this protocol. The HIC found the survey study to be exempt from review under 45 CFR 46.101(b)(2). The HIC approved the interview study and required signed informed consent from participants.

Electronic medical record data will be extracted into an electronic spreadsheet for analysis. This extraction will occur at regular intervals to ensure continued maintenance and uptake of the tool. Utilization of the decision support tools at the provider and site level will be assessed based on the rate of electronic chart documentation. This is important to determine the rate of uptake of the intervention, as well as to determine whether there are any flaws in the design of the tool. Congruence of actual practice with guideline recommendations will be assessed based on automatically generated disagreement flags in the electronic medical record as well as by manual chart review. This data collection, including the manual chart review, will be performed by project staff and will not impose a burden on the participating sites. In addition, project staff will directly observe a random sampling of clinicians using the tool in clinical settings to determine how the tool affects workflow. These observations will not require any effort, time or action on the part of the clinicians themselves and will not impose a burden on the participating sites. Signed informed consent will be obtained prior to any observations. The Human Investigation Committee at Yale University has reviewed this protocol. It approved the medical record review, approved direct observation of clinicians and interviews of clinicians, required signed informed consent from clinicians, granted a waiver of informed consent from patients per 45 CFR 46.116(d), and granted a waiver of HIPAA authorization.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. The Asthma Management and Clinical Decision Support System Usability and User Satisfaction Survey (asthma questionnaire) will be completed by 172 health care professionals across 3 sites and is expected to require about 6 minutes to complete. The Obesity Prevention and Clinical Decision Support System Usability and User Satisfaction Survey (obesity questionnaire) will be completed by 82 health care professionals across 2 sites and is expected to require about 6 minutes to complete. The in-person interviews will be conducted with a total of 50 clinicians at 3 sites and are expected to last 30 minutes each. The total burden is estimated to be 51 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $2,781.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of sites	Number of responses per site	Hours per response	Total burden hours
Asthma questionnaire—Yale	2	31	6/60	6
Asthma questionnaire—Nemours	1	110	6/60	11
Obesity questionnaire—Yale	1	57	6/60	6
Obesity questionnaire—Nemours	1	25	6/60	3
In-person interviews—Yale	2	15	30/60	15
In-person interviews—Nemours	1	20	30/60	10
Total	5	na	na	51

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of sites	Total burden Hours	Average hourly wage rate *	Total cost burden
Asthma questionnaire—Yale	2	6	$59.83	$359
Asthma questionnaire—Nemours	1	11	59.83	658
Obesity questionnaire—Yale	1	6	47.25	284
Obesity questionnaire—Nemours	1	3	47.25	142
Interviews—Yale	1	15	53.54	803
Interviews—Nemours	1	10	53.54	535
Total	5	51	na	2,781

* Based upon the mean of the average wages for other physicians and surgeons, general pediatricians, and pediatric trainees (asthma questionnaire), and general pediatricians and pediatric trainees (obesity questionnaire), National Compensation Survey: Occupational wages in the United States 2008, ''U.S. Department of Labor, Bureau of Labor Statistics,'' and Yale Pediatric Residency Program, 2008.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for this research. Since this project will not exceed one year the total and annualized costs are identical. The total cost is estimated to be $5,703.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$1,406	$1,406
Data Collection Activities	416	416
Data Processing and Analysis	780	780
Publication of Results	1,601	1,601
Project Management	200	200
Overhead	1,299	1,299
Total	5,703	5,703

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ' s estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 16 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–28210 Filed 11–25–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0563]

Draft Guidance for Industry and Food and Drug Administration Staff; Preliminary Timetable for the Review of Applications for Modified Risk Tobacco Products Under the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Preliminary Timetable for the Review of Applications for Modified Risk Tobacco Products under the Federal Food, Drug, and Cosmetic Act.'' This guidance is intended for manufacturers, retailers, importers, and FDA staff. The guidance describes FDA's current thinking regarding the appropriate preliminary timetable for its review of applications for Modified Risk Tobacco Products (MRTPs) under the Federal Food, Drug, and Cosmetic Act (the act), as modified by the Federal Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by February 25, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Preliminary Timetable for the Review of Applications for Modified Risk Tobacco Products under the Federal Food, Drug, and Cosmetic Act'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance document may be sent. See the

SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 240–276–1717, *annette.marthaler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act amended the act (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 911 of the act, as amended by the Tobacco Control Act, states: ''(a) No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product'' and ''(d) Any person may file with the Secretary an application for a modified risk tobacco product.* * *.'' Section 911(g) of the act provides the criteria under which the agency determines whether to issue an order that an MRTP may be commercially marketed. The Tobacco Control Act provides that, within 2 years and 9 months of the enactment of the Tobacco Control Act, the agency shall issue regulations or guidance regarding MRTP applications, and those regulations or guidance shall ''establish a reasonable timetable for the Secretary to review an application under this section.'' FDA is issuing this guidance to describe a preliminary timetable the agency intends to follow until such time as the agency issues more comprehensive guidance or regulations on MRTP applications. Pending further guidance or rulemaking, FDA intends to issue a decision on an MRTP application within 360 days of its receipt by FDA.

II. Significance of Guidance

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on ''Preliminary Timetable for the Review of Applications for Modified Risk Tobacco Products under the Federal Food, Drug, and Cosmetic Act.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: November 24, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28515 Filed 11–24–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2476–FN]

Medicare and Medicaid Programs; Conditional Approval of Application by the American Association for Accreditation of Ambulatory Surgery Facilities for Continued Deeming Authority for Ambulatory Surgical Centers

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

ACTION: Final notice.

SUMMARY: This final notice announces our decision to conditionally approve, with a 180 day probationary period, the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for continued recognition as a national accreditation program for ambulatory surgical centers seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective on November 27, 2009 through November 27, 2012, with a 180-day probationary period beginning November 27, 2009 through May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Lillian Williams (410) 786–8636. Patricia Chmielewski (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC) provided certain requirements are met. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Under this authority, the minimum requirements that an ASC must meet to participate in Medicare are set forth in regulations at 42 CFR part 416, which determine the basis and scope of ASC covered services, and the conditions for Medicare payment for facility services. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, to enter into an agreement, an ASC must first be certified by a State survey agency as complying with conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet those requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we may ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accreditation organization applying for

approval of deeming authority under part 488, subpart A, must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning re-approval of accrediting organizations are set forth at section § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years, or sooner as we determine. The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) term of approval as a recognized accreditation program for ASCs expires November 26, 2009.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Provisions of the Proposed Notice

On June 26, 2009, we published a proposed notice (74 FR 30587) announcing AAAASF's request for re-approval as a deeming organization for ASCs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of the AAAASF application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAASF's—(1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation;
- A comparison of AAAASF's ASC accreditation standards to our current Medicare ASC conditions for coverage (CfC); and,
- A documentation review of AAAASF's survey processes to—
  - o Determine the composition of the survey team, surveyor qualifications, and the ability of AAAASF to provide continuing surveyor training;
  - ○ Compare AAAASF's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;
  - ○ Evaluate AAAASF's procedures for monitoring providers or suppliers found to be out of compliance with AAAASF's program requirements. The monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d);
  - ○ Assess AAAASF's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner;
  - ○ Establish AAAASF's ability to provide us with electronic data and reports necessary for effective validation and assessment of AAAASF's survey process;
  - ○ Determine the adequacy of staff and other resources;
  - ○ Review AAAASF's ability to provide adequate funding for performing required surveys;
  - ○ Confirm AAAASF's policies with respect to whether surveys are announced or unannounced; and,
  - ○ Obtain AAAASF's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the June 26, 2009 proposed notice (74 FR 30587) also solicited public comments regarding whether AAAASF's requirements met or exceeded the Medicare CfCs for ASCs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between AAAASF's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared AAAASF's accreditation requirements and survey process with the Medicare CfCs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of the AAAASF's deeming application, which were conducted as described in section III of this final notice, yielded the following:

- To meet the requirements at § 416.2, AAAASF revised their standards to include the current definition of an ASC.
- To meet the requirements at § 416.41(a), AAAASF revised their standards to ensure contracted services of an ASC are provided in a safe and effective manner.
- To meet the requirements at § 416.41(b)(2) and 416.41(b)(3), AAAASF revised their standards to ensure that an ASC has a transfer agreement with a local Medicare participating hospital and a procedure for transferring patients with emergency needs to a Medicare hospital, or a non-participating hospital that meets the requirements for payment at § 482.2.
- To meet the requirements at § 416.41(c)(1), AAAASF revised their standards to ensure ASCs maintain a written disaster preparedness plan.
- To meet the requirements at § 416.42, AAAASF revised their standards to ensure surgical procedures provided in the ASC are performed in a safe manner.
- To meet the requirements at § 416.42(a)(1), AAAASF revised their standards to require a physician examine a patient to evaluate the risk of anesthesia and the procedure to be performed immediately before surgery.
- To meet the requirements at § 416.44(a), AAAASF revised their standards to include the requirement that ASCs provide a functional and sanitary environment for the provision of surgical services.
- To meet the requirements at § 416.44(b)(5)(iii), AAAASF revised their standards to require alcohol-based hand rub dispensers be installed in a manner that adequately protects against inappropriate access.
- To meet the requirements at § 416.44(c), AAAASF revised their standards to ensure that ASCs that utilize an automated external defibrillator (AED) have policies and procedures to indicate an AED is sufficient given the patient population and types of procedures performed. In addition, AAAASF revised their standards to include the requirement that emergency medical equipment and supplies be available in the operating room.
- To meet the requirements at § 416.46, AAAASF revised their standards to ensure the nursing services of the ASC are directed and staffed to meet all of the patient's nursing needs.
- To meet the requirements at § 416.47 (b), AAAASF revised their standards to include the requirement that every medical record must be accurate and promptly completed.

• To meet the requirements at § 416.47(b)(2), AAAASF revised their standards to require medical records include a significant medical history and results of physical examination.

• To meet the requirements at § 416.49, AAAASF revised their standards to require ASCs that do not provide laboratory services to have procedures for obtaining laboratory services.

• To meet the requirements at § 416.49(b)(1), AAAASF revised their standards to include the requirement that ASCs have procedures for obtaining radiologic services.

• To meet the requirements at § 416.49(b)(2), AAAASF revised their standards to ensure that radiologic services provided in an ASC meet the hospital conditions of participation for radiologic services specified at § 482.26.

• To meet the requirements at § 416.50, AAAASF revised their standards to include the requirement that an ASC must inform the patient of his or her rights.

• To meet the requirements at § 416.50(b) through § 416.50(d) AAAASF revised their standards to include patient rights requirements.

• To meet the requirements at § 416.51(a), AAAASF revised their standards to include the requirement that ASCs provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice.

• To meet the requirements at § 416.51(b), AAAASF revised their standards to ensure ASCs maintain an infection control and prevention program.

• To meet the requirements at § 416.52, AAAASF revised their standards to include the requirements that the ASC must ensure each patient has the appropriate pre- and post-surgical assessments completed and that all elements of the discharge requirements are completed.

• To meet the requirements at § 488.4(a)(4), AAAASF developed and implemented internal monitoring procedures to ensure their surveyors are trained and qualified.

• To eliminate any real or perceived conflict of interest between AAAASF's accreditation activities and the financial, consulting and professional activities of AAAASF's surveyors, AAAASF developed and implemented policies and procedures that adequately address conflicts of interest issues for surveyors.

• To meet the requirements at § 488.6(a), AAAASF developed an action plan to ensure that deemed status survey files are complete, accurate, and consistent.

• To meet the requirements at SOM 2200F, AAAASF revised its survey report to ensure the documentation of cited deficiencies contains a regulatory reference, a clear and detailed description of the deficient practice, and relevant findings.

• To meet the requirements at § 488.20(b) and § 488.28(a), AAAASF developed a policy to ensure that facilities with condition level non-compliance on a recertification survey submit an acceptable plan of correction (PoC) and receive a follow-up onsite focused survey.

• To meet the requirements at § 489.13, AAAASF modified its policies related to the accreditation effective date for new providers.

• AAAASF develop a policy regarding condition level noncompliance identified during an initial certification survey for participation in Medicare in accordance with section 2005A2 of the SOM.

• To meet the requirements at 2728 of the SOM, AAAASF modified its policies regarding timeframes for sending and receiving a PoC.

• To meet our requirements related to a PoC, AAAASF amended its policies to ensure approved PoCs contain all elements specified in section 2728 of the SOM.

• To meet the requirements at 2700A of the SOM, AAAASF developed and implemented new policies and procedures that ensure all surveys are unannounced.

• AAAASF revised its policies to ensure timeframes for investigation of complaints are consistent with the requirements at section 5075.9 of the SOM.

• AAAASF revised its accreditation decision letters to ensure that they are accurate and contain all the required elements for the CMS Regional Office to render a decision regarding the deemed status of an accredited ASC.

• To meet the requirements at § 488.20(b)(1), AAAASF revised its policies to allow resurveys of a provider as frequently as necessary to ascertain compliance and confirm correction of deficiencies.

• AAAASF revised its policies to require that all deficiencies identified during a deemed survey visit be cited and documented, including deficiencies corrected onsite at the time of survey.

• To ensure AAAASF surveyors are properly trained and can effectively apply knowledge and skills acquired in training, AAAASF expanded its surveyor training program to include a Medicare surveyor handbook, comprehensive interpretive guidelines, random validation surveys to assess surveyor performance, and an onsite preceptor training and evaluation program.

To verify AAAASF's continued compliance with the provisions of this final notice, we will conduct a follow-up corporate onsite visit and survey observation within 6 months of the date of publication of this notice.

Review of AAAASF's renewal application for ASCs deeming authority revealed that AAAASF has ongoing, serious, widespread areas of non-compliance, specifically AAAASF's—

• Inability to provide us with accurate and timely data on deemed providers;

• Lack of complete and accurate deemed facility survey files; and

• Inadequate surveyor training and evaluation program.

Due to the significant number of areas of noncompliance identified during the review of AAAASF's renewal application for ASCs deeming authority, we have concerns that AAAASF's accreditation program for ASCs may no longer provide reasonable assurance that its accredited entities meet the Medicare requirements.

In accordance with § 488.8(d)(3), every 6 years, or sooner as determined by us, an approved accreditation organization must reapply for continued approval of deeming authority. We notify the organization of the materials they must submit as part of the reapplication procedure. An accreditation organization that is not meeting the requirements of this subpart, as determined through a comparability review, must furnish us, upon request and at any time, with the reapplication materials upon request. We will establish a deadline by which the materials are to be submitted.

In accordance with § 488.8(f)(3)(i), if we determine that an accreditation organization has failed to adopt requirements comparable to our requirements, we may grant a conditional approval of the accreditation organization's deeming authority for a period of up to 1 year to adopt comparable requirements; in this case, we are providing AAAASF with a probationary period of 180 days. Within 60 days after the end of AAAASF's probationary period, we will make a final determination as to whether or not AAAASF's ASCs accreditation requirements are comparable to our requirements and issue an appropriate notice that includes reasons for our determination, no later than August 23, 2010. If AAAASF has not made improvements acceptable to us during

the 180-day probationary period, we may remove recognition of deemed authority for its ASC program effective 30 days after the date we provide written notice to AAAASF that its ASC deeming authority will be removed.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that AAAASF's accreditation program for ASCs requires further revision and subsequent review. We are confident that with additional time, AAAASF will make the necessary revisions to ensure AAAASF's accreditation program for ASCs meets or exceeds the Medicare requirements as stated at 42 CFR part 416. Therefore, we conditionally approve AAAASF as a national accreditation organization for ASCs that request participation in the Medicare program, effective November 27, 2009 through November 27, 2012, with a 180-day probationary period beginning November 27, 2009 through May 26, 2010.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

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

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 29, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–28048 Filed 11–25–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2302–FN]

Medicare and Medicaid Programs; Approval of the Application by the Joint Commission for Continued Deeming Authority for Hospitals

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

ACTION: Final notice.

SUMMARY: This final notice announces the approval of a deeming application from the Joint Commission for continued recognition as a national accreditation program for hospitals that request participation in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective July 15, 2010 through July 15, 2014.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital, provided certain requirements are met. The regulations specifying the Medicare conditions of participation (CoPs) for hospitals are located at 42 CFR part 482. These CoPs implement section 1861(e) of the Social Security Act (the Act), which specifies services covered as hospital care and the conditions that a hospital program must meet in order to participate in the Medicare program. Regulations concerning provider agreements are located at 42 CFR part 489 and regulations pertaining to the survey and certification of facilities are located at 42 CFR part 488.

Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 482 of our regulations. Then, the hospital is subject to routine surveys by a State survey agency to determine whether it continues to meet the Medicare requirements. There is, however, an alternative to State compliance surveys.

Section 1865(a)(1) of the Act (as redesignated under section 125 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275)) provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we would ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accreditation body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for deeming authority under part 488, subpart A, must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the re-approval of accreditation organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued deeming authority every 6 years or as we determine.

In July 2008, section 125 of MIPPA revoked the Joint Commission's statutorily-guaranteed deeming authority for their hospital program and required the Joint Commission subsequently to be recognized as a national accreditation body for hospitals only after applying to CMS, subject to terms and conditions required by the Secretary. These terms and conditions are set out at 42 CFR part 488, subpart A, as described above. Based on the 24-month transition period allowed by section 125 of MIPPA, the Joint Commission's term of approval as a recognized accreditation program for hospitals expires July 15, 2010.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for deeming authority is conducted in a timely manner. We must complete our review of an accreditation organization's application within 210 calendar days after the date of receipt of the completed application (including all documentation necessary to make a determination). Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice and Response to Comments

On June 26, 2009, we published a proposed notice in the **Federal Register** (74 FR 30588) announcing the Joint Commission's request for re-approval as a deeming organization for hospitals. In that notice, we specified in detail our evaluation criteria. Under section 1865(a)(2) of the Act and in our

regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of the Joint Commission's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

• An onsite administrative review of the Joint Commission's—(1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.

• A comparison of the Joint Commission's hospital accreditation standards to our current Medicare hospital CoPs.

• A documentation review of the Joint Commission's survey processes to—

+ Determine the composition of the survey team, surveyor qualifications, and the Joint Commission's ability to provide continuing surveyor training.

+ Compare the Joint Commission's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate the Joint Commission's procedures for monitoring providers or suppliers found to be out of compliance with the Joint Commission program requirements. The monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ Assess the Joint Commission's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish the Joint Commission's ability to provide us with electronic data and reports necessary for effective validation and assessment of the Joint Commission's survey process.

+ Determine the adequacy of staff and other resources.

+ Review the Joint Commission's ability to provide adequate funding for performing required surveys.

+ Confirm the Joint Commission's policies with respect to whether surveys are announced or unannounced.

+ Obtain the Joint Commission's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the June 26, 2009 proposed notice also solicited public comments regarding whether the Joint Commission's requirements met or exceeded the Medicare CoPs for hospitals. We received 4 comments in response to our proposed notice. Below are the comments received and our responses to these comments.

Comment: One commenter expressed support for the Joint Commission's continued deeming authority for hospitals. This commenter stated the Joint Commission's accreditation and survey process has improved the safety and quality of healthcare with its rigorous evaluation system combined with mentoring and seeking solutions that take a systems approach.

Response: We appreciate the commenter's support. The Joint Commission has been approved for continued deeming authority as a national accreditation program.

Comment: One commenter agrees that it is a good idea to have options for accreditation. However, the commenter believes that a single, standardized, regulatory approach to healthcare is necessary.

Response: The Medicare CoPs are the minimum health and safety requirements that all hospitals must meet to participate in the Medicare program and serve as a single standardized Federal regulatory approach. We recognize only those accreditation programs that meet or exceed Medicare requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. A hospital may opt for routine surveys by a State survey agency to determine whether it meets the Medicare requirements.

Comment: One commenter requested that the Joint Commission correct a patient safety deficiency in its standards by requiring all hospitals to be smoke free with no exceptions for special circumstances.

Response: The commenter's request is not directly related to this application for continued deeming authority for hospitals. All deeming applications are reviewed in accordance with the requirements at § 488.4 and § 488.8 to ensure that the applicant accreditation program meets or exceeds Medicare requirements. We recommend the commenter discuss this recommendation directly with the Joint Commission.

Comment: One commenter expressed concerns about the Joint Commission's continued deeming authority for hospitals. The commenter stated that the Joint Commission's standards are not focused on the CMS CoPs and that the National Patient Safety Goals are not evidence-based. In addition, the commenter stated that the Joint Commission's standards are ever changing and confusing. The commenter further stated that organizations spend inordinate time and resources preparing for the Joint Commission surveys and that these resources should be more focused on the CMS CoPs and other important quality initiatives.

Response: On July 15, 2008, Congress enacted the Medicare Improvement for Patients and Providers Act (MIPPA). Section 125 of MIPPA revoked the Joint Commission's previously guaranteed statutory deeming authority for hospitals, and included a 24-month transition period. Effective July 15, 2010, the Secretary may recognize the Joint Commission as a national accreditation body for hospitals based on the terms and conditions, and upon submission of such information, as the Secretary may require. On May 1, 2009, the Joint Commission submitted a complete application for renewal of hospital deeming authority in accordance with the requirements at § 488.4. We have reviewed the application and have concluded that the Joint Commission's accreditation program for hospitals meets or exceeds Medicare requirements.

IV. Provision of the Final Notice

A. Differences Between the Joint Commission's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the Joint Commission's hospital accreditation requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of the Joint Commission's deeming application, which were conducted as described in section III of this final notice, yielded the following:

• To meet the requirements at § 482.12(a)(2) and § 482.22(c)(4), the Joint Commission revised its elements of performance (EPs) to require that all licensed independent practitioners who provide for the patient's care, treatment, and services in an accredited hospital via telemedicine are credentialed and privileged at the originating site. If the distant site is a Medicare-participating hospital, the originating site's medical staff may use a copy of the distant site's

credentialing packet for privileging purposes. This packet includes all credentialing documents, a list of all privileges granted to the licensed independent practitioner by the distant site, and an attestation signed by an appropriate official of the distant-site hospital, indicating that the packet is complete, accurate, and up-to-date.

- To meet the requirements at § 482.12(a)(7), the Joint Commission added a note to its EPs to clarify that an accredited hospital's staff membership and/or professional privileges are not dependent solely upon certification, fellowship, or membership in a specialty board or society.
- To meet the requirements at § 482.12(c)(4), the Joint Commission revised its EPs to require that in all accredited hospitals, a doctor of medicine or osteopathy is responsible for the care of each Medicare patient's medical or psychiatric problem.
- To meet the requirements at § 482.12(e), the Joint Commission revised its EPs to require that an accredited hospital's governing body be responsible for the oversight of contracted services.
- To meet the requirements at § 482.12(f)(1), the Joint Commission revised its EPs to ensure emergency services provided at an accredited hospital comply with CMS requirements set out at § 482.55.
- To meet the requirements at § 482.13(a)(1), the Joint Commission revised its EPs to address an accredited hospital's responsibility to notify patients of their rights.
- To meet the requirements at § 482.13(a)(2)(iii), the Joint Commission revised its EPs to require the written notice provided by accredited hospitals to patients in the grievance process contain the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance, and the date of completion.
- To meet the requirements at § 482.13(b)(2), the Joint Commission revised its EPs to include the requirement that patients in accredited hospitals have the right to make informed decisions about their care; however, this right is not to be construed as a mechanism to demand the provision oftreatment or services deemed medically unnecessary or inappropriate.
- To meet the requirement at § 482.13(b)(4), the Joint Commission revised its EPs to include the requirement that the patient in an accredited hospital has the right to have a family member or representative of his or her choice and his or her own physician notified promptly of his or her admission to the hospital.
- To meet the requirements at § 482.21, the Joint Commission revised its EPs to require that an accredited hospital develop and maintain an on-going quality assessment and performance improvement program.
- To meet the requirements at § 482.21(b)(3), the Joint Commission revised its EPs to require an accredited hospital's governing body to specify the frequency and detail of data collection.
- To meet the requirements at § 482.21(c)(2), the Joint Commission revised its EPs to require that an accredited hospital's performance improvement activities improve patient safety.
- To meet the requirements at § 482.21(d)(3), the Joint Commission amended its survey process activities to include review of the hospital's performance improvement projects.
- To meet the requirements at § 482.21(e)(5), the Joint Commission revised its EPs to require that an accredited hospital's governing body determine the number of distinct improvement projects conducted annually.
- To meet the requirements at § 482.22, the Joint Commission added a new EP to require that an accredited hospital have a single organized medical staff.
- To meet the requirements at § 482.22(c)(6), the Joint Commission revised its EPs to require that an accredited hospital's bylaws include criteria for determining when privileges are to be granted to individual practitioners.
- To meet the requirements at § 482.23(c)(4), the Joint Commission revised its EPs to require that accredited hospitals have a procedure for reporting transfusion reactions.
- To meet the requirements at § 482.24(b), the Joint Commission revised its EPs to require an accredited hospital to maintain a complete and accurate medical record for each individual patient.
- To meet the requirements at § 482.24(b)(1), the Joint Commission revised its EPs to require accredited hospitals to retain medical records in their original or legally reproduced form for a period of at least 5 years.
- To meet the requirements at § 482.24(c)(2)(i)(A), the Joint Commission revised its EPs to require that accredited hospitals complete and document a medical history and physical examination no more than 30 days before or 24 hours after a patient's admission or registration.
- To meet the requirements at § 482.24(c)(2)(vii), the Joint Commission revised its EPs to require the final progress note for each patient include the outcome of hospitalization, disposition of the case, and provisions for follow-up care.
- To meet the requirements at § 482.25, the Joint Commission revised its EPs to require that an accredited hospital's medical staff develop policies and procedures that minimize drug errors.
- To meet the requirements at § 482.25(a)(1), the Joint Commission added a new EP to require that an accredited hospital retain a full-time, part-time, or consulting pharmacist to develop, supervise, and coordinate all the activities of the pharmacy department or pharmacy service.
- To meet the requirements at § 482.25(b)(6), the Joint Commission revised its EPs to ensure that drug administration errors, adverse drug reactions and incompatibilities are reported to the hospital-wide quality assurance program as appropriate.
- To meet the requirements at § 482.25(b)(7), the Joint Commission revised its EPs to require that an accredited hospital report abuses and losses of controlled substances to the chief executive as appropriate.
- To meet the requirements at § 482.26(b)(3), the Joint Commission revised its survey process to include observation and interview of staff in radiation areas for utilization of exposure meters and exposure meter data.
- To meet the requirements at § 482.26(c)(2), the Joint Commission added a new EP to require an accredited hospital's medical staff to determine the qualifications of the radiology staff.
- To meet the requirements at § 482.28(a)(1)(i), the Joint Commission added a note to its EPs to clarify that the director of dietetic services in an accredited hospital must be a full-time employee responsible for the daily management of dietary services.
- To meet the requirements at § 482.28(b)(3), the Joint Commission added a new EP to require that an accredited hospital make available to all medical, nursing, and food service staff a current therapeutic diet manual approved by the dietician and medical staff.
- To meet the requirements at § 482.42(a), the Joint Commission added a new EP to require that each accredited hospital have an infection control officer responsible for developing and implementing policies governing the control of infections and communicable diseases.

• To meet the requirements at § 482.42(b)(1), the Joint Commission added a new EP to require that an accredited hospital delineate the responsibilities of the chief medical officer, medical staff, and director of nursing, to ensure that problems identified by the infection control officer are addressed and that corrective action plans are successfully implemented.

• To meet the requirements at § 482.45(b)(2), the Joint Commission added the definition of ''organ'' to its glossary.

• To meet the requirements at § 482.51(a)(4), the Joint Commission added a new EP to address the hospital's responsibility to maintain a roster of practitioners specifying the surgical privileges of each practitioner.

• To meet the requirements at § 482.51(b)(2), the Joint Commission revised its EPs to require an accredited hospital to place a properly executed informed consent form in each patient's chart before surgery, except in emergencies.

• To meet the requirements at § 482.51(b)(3), the Joint Commission added a note to its standards to clarify that the hospital must have the necessary resuscitation equipment available in the operating room.

• To meet the requirements at § 482.52(a), the Joint Commission added a new EP to include the requirements for individuals qualified to administer anesthesia in an accredited hospital.

• To meet the requirements at § 482.52(c), the Joint Commission added a new EP to incorporate the permissive exemption from physician supervision of certified registered nurse anesthetists.

• To meet the requirements at § 482.53(a)(2), the Joint Commission added a new EP to require that an accredited hospital's service director and medical staff approve the qualifications, training, functions, and responsibilities of nuclear medicine personnel.

• To meet the requirements at § 482.53(c)(2), the Joint Commission revised its EPs to require an accredited hospital to inspect, test, and calibrate nuclear medicine equipment annually.

• To meet the requirements at § 482.53(d)(3), the Joint Commission added the definition ''radiopharmaceuticals'' to its glossary.

• To meet the requirements at § 482.54(b)(1), the Joint Commission added a new EP to require that an accredited hospital assign responsibility for outpatient services to one individual.

• To meet the requirements at § 488.55(a)(1) and § 482.55(b)(1), the Joint Commission added a new EP to require an accredited hospital's emergency services to be directed and supervised by a qualified member of the medical staff.

• To meet the requirements at § 482.56(a)(2), the Joint Commission revised its EPs to include qualifications for physical therapy, occupational therapy, speech-language pathology, and audiology services when these services are provided by accredited hospitals.

• To render a decision regarding the deemed status of an accredited hospital, The Joint Commission revised its accreditation decision letters to ensure that they are accurate and contain all the required elements for the CMS Regional Office.

• To meet the requirements at § 488.28(a), the Joint Commission updated its guidelines for submission of Evidence of Standards Compliance (ESC) to emphasize that the person responsible for implementation of corrective action and assessment of ongoing compliance must be documented in the ESC.

• To clearly identify whether an identified deficient practice represented condition-level or standard-level noncompliance, the Joint Commission modified its survey report.

• To meet the requirements of section 2728 of the SOM, the Joint Commission modified its policies regarding timeframes for sending an ESC.

• To meet the requirements at section 5075.9 of the SOM, the Joint Commission revised its policies to ensure complaint surveys triaged as non-immediate jeopardy (IJ) high and non-IJ medium are conducted within 45 calendar days.

• To meet the survey process requirements in Appendix A of the SOM, the Joint Commission developed a policy outlining the minimum number of inpatient records required for review during a certification survey.

• To meet the requirements at § 488.3(a), section 2026A of the SOM and Appendix A, the Joint Commission developed a new policy to ensure all areas and locations receiving payment under the Medicare's provider agreement are surveyed for compliance with the conditions of participation independently.

• To meet the requirements at section 2700A of the SOM, the Joint Commission revised its survey activity guide to ensure all deemed status surveys are unannounced.

• To meet the requirements at § 489.18 and section 3210 of the SOM, the Joint Commission revised its policies to state that if an organization acquires a new service, program, or site which requires an extension survey, the survey will be conducted within 6 months, and the results of the survey will immediately impact the accreditation status of the acquiring organization.

To verify the Joint Commission's continued compliance with the provisions of this final notice, we will conduct a follow-up corporate onsite visit and survey observation within 1 year of the effective date of this notice.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that the Joint Commission's requirements for hospitals meet or exceed our requirements. Therefore, we approve the Joint Commission as a national accreditation organization for hospitals that request participation in the Medicare program, effective July 15, 2010 through July 15, 2014.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 15, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–27973 Filed 11–25–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2305–FN]

Medicare and Medicaid Programs; Approval of the Accreditation Commission for Health Care for Deeming Authority for Hospices

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the

Accreditation Commission for Health Care (ACHC) for recognition as a national accreditation program for hospices seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective November 27, 2009 through November 27, 2013.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met. Section 1861 (dd)(1) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice program. Under this authority, the regulations at 42 CFR part 418 specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care. Provider agreement regulations are located in 42 CFR part 489 and regulations pertaining to the survey and certification of facilities are located in 42 CFR part 488.

Generally, in order to enter into an agreement, a hospice facility must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418 of our regulations. Then, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we would ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30 day public comment period. At the end of the 210-day period we must publish a notice in the **Federal Register** of our approval or denial of the application.

III. Provisions of the Proposed Notice

On July 24, 2009 we published a proposed notice (74 FR 36720) announcing ACHC's request for initial approval as a deeming organization for hospices. In this notice, we specified in detail our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of ACHC's application in accordance with the criteria specified in our regulation, which include, but are not limited to the following:

- An onsite administrative review of ACHC's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors, (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of ACHC's accreditation standards to our current Medicare conditions for participation (CoPs).
- A documentation review of ACHC's survey processes to:
  + Determine the composition of the survey team, surveyor qualifications, and the ability of ACHC to provide continuing surveyor training.
  + Compare ACHC's processes to that of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  + Evaluate the ACHC's procedures for monitoring providers or suppliers found to be out of compliance with ACHC program requirements. The monitoring procedures are used only when ACHC identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
  + Assess ACHC's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  + Establish ACHC's ability to provide us with electronic data and reports necessary for effective validation and assessment of ACHC's survey process.
  + Determine the adequacy of staff and other resources.
  + Review ACHC's ability to provide adequate funding for performing required surveys.
  + Confirm ACHC's policies with respect to whether surveys are announced or unannounced.
  + Obtain ACHC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the July 24, 2009 proposed notice (74 FR 36720) also solicited public comments regarding whether ACHC's requirements met or exceeded the Medicare CoPs for hospices. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between ACHC's Standards and Requirements and Medicare's Conditions and Survey Requirements

We compared ACHC's accreditation requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of ACHC deeming application, which were conducted as described in section III of this notice yielded the following:

- ACHC modified its survey report to clearly identify whether an identified deficient practice represented condition level or standard level noncompliance.
- ACHC revised it accreditation decision letters to ensure that they are accurate and contain all of the required elements for the CMS Regional Office to render a decision regarding the deemed status of an accredited hospice.
- ACHC modified its policies regarding timeframes for sending and receiving a plan of correction (PoC) in accordance with section 2728 of the SOM.

• To meet the CMS requirements related to a PoC, ACHC amended its policies to ensure approved PoCs contain all elements specified in section 2728 of the SOM.

• To meet the requirements at § 488.28(a) and section 2726 of the SOM, ACHC developed and implemented new policies that require a written PoC for all deficiencies cited.

• ACHC revised its policies to ensure complaints triaged as immediate jeopardy are investigated within 2 business days of receipt in accordance with the requirements at section 5075.9 of the SOM.

• To meet the requirements at § 418.3, ACHC revised its standards to include the definitions used in the Medicare hospice CoPs.

• To meet the requirements at § 418.52(a)(3), ACHC revised its standards to require that the hospice obtain the patient's or patient's representative signature confirming that he or she received a copy of the notice of rights and responsibilities.

• To meet the requirements at § 418.54(c)(8), ACHC revised its standards to require that the comprehensive assessment consider the patient's need for referrals and further evaluation by appropriate health professionals.

• To meet the requirements at § 418.58(d)(1), ACHC revised its standards to include the requirement that the hospice governing body determine the number and scope of performance improvement projects conducted annually.

• To meet the requirements at § 418.110(c), ACHC revised its standards to ensure the hospice maintains a safe physical environment free of hazards for patients, staff and visitors.

• To meet the requirements at § 418.110(m)(15), ACHC revised its standards to require that hospices document in the patient clinical record: the one hour face to face medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior; a description of the patient behavior and intervention used; alternatives or other less restrictive interventions attempted; the patient condition or symptom(s) that warranted the use of restraint and seclusion; and the patient response to the intervention(s) used, including the rationale for continued use of the intervention.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that ACHC's requirements for hospices meet or exceed our requirements. Therefore, we recognize ACHC as a national accreditation organization for hospices that request participation in the Medicare program, effective November 27, 2009 through November 27, 2013.

V. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

VII. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this final notice.

In accordance with Executive Order 13132, we have determined that this final notice will not have a significant effect on the rights of States, local or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: November 5, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–28010 Filed 11–25–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 General Medical Sciences Special Emphasis Panel; Review of Applications for 'R13' Scientific Conference Grants.

Date: December 10, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Margaret J. Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28413 Filed 11–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, December 10, 2009, 1 p.m. to December 10, 2009, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 18, 2009, 74 FR 59567.

The meeting is cancelled due to the reassignment of the applications.

Dated: November 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28404 Filed 11–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tumor Biomarkers.

Date: December 15, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: December 15, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28396 Filed 11–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1513–N]

Medicare Program; Town Hall Meeting on the Fiscal Year 2011 Applications for New Medical Services and Technologies Add-on Payments and Informational Workshop on the Application Process and Criteria for New Medical Services and Technologies Add-on Payments

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting to discuss fiscal year (FY) 2011 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2011 new medical services and technologies applications meet the substantial clinical improvement criterion.

Additionally, this notice announces an Informational Workshop for all interested parties on the application process and criteria for new medical services and technologies under the IPPS and on the outpatient prospective payment system (OPPS) transitional pass-through payment for drugs, biologicals, and devices and new technology Ambulatory Payment Classification (APC) assignment for new services application processes.

DATES: *Meeting Date:* The Town Hall meeting and the Informational Workshop announced in this notice will be held on Wednesday, February 10, 2010. The Informational Workshop will begin at 9 a.m., and check-in will begin at 8:30 a.m. eastern daylight time (e.d.t.). The Town Hall meeting will begin at 1 p.m. e.d.t. and check-in will begin at 12:30 p.m. e.d.t. Only one check-in is required to enter the building. Participants attending the Informational Workshop will be able to attend the Town Hall meeting without an additional check-in unless they exit the building. In this case, a participant will need to repeat the security procedures and check-in.

Deadline for Registration of Presenters of the Town Hall Meeting: All presenters for the Town Hall meeting, whether attending in person or by phone, must register and submit their agenda item(s) by January 26, 2010.

Deadline for Registration of All Other Participants for the Town Hall Meeting, Participants of the Informational Workshop, and Submitting Requests for Special Accommodations: All other participants for the Town Hall Meeting and participants of the Informational Workshop must register by February 2, 2010. Requests for special accommodations must be received no later than 5 p.m., e.d.t. on February 2, 2010.

ADDRESSES: *Meeting Location:* The Town Hall meeting and Informational Workshop will both be held in the main Auditorium in the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate in the meeting must register by following the on-line registration instructions located *in* section III. of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Registration information and special accommodation requests may also be mailed to the address listed in the **ADDRESSES** section of this notice.

Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Each presenter must submit an agenda item(s) regarding whether a FY 2010 application meets the substantial clinical improvement criterion. Agenda items or written comments, questions, or other statements must not exceed three single-spaced typed pages and must be sent to: Division of Acute Care, New Technology Team, Mailstop C4–07–08, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attention: Michael Treitel.

Agenda items or written comments may also be sent via e-mail to *newtech@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute care hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act

requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the inpatient hospital prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (For a more detailed discussion, see the FY 2002 proposed and final rules (66 FR 22693, May 4, 2001) and the final rule (66 FR 46912, September 7, 2001) respectively.)

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluate a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

++ Reduced mortality rate with use of the device.

++ Reduced rate of device-related complications.

++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

++ Decreased number of future hospitalizations or physician visits.

++ More rapid beneficial resolution of the disease process treatment because of the use of the device.

++ Decreased pain, bleeding or other quantifiable symptoms.

++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1886(d)(5)(K)(viii) of the Act to revise the process for evaluating new medical services and technology applications by requiring the Secretary to do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to our clinical staff as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and alternatives provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2011. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2011 IPPS proposed rule.

II. Town Hall Meeting and Informational Workshop Format

A. Town Hall Meeting Format

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial improvement. This will allow for a discussion of the substantial clinical improvement criteria as it relates to each of the FY 2011 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who would like to present must register and submit their agenda item(s) to the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Comments from participants will be heard after scheduled statements if time permits. Once the agenda is completed, it will be posted on the CMS IPPS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.*

For presenters or participants unable to attend the CMS for the meeting, an open toll-free phone line, (800) 603–1774, is available. Persons who call in will be asked for the conference code by the conference operator. The conference code is ''New Tech.''

In addition, written comments will also be accepted and presented at the meeting if they are received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for CMS consideration. If the comments are to be considered before the publication of the proposed rule, the comments must be received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

B. Informational Workshop Format

In addition, to the statutorily-required Town Hall meeting on whether an IPPS new technology application meets the substantial clinical improvement criteria we will be holding an Informational Workshop on applying for special payment for new medical services and technologies under the IPPS and OPPS. Specifically, for new technology add-on payments under the IPPS, we will discuss each criterion in detail along with other information that will be helpful in guiding an applicant through the new technology add-on payment process. We will also discuss the processes of DRG assignment and requesting new ICD–9 codes under the IPPS. (Information on DRGs can be found on the IPPS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp#TopOfPage* and information on ICD–9–CM coding can be found on our Web site at (*http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/*)

To facilitate the public's knowledge of OPPS application processes for transitional pass-through status of

drugs, biologicals and devices and assignment of new services to New Technology Ambulatory Payment Classification (APCs), the Informational Workshop will also include information on several processes for applying for special payment under the OPPS. One topic concerns the process for applying for a new category of devices for pass-through payment and criteria for evaluation. Interested parties may apply for a new device category, in accordance with section 1833(t)(6) of the Act. As background information, we have posted application and process background information on our Web site at *http://www.cms.hhs.gov/HospitalOutpatientPPS/04_passthrough_payment.asp#TopOfPage.*

Furthermore, under section 1833(t)(6) of the Act interested parties may also apply for transitional pass-through payment for certain new drugs, biological or radiopharmaceutical agents. As background information, we have posted application and process background information on our Web site, *http://www.cms.hhs.gov/HospitalOutpatientPPS/04_passthrough_payment.asp#TopOfPage.* Finally, we provide the opportunity for the public to apply for new services to be placed in New Technology APC groups in the OPPS, in accordance with our criteria and discussion in our November 30, 2001 final rule (66 FR 59897). As background information, we have posted application and process background information on our Web site, *http://www.cms.hhs.gov/HospitalOutpatientPPS/04_passthrough_payment.asp#TopOfPage.* We plan to discuss all three of these OPPS application processes at the Informational Workshop that will be held on February 10, 2010.

The Informational Workshop is open to all interested parties including organizations representing hospitals, physicians, and manufacturers. We encourage all interested parties to attend, especially those who are not familiar with these processes. Individuals who want to attend this Informational Workshop must register by the date specified in the **DATES** section of this notice. Registration information is available in section III. of this notice.

For participants who cannot come to CMS for the meeting, an open toll-free phone line, (800) 603–1774, has been made available. If you are calling in, the operator will ask you for the conference code. The conference code is ''New Tech.''

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial improvement. This will allow for a discussion of the substantial clinical improvement criteria on each of the FY 2011 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who would like to present must register and submit their agenda item(s) to the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Comments from participants will be heard after scheduled statements if time permits. Once the agenda is completed, it will be posted on the CMS IPPS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.*

For presenters or participants unable to attend the CMS for the meeting, an open toll-free phone line, (800) 603–1774, is available. Persons who call in will be asked for the conference code by the conference operator. The conference code is ''New Tech.''

In addition, written comments will also be accepted and presented at the meeting if they are received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for CMS consideration. If the comments are to be considered before the publication of the proposed rule, the comments must be received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

For participants who cannot come to CMS for the meeting, an open toll-free phone line, (800) 603–1774, has been made available. If you are calling in, the operator will ask you for the conference code. The conference code is ''New Tech.''

III. Registration Instructions

The Division of Acute Care in CMS is coordinating registration for both the Town Hall meeting and the Informational Workshop. While there is no registration fee, individuals must register to attend the Town Hall meeting on substantial clinical improvement and for the Informational Workshop (two separate registrations).

Registration may be completed on-line at the following web address: *http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.* Select the links at the bottom of the page ''Register to Attend the New Technology Town Hall meeting'' and ''Register to attend the New Technology Informational Workshop''. After completing the registration, on-line registrants should print the confirmation page and bring it with them to the meeting(s).

If you are unable to register on-line, you may register by sending an email to the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include your name, address, telephone number, email address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

IV. Security, Building, and Parking Guidelines

Because these meetings will be located on Federal property, for security reasons, any persons wishing to attend these meetings must register by close of business on the date listed in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 8:30 a.m., e.d.t. if you are attending the Informational Workshop and no later than 12:30 p.m. if you are attending the town hall meeting so that you will be able to arrive promptly at the appropriate meeting.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support

a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meetings. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting(s).

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 250 registrants.

Authority: Section 503 of Public Law 108–173.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. E9–27971 Filed 11–25–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 11, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Elaine Ferguson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6778, e-mail: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On January 11, 2010, the committee will discuss supplemental drug application (sNDA) 21–742, nebivolol tablets, Forest Laboratories, Inc., for the proposed indication (use) of treatment of chronic heart failure.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 24, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 16, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 17, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 20, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28302 Filed 11–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: November 27, 2009.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD

publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 19, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–28213 Filed 11–25–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed continuation of a collection of information (OMB #1024–0258).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before December 28, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0258), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Carol Mansfield, Ph.D., RTI International, 3040 Cornwallis Rd, Research Triangle Park, NC: or via phone: 919/541–8053, or via e-mail at: *carolm@rti.org.*

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 Eye St., Washington, DC 20005; or via phone at 202/513–7189; or via e-mail *James_Gramann@partner.nps.gov.* You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/.*

Comments Received on the 60-Day Federal Register Notice: The NPS published a 60-Day Notice to solicit public comments on this ICR entitled ''Visitor Surveys for Cape Hatteras National Seashore'' in the **Federal Register** on June 17, 2009, on page 28719. In response to the notice, NPS received a number of comments. The comments and NPS response are summarized below.

(1) Comments supporting or opposing the closure of beaches to beach driving. NPS received a number of comments either supporting or opposing closing the beaches in Cape Hatteras to driving. These comments relate to possible management actions NPS might take, but do not relate to the need for the information collection or the burden of the collection.

(2) Comments on the wording of the questions. NPS received comments on the wording of specific questions. One comment suggested revisions to the description of nesting shorebirds and turtles. The original question used the word ''endangered;'' however this word has a specific legal meaning. The wording was changed to ''protected.''

(3) Comment on additional questions. NPS received a number of comments suggesting additional questions. In response, a question was added on local residents' visitation to Cape Hatteras National Seashore park during 2007. We also added a question about the primary purpose of a visitor's trip.

SUPPLEMENTARY INFORMATION:

Title: Visitor Surveys for Cape Hatteras National Seashore.

Bureau Form Number(s): None.

OMB Number: 1024–0258.

Expiration Date: To be requested.

Type of Request: Revision of a currently approved collection.

Description of Need: The National Park Service (NPS) is requesting renewal of an existing information collection that received emergency approval on May 21, 2009. RTI International, under contract with Cape Hatteras National Seashore, has completed a survey of local businesses under the emergency approval and has begun to conduct a visitor survey at Cape Hatteras National Seashore. The request for a renewal is to continue the visitor survey. The survey gathers information that will be used in the Seashore's planning and rulemaking process for an off-road vehicle (ORV) management plan/environmental impact statement and ORV regulation. The continuation of the visitor survey with the renewal request will allow the NPS to obtain a seasonally representative sample of visitors to Cape Hatteras National Seashore. By having seasonal representation, the NPS will have a more complete picture of visitors and visitors' preferences for park management. The information also will provide input into an economic analysis of potential impacts of ORV management at the park.

Automated Data Collection: No automated data collection will be used. Data will be collected via on-site surveys.

Description of Respondents: Visitors to Cape Hatteras National Seashore, including non-local and local residents.

Estimated Average Number of Respondents: 2,000 (1,200 respondents and 800 non-respondents).

Estimated Average Number of Responses: 2,000 (1,200 respondents and 800 non-respondents).

Estimated Average Burden Hours per Response: 20 minutes for respondents and 2 minutes for non-respondents.

Frequency of Response: 1 time per respondent.

Estimated Total Annual Reporting Burden: 427 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being gathered; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 20, 2009.

Alfred J. Poole,

NPS, Acting Information Collection Clearance Officer.

[FR Doc. E9–28334 Filed 11–25–09; 8:45 am]

BILLING CODE 4310–X6–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2009–N253] [91200–1231–9BPP–L2]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0121; Depredation Orders for Double-Crested Cormorants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on December 31, 2009. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before December 28, 2009.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0121.

Title: Depredation Orders for Double-Crested Cormorants, 50 CFR 21.47 and 21.48.

Service Form Number(s): None.

Type of Request: Extension of a currently approved collection.

Affected Public: Aquaculture producers, States, and tribes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually for reports; ongoing for recordkeeping.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Report take of migratory bird species other than double-crested cormorants (21.47(d)(7); 21.48(d)(7)).	1	1	1 hour	1
Report take of species protected under Endangered Species Act (21.47(d)(8); 21.48(d)(8)).	1	1	1 hour	1
Written notice of intent to conduct control activities (21.48(d)(9)).	12	12	3 hours	36
Report of control activities (21.48(d)(10) and (11))	12	12	20 hours	240
Report effects of management activities (21.48(d)(12))	9	9	100 hours	900
Recordkeeping (21.47(d)(9))	500	500	7 hours	3,500
Totals	535	535		4,678

Abstract: This information collection is associated with regulations implementing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.). Under the MBTA, it is unlawful to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, migratory birds or their parts, nests, or eggs, except as authorized by regulations implementing the MBTA.

The regulations at 50 CFR 21.47 (Aquaculture Depredation Order) authorize aquaculture producers and the U.S. Department of Agriculture (APHIS-Wildlife Services) in 13 States to take double-crested cormorants when the birds are found committing or about to commit depredations on commercial freshwater aquaculture stocks. The regulations at 50 CFR 21.48 (Public Resource Depredation Order) authorize State fish and wildlife agencies, the U.S. Department of Agriculture (APHIS-Wildlife Services), and federally recognized tribes in 24 States to take double-crested cormorants to prevent depredations on the public resources of fish, wildlife, plants, and their habitats.

Both 50 CFR 21.47 and 21.48 impose reporting and recordkeeping requirements on those operating under the depredation orders. We use the information collected to:

- Help assess the impact of the depredation orders on double-crested cormorant populations.
- Protect nontarget migratory birds or other species.
- Ensure that agencies and individuals are operating in accordance with the terms, conditions, and purpose of the orders.
- Help gauge the effectiveness of the orders at mitigating cormorant-related damages.

Comments: On August 13, 2009, we published in the **Federal Register** (74 FR 40835) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on October 13, 2009. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 17, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–28327 Filed 11–25–09; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L19900000 PO0000; OMB Control Number 1004–0025]

Information Collection; Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0025 under the Paperwork Reduction Act. This control number covers paperwork requirements in 43 CFR part 3860, which pertain to mineral patent applications, and in 43 CFR part 3870, which pertain to adverse claims, protests, and conflicts.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before December 28, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0025), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Deery, Solid Minerals Group, at 202–912–7119 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to contact Mr. Deery.

SUPPLEMENTARY INFORMATION:

Title: Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests (43 CFR 3860 and 3870).

OMB Control Number: 1004–0025.

Abstract: This notice pertains to information collections that are necessary to determine whether or not applications for mineral patents should be granted, and to information collections that authorize challenges to such applications. The BLM considers such applications and challenges under the General Mining Law and other statutes that authorize the Secretary of the Interior to regulate the development of mineral deposits on Federal lands. The information collections covered by this notice are found at 43 CFR parts 3860 and 3870, and in the following forms:

- Form 3860–2, Certificate of Title on Mining Claims; and
- Form 3860–5, Application for Survey of Mining Claim.

60-Day Notice: The required 60-day notice was published in the **Federal Register** on June 3, 2009 (74 FR 26726). The public comment period closed on August 3, 2009. We did not receive any comments.

Current Action: This proposal is being submitted to extend the expiration date of November 30, 2009.

Type of Review: 3-year extension.

Affected Public: Individuals, associations, and corporations applying for mineral patents, or seeking to challenge such applications.

Obligation to Respond: Required to obtain or retain benefits.

Annual Responses: 7.

Annual Burden Hours: 256.

Document processing fees are associated with some of these information collections.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0025 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. E9–28437 Filed 11–25–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N224; 40120–1112–0000–F2]

Receipt of Application for Incidental Take Permit for Residential Development, Walton County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of application for incidental take permit (ITP) for a Habitat Conservation Plan (HCP); availability of proposed HCP and environmental assessment (EA); request for comment.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of a proposed HCP, an accompanying ITP application, and an EA related to a proposed development that would take the Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*) on Perdido Key in Walton County, Florida. The HCP analyzes the take of the federally endangered Choctawhatchee beach mouse incidental to construction and occupation of a 13-unit condominium (Project). Will and Sikes, Inc. (Applicant) requests an ITP under the Endangered Species Act of 1973 (Act), as amended. The Applicant's HCP describes the mitigation and minimization measures proposed to address the effects on the species.

DATES: We must receive any written comments on the ITP application, EA, and HCP at our Regional Office (see **ADDRESSES**) on or before December 28, 2009.

ADDRESSES: Documents will be available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: David Dell); or at the Fish and Wildlife Service Field Office, 1601 Balboa Avenue, Panama City, FL 32405 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator (see **ADDRESSES**), telephone: 404/679–7313; or Mr. Ben Frater, Field Office Project Manager, at the Panama City Field Office (see **ADDRESSES**), telephone: 850/769–0552, ext. 248.

SUPPLEMENTARY INFORMATION: We announce the availability of a proposed HCP, accompanying ITP application, and an EA, which analyzes the take of the Choctawhatchee beach mouse incidental to the Project. The applicant requests a 30-year ITP under section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to NEPA regulations (40 CFR 1506.6). Further, we specifically solicit information regarding the adequacy of the HCP per 50 CFR parts 13 and 17.

An assessment of the likely environmental impacts associated with the implementation of the Project, the EA considers the environmental consequences of the no-action alternative and the proposed action. The proposed action alternative is issuance of the ITP and implementation of the HCP as submitted by the Applicant. The HCP covers activities associated with the construction and maintenance of a condominium. Avoidance, minimization, and mitigation measures include a reduced design footprint, on-site land management to maintain use of the site by Choctawhatchee beach mice, and funding off-site habitat acquisition and management.

Public Comments

If you wish to comment, you may submit comments by any one of several methods. Please reference TE206010–0 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Covered Area

The area encompassed under the HCP and ITP application is a 2.65-acre tract of Gulf-front property containing 1.65 acres of suitable, currently undeveloped Choctawhatchee beach mouse habitat. The Project area is located in south-central Walton County, Florida, and includes 300 linear feet of dunes and open beach. Choctawhatchee beach mice historically ranged throughout the Walton and Bay County coastline, but are now restricted to about 15 miles of coastline in the Topsail Hill area in Walton County and Shell Island in Bay County.

Next Steps

We will evaluate these ITP applications, including the HCP and any comments we receive, to determine whether these applications meet the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Endangered Species Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If we determine that the requirements are met, we will issue the ITP for the incidental take of the Choctawhatchee beach mouse.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: October 5, 2009.

Mark Musaus,

Acting Regional Director.

[FR Doc. E9–28369 Filed 11–25–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Mormon Island Auxiliary Dam (MIAD) Modification Project, Sacramento and El Dorado Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Supplemental Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and notice of public meeting.

SUMMARY: Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation), the lead Federal agency and the Sacramento Area Flood Control Agency (SAFCA), the CEQA lead agency, have made available for public review and comment a Draft Supplemental EIS/EIR for the MIAD Modification Project.

The MIAD Modification Project is a feature of the larger Folsom Dam Safety/Flood Damage Reduction (DS/FDR) Project currently underway by Reclamation, the U.S. Army Corps of Engineers (Corps), and the Corps' non-Federal sponsors, the Central Valley Flood Protection Board and SAFCA, to address hydrologic, static, and seismic issues at Folsom Dam and Reservoir. The analysis in the Folsom DS/FDR EIS/EIR considered several methods to modify MIAD to achieve Reclamation's risk standards for dam safety. Subsequent investigations have shown that the preferred alternative's design approaches and construction techniques need to be changed to achieve Reclamation's existing risk standards for dam safety. Specifically, the utilization of jet grouting to stabilize the foundation of MIAD will not meet Reclamation's dam safety standards. The purpose of this Draft Supplemental EIS/EIR is to analyze additional techniques to stabilize the MIAD foundation to meet the existing risk standards for dam safety.

Additionally, the supplement addresses potential environmental effects associated with completing mitigation for the Folsom DS/FDR Project at the Mississippi Bar site. The two mitigation alternatives include the improvement of up to 80 acres of seasonal wetland and riparian habitat and the no action alternative. The environmental effects of the mitigation were not addressed in the previous environmental document as the location for mitigation had not been determined.

DATES: Comments on the MIAD Modification Project Draft Supplemental EIS/EIR should be submitted on or before January 18, 2010.

Two public meetings will be held to provide interested individuals with an opportunity to comment in writing on the MIAD Modification Project Draft Supplemental EIS/EIR. Each public meeting will allow time to review information displays, ask questions, and provide written comments on distributed comment forms:

- Wednesday, December 16, 2009, 6 to 9 p.m., Folsom, CA.
- Thursday, December 17, 2009, 6 to 9 p.m., El Dorado Hills, CA.

ADDRESSES: The public meetings will be held at:

- *Folsom:* Folsom Community Center, 52 Natoma Street, Folsom, CA 95630.
- *El Dorado Hills:* El Dorado Hills Community Services District, 1021 Harvard Way, El Dorado Hills, CA 95762.

Send written comments on the MIAD Modification Project Draft Supplemental EIS/EIR and requests for a compact disk or a bound copy of the Draft Supplemental EIS/EIR to Mr. Matthew See, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630 (e-mail: *msee@usbr.gov;* telephone: 916–989–7198). The MIAD Draft Supplemental EIS/EIR will also be available at: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=3472.*

Copies of the MIAD Modification Project Draft Supplemental EIS/EIR are available for public review at the following locations:

Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225.

Bureau of Reclamation, Mid-Pacific Regional Office Library, 2800 Cottage Way, W–1825, Sacramento, CA 95825–1989.

El Dorado County Library, 345 Fair Lane, Placerville, CA 95667–5699.

Folsom Public Library, 411 Stafford Street, Folsom, CA 95630.

Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.

Roseville Public Library, 311 Vernon Street, Roseville, CA 95678.

Sacramento Central Library, 828 I Street, Sacramento, CA 95814–2589.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew See at 916–989–7198, TDD 916–989–7285, e-mail *msee@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Folsom Facility consists of 12 structures (dams and dikes), that impound the American River forming Folsom Reservoir. As part of their responsibilities, Reclamation and the Corps have determined that the Folsom Facility requires structural improvements to increase overall public safety above existing conditions including addressing dam safety and security issues. Both Reclamation and the Corps share in the responsibility of ensuring that the Folsom Facility is maintained and operated under their respective agency dam safety regulations and guidelines, as defined by Congress. The improvements will enhance the facility's ability to reduce flood damages posed by hydrologic (flood), seismic (earthquake), and static (seepage) events. These events have a low probability of occurrence in a given year; however, due to the large population downstream of Folsom Dam, modifying the facilities is prudent and necessary to improve public safety above current baseline conditions and meet current safety standards.

Reclamation has identified the need for expedited action to reduce hydrologic, static, and seismic risks under its Safety of Dams (SOD) Program and security issues under its Security Program. These identified risks are among the highest risks for all dams in Reclamation's inventory, and the Folsom Facility is among Reclamation's highest priorities within its SOD Program. Both Reclamation and the Corps have conducted engineering studies to identify potential corrective measures for the Folsom Facility to alleviate seismic, static, and hydrologic dam safety issues and flood management concerns. These two Federal agencies have combined their efforts resulting in (1) a Joint Federal Project for addressing Reclamation's dam safety hydrologic risk and the Corps' flood damage red objectives and (2) other stand-alone flood damage reduction and dam safety actions to be completed by the respective agencies in a coordinated manner.

A supplemental EIS/EIR is required to address the potential environmental effects of the newly proposed foundation stabilizing methods. The Draft Supplemental EIS/EIR describes four action alternatives that address the stabilization of both the upstream (water side) and downstream (dry side) foundations of MIAD. The No Action alternative is also included in these analyses. To address the upstream foundation seismic issues, an overlay would be added. To address the downstream foundation seismic issues, the foundation needs to be completely excavated and replaced. The four action alternatives address different methods of excavation and replacement of the downstream foundation.

The MIAD Modification Project Draft Supplemental EIS/EIR discusses the project background, purpose and need, project description and alternatives, and related projects. The Draft Supplemental EIS/EIR addresses the impacts of project construction on aquatic resources, terrestrial vegetation and wildlife, hydrology, water quality, flood control, groundwater, water supply, socioeconomics, cultural resources, soils, minerals, geological resources, visual resources, transportation and circulation, land use, planning and zoning, recreation resources, public services and utilities, air quality, public health and safety, growth inducement, noise, environmental justice, and Indian trust assets.

Special Assistance for Public Meetings

If special assistance is required at the public meetings, please contact Mr. Matthew See, Bureau of Reclamation, at 916–989–7198. Please notify Mr. See as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 19, 2009.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. E9–28370 Filed 11–25–09; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–683]

In the Matter of: Certain MLC Flash Memory Devices and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation To Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 8) granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. 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 August 27, 2009, based on a complaint filed by BTG International, Inc. of West Conshohocken, Pennsylvania (''BTG''). 74 FR. 43723–4 (August 27, 2009). The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 power supplies by reason of infringement of certain claims of U.S. Patent Nos. 5,394,362; 5,764,571; 5,872,735, 6,104,640; and 6,118,692. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named various respondents, including Lenovo Group Limited of Quany Bay, Hong Kong (''Lenovo Group'').

On October 21, 2009, BTG and respondent Lenovo Group filed a joint motion to amend the Complaint and Notice of Investigation to replace Lenovo Group with Lenovo (Singapore) Pte. Ltd (''LSPL''). The motion indicated that the Commission investigative attorney did not oppose the motion. No responses to the motion were filed.

On November 5, 2009, the ALJ issued the subject ID granting the motion, finding that, pursuant to Commission Rule 210.14(b)(1) (19 C.F.R. **210.14(b)(1)), there was good cause to substitute LSPL for Lenovo Group as a respondent. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 23, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28360 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

[OMB Number 1103–0106]

Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: COPS Hiring Recovery Program (CHRP) Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until January 26, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Whiteaker, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the extension of a previously approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* CHRP Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement and public safety agencies that are recipients of a COPS Hiring Recovery Program (CHRP) grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 1046 report respondents can complete the report in an average of 10 minutes per calendar quarter.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 697.333 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 23, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E9–28462 Filed 11–25–09; 8:45 am]

BILLING CODE 4410–AT–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 November 20, 2009, a proposed Consent Decree in *United States* v. *Klockner & Klockner Partnership, Joseph S.*

Klockner, and Daniel Klockner III, Civil Action No. 2:09–cv–05905–FSH–PS, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States seeks, *inter alia,* injunctive relief and cost recovery with respect to the Klockner Source Area at the Rockaway Borough Well Field Superfund Site (''Site'') in Morris County, New Jersey, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.* The complaint in this matter alleges that Klockner & Klockner Partnership (''Klockner & Klockner'') was the owner of the Klockner Source Area during a time period when hazardous substances were disposed and released there and is also the current owner of a portion of the Klockner Source Area. The complaint also alleges that Joseph S. Klockner and Daniel Klockner III, as the general partners of Klockner & Klockner, are jointly and severally liable with Klockner & Klockner for the obligations of Klockner & Klockner. The Consent Decree requires Klockner & Klockner, Joseph S. Klockner, and Daniel Klockner III (the ''Settling Defendants'') to perform the soil remedy selected for the Klockner Source Area (''Operable Unit Three'' for the Site) and reimburse the United States for future response costs relating to the Klockner Source Area. The soil remedy selected for the Klockner Source Area includes soil vapor extraction and excavation and off-site treatment or disposal of soils contaminated with volatile organic compounds or lead at the Klockner Source Area.

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 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. *Klockner & Klockner Partnership, et al.,* D.J. Ref. 90–11–3–923/1.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *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 from the Consent Decree Library, please enclose a check in the amount of $47.00 (25 cents per page reproduction costs of Consent Decree and Appendices) 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. E9–28424 Filed 11–25–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0006]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Revision of a currently approved collection; Law Enforcement Officers Killed or Assaulted.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 26, 2010.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional LEOKA information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Law Enforcement Officers Killed or Assaulted.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: 1–705;

Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, State, Federal and tribal law enforcement agencies.

Brief Abstract: This collection is needed to collect information on law enforcement officers killed or assaulted in the line of duty throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,799 law enforcement agency respondents that submit monthly for a total of 213,588 responses with an estimated response time of 7 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 24,919 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice,

Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 23, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–28463 Filed 11–25–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; ERISA Investment Manager Electronic Registration

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public, and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions incorporated in the regulation pertaining to electronic registration of investment managers under ERISA. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before January 26, 2010.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3(38)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) imposes certain registration requirements on an investment adviser that wishes to be considered an investment manager under ERISA. In 1997, section 3(38) was amended to permit advisers to satisfy the registration requirements by registering electronically with the Investment Adviser Registration Depository (IARD) established and maintained by the Securities Exchange Commission (SEC). The Department promulgated a final regulation (69 FR 52120, Aug. 24, 2004) to implement the statutory change. The final regulation is codified at 29 CFR 2510.3–38. EBSA submitted an ICR requesting OMB approval of the information collection contained in 29 CFR 2510.3–38 when the proposed regulation was published, and OMB approved the information collection under OMB control number 1210–0125. The approval is scheduled to expire on February 28, 2010. The Department intends, following receipt of comments pursuant to this notice, to submit an ICR to OMB requesting an extension of its approval of this information collection. The public is not required to respond to an information collection unless it displays a valid OMB control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

III. Current Actions

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2510.3–38. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Investment Manager Electronic Registration.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0125.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 500.

Responses: 500.

Estimated Total Burden Hours: 1,000.

Estimated Total Burden Cost (Operating and Maintenance): $50,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Dated: November 9, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–28381 Filed 11–25–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request Annual Report for Multiple Employer Welfare Arrangements (Form M–1)

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning a proposed extension of the current approval of an information collection entitled Annual Report for Multiple Employer Welfare Arrangements (Form M–1), contained in the Department's regulation at 29 CFR 2520.101–2, Multiple Employer Welfare

Arrangements and Certain Other Entities that Offer or Provide Medical Care to the Employees of Two or More Employers. A copy of the Department's information collection request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before January 26, 2010.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as Part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. In the interest of assuring compliance with Part 7, section 101(g) of ERISA, added by HIPAA, further permits the Secretary of Labor (the Secretary) to require multiple employer welfare arrangements (MEWAs), as defined in section 3(40) of ERISA, to report to the Secretary in such form and manner as the Secretary might determine. The Department published a final rule providing for such reporting on an annual basis, together with a form (Form M–1) to be used by MEWAs for the annual report. The reporting requirement enables the Secretary to determine whether the requirements of Part 7 of ERISA are being carried out. EBSA submitted an ICR for the information collection in Form M–1 to the Office of Management and Budget (OMB) for review and clearance in connection with publication of the final rule, and OMB approved the information collection under OMB control number 1210–0116. This approval is scheduled to expire on February 28, 2010. After considering any comments received in response to this notice, EBSA intends to submit an ICR to OMB to request continuing approval. The public is not required to respond to an information collection unless it displays a valid control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

This notice requests comments on an extension of OMB's approval of the information collection included in Form M–1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1).

OMB Number: 1210–0116.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 741.

Frequency of Response: Annually.

Responses: 3,718.

Estimated Total Burden Hours: 2,336.

Total Burden Cost (Operating and Maintenance): $143,650.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: November 9, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–28384 Filed 11–25–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Summary Plan Description Requirements Under ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions in the regulation pertaining to summary plan description requirements under ERISA. A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before January 26, 2010.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(b) of the Employee Retirement Income Security Act of 1974 (ERISA) requires the administrator of an employee benefit plan to furnish plan participants and certain beneficiaries with a Summary Plan Description (SPD) that describes, in language understandable to an average plan participant, the benefits, rights, and obligations of participants in the plan.

The information required to be contained in the SPD is set forth in section 102(b) of ERISA. To the extent that there is a material modification in the terms of the plan or a change in the required content of the SPD, section 104(b)(1) of ERISA requires the administrator to furnish participants and specified beneficiaries a summary of material modifications (SMM) or summary of material reductions (SMR). The Department of Labor (Department) has issued regulations providing guidance on compliance with the requirements to furnish SPDs, SMMs, and SMRs. These regulations, which are codified at 29 CFR 2520.102–2, 102–3, and 29 CFR 104b–2 and 104b–3, contain information collections for which the Department has obtained OMB approval under the OMB Control No. 1210–0039. The current approval is scheduled to expire on March 31, 2010, and the Department intends, following receipt of comments pursuant to this notice, to submit an ICR to OMB requesting an extension of its approval of these information collections. The public is not required to respond to an information collection unless it displays a valid control number. No change to the existing ICR is being proposed or made at this time.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

III. Current Actions

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2520.102–2, 102–3, and 29 CFR 104b–2 and 104b–3. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary Plan Description Requirements under ERISA.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0039.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 900,000.

Responses: 50,000,000.

Estimated Total Burden Hours: 1,100,000.

Estimated Total Burden Cost (Operating and Maintenance): $400,000,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Dated: November 9, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–28383 Filed 11–25–09; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors and Four Board Committees

ACTION: Amended notice; changes to the agenda of the Board of Directors meeting.

DATE AND TIME: The Legal Services Corporation (LSC) is announcing an amendment to the notice of the Board of Directors and four of the Board's Committee meetings scheduled for Monday, November 30, 2009 ''Notice''. The Notice was published on November 25, 2009, FR–DOC Number 2009–28333. The amendments to the Notice are as follows: On the agenda of the Board of Directors meeting, item #6, ''*Consider and act on the annual performance evaluation of the Inspector General'' is moved from ''Closed Session'' to ''Open Session''. Also on the Board of Directors Meeting agenda there is a new item added ''Consider and act on proposed use of the LSC President's discretionary fund'' as item #8 (Open Session*). The items currently numbered 8, 9, & 10 are therefore renumbered 9, 10, and 11, respectively. There are no other changes to the announcement cited above.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

PUBLIC OBSERVATION: For all meetings and portions thereof open to public observation, members of the public who are unable to attend but wish to listen to the proceedings may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the presiding Chairman may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 3899506694;
- When connected to the call, please *MUTE* your telephone immediately.

MEETING SCHEDULE

	Time
1. Joint Meeting of the *Audit Committee* and *Finance Committee*	11 a.m.
2. *Governance & Performance Review Committee*	
3. *Search Committee for an Interim LSC President*	
4. *Board of Directors*	

Status of Meetings

Open, except as noted below:

- *Joint Meeting of the Audit & Finance Committees*—A portion of the meeting may be closed to the public pursuant to a vote of the Board of Directors so the committees may consider and perhaps act on recommendations related to how the Corporation may proceed with self-correction of an independent contractor issue and what related actions to take on proposed resolutions concerning LSC's 403(b) Thrift Plan and related provisions of the Employee Handbook. The Committees will also hear a briefing by the Corporation's independent auditors regarding the status of LSC's fiscal year 2009 financial audit and their preliminary findings.[1] A *verbatim* written transcript will be made of the closed session of the meeting. 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)(2) and (9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a) and (g), will not be available for public inspection. A copy of the General Counsel's Certification

[1] Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 and 1622.3.

that, in his opinion, the closing is authorized by law will be available upon request.

• *Search Committee for LSC Interim President*—A portion of the meeting may be closed to the public pursuant to a vote of the Board of Directors so the committee may consider and perhaps act on a recommendation to make to the full Board as to an Interim President for LSC. A *verbatim* written transcript will be made of the closed session of the Committee meeting. 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)(6), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(e), 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.

• *Board of Directors*—A portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on: recommendations on selection of labor counsel to advise and represent the Corporation on union matters; recommendations related to how the Corporation may proceed with self-correction of an independent contractor issue and what related actions to take on the proposed resolutions concerning LSC's 403(b) Thrift Plan and related provisions of the Employee Handbook; and a recommendation on selection of an Interim President for LSC.

A *verbatim* written transcript will be made of the closed session of the Board meeting. 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)(2), (6) and (9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a), (e) and (g), 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.

Matters To Be Considered

Joint Meeting of Audit Committee & Finance Committee; Agenda

Open Session

1. Approval of agenda.

Closed Session

2. Briefing by the auditing firm performing the annual independent audit of LSC on the status of the fiscal year 2009 audit and any preliminary findings.

3. Consider and act on recommendations to make to the Board related to how the Corporation should proceed with self-correction of an independent contractor issue and what related actions to take on proposed resolutions revising LSC's 403(b) Thrift Plan with regard to the minimum hours requirements for participation and related conforming amendments to the LSC Employee Handbook.

Open Session

4. Consider and act on recommendations to make to the Board related to what actions to take on proposed resolutions revising LSC's 403(b) Thrift Plan with regard to the minimum hours requirements for participation, related conforming amendments to the LSC Employee Handbook, and amendments to the LSC Employee Handbook regarding merger of LSC's TDA and 403(b) thrift plans.

5. Consider and act on recommendation to make to the Board regarding proposed use of the LSC President's discretionary fund.

6. Consider and act on other business.

7. Public comment.

8. Consider and act on motion to adjourn meeting

Governance and Performance Review Committee; Agenda

Open Session

1. Approval of agenda.

2. Consider and act on performance review of the Inspector General.

3. Consider and act on other business.

4. Public comment.

5. Consider and act on motion to adjourn meeting.

Search Committee for Interim LSC President; Agenda

Open Session

1. Approval of agenda.

Closed Session

2. Consider and act on a recommendation to make to Board as to an interim President for LSC.

Open Session

3. Consider and act on other business.

4. Public Comment.

5. Consider and act on motion to adjourn meeting.

Board of Directors; Amended Agenda

Open Session

1. Approval of agenda.

2. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under Closed Session.

Closed Session

3. Consider and act on recommendations regarding selection of labor counsel to advise and represent the Corporation on union matters.

4. Consider and act on recommendation as to selection of an interim President for LSC.

5. Consider and act on recommendations related to how the Corporation may proceed with self-correction of an independent contractor issue and related proposed resolutions revising LSC's 403(b) Thrift Plan with regard to the minimum hours requirements for participation and related conforming amendments to the LSC Employee Handbook.

Open Session

6. Consider and act on the annual performance evaluation of the Inspector General.

7. Consider and act on recommendations related to what actions to take on proposed resolutions revising LSC's 403(b) Thrift Plan with regard to the minimum hours requirements for participation, related conforming amendments to the LSC Employee Handbook, and amendments to the LSC Employee Handbook regarding merger of LSC's TDA and 403(b) thrift plans.

8. Consider and act on proposed use of the LSC President's discretionary fund.

9. Public comment.

10. Consider and act on other business.

11. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

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 attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: November 24, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–28568 Filed 11–24–09; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES:

January 19, 2010, 8:30 a.m.–4:30 p.m.
January 20, 2010, 9 a.m.–5 p.m.
January 21, 2010, 8:30 a.m.–11 a.m.

LOCATION: JW Marriott Houston, 5150 Westheimer, Houston, TX 77056.

STATUS:

January 19, 2010, 8:30 a.m.–4:30 p.m.—OPEN.
January 20, 2010, 9 a.m.–5 p.m.—OPEN.
January 21, 2010, 8 a.m.–8:30 a.m.—CLOSED EXECUTIVE SESSION.
January 21, 2010, 8:30 a.m.–11 a.m.—OPEN.

AGENDA: Public Comment Sessions; Emergency Management; Housing; Developmental Disabilities and Bill of Rights Act, Workforce Infrastructure, International Development, National Summit on Disability Policy 2010, United States Marine Corps Research Project, Technology, Reports from the Chairperson and Council Members; Unfinished Business; New Business; Announcements; Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of External Affairs, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: National Council on Disability (NCD) is an independent federal agency, composed of 15 members appointed by the President, by and with the consent of the U.S. Senate.

The purpose of the NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, and that empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

To carry out this mandate we gather public and stakeholder input, including that received at our public meetings held around the country; review and evaluate Federal programs and legislation; and provide the President, Congress and Federal agencies with advice and recommendations.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

Dated: November 18, 2009.

Michael C. Collins,

Executive Director.

[FR Doc. E9–28505 Filed 11–24–09; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

ACTION: Notice.

SUMMARY: The Director, Office of Administration, invites comments on the submission for OMB review, in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR 1320). This notice announces that the NMB has submitted to the Office of Management and Budget a request for clearance of one (1) information collection.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

ADDRESSES: Written comments should be addressed to June D.W. King, Director, Office of Administration, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC 20005 or should be e-mailed to *king@nmb.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (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, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection 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 Record keeping burden. OMB invites public comment.

Dated: November 23, 2009.

June D.W. King,

Director, Office of Administration, National Mediation Board.

Application for Alternative Dispute Resolution (ADR) Services

Frequency: On occasion.

Affected Public: Airline Carriers, Railroads, and Union Officials.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate about 45 annually.

Burden Hours: 9.

Abstract: The Railway Labor Act, 45 U.S.C., 151 a. General Purposes, provides that the purposes of the Act are (1) to avoid any interruption to commerce or to the operation of any carrier engaged therein. * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions, and (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.

In fulfilling its role to administer the Act, the National Mediation Board offers the parties to disputes mediation and arbitration services. On a voluntary basis, training programs in Alternative Dispute Resolution (ADR) and facilitation services are also available. These ADR programs are designed to enhance the bargaining and grievance handling skill level of the disputants and to assist the parties in the resolution of disputes. The impact of these ADR programs is that mediation and arbitration can be avoided entirely or the scope and number of issues brought to mediation or arbitration is significantly reduced.

This collection is necessary to confirm the voluntary participation of the parties in the ADR process. The information provided by the parties is used by the NMB to schedule the parties for ADR training and facilitation. Based on a recent survey of those who participated in the NMB's ADR Programs, 94.6% said they were satisfied with the ADR Programs and said they recommend the program for all negotiators. Collecting the brief information on the Application for ADR Services form allows the parties to voluntarily engage the services of the NMB in the orderly settlement of all disputes and fulfill the purposes of the Act.

Requests for copies of the proposed information collection request should be addressed to Daniel Rainey, Director, Office of Alternative Dispute Resolution Services, National Mediation Board, 1301 K Street, NW., Suite 250 E, Washington, DC 20005 or addressed to the e-mail address *rainey@nmb.gov* or faxed to 202–692–5083. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King, Director, Office of Administration at 202–692–5010 or via e-mail address *king@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–28432 Filed 11–25–09; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0515]

Office of New Reactors; Proposed Standard Review Plan Appendix 18–A on Guidance for Crediting Manual Operator Actions in Diversity and Defense-in-Depth (D3) Analyses

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC staff is soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' (SRP) Appendix 18–A on Guidance for Crediting Manual Operator Actions in Diversity and Defense-in-Depth (D3) Analyses (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092950353). This Appendix defines a methodology for evaluating manual operator action as a diverse means of coping with Anticipated Operational Occurrences and Postulated Accidents that are concurrent with a software Common Cause Failure of the Digital Instrumentation and Control (I&C) Protection System. This Appendix supersedes, and incorporates with limited modifications, the guidance in Section 3 of Digital I&C Interim Staff Guidance (ISG), Digital I&C–ISG–05, Revision 1, Highly Integrated Control Rooms—Human Factors Issues.

The NRC staff issues SRPs to facilitate timely implementation of current staff guidance and to facilitate activities associated with the review of applications for design certification (DC) and combined licenses (COLs) by the Office of New Reactors (NRO). The NRC staff will also incorporate the revised SRP section and Appendix 18–A into the next revisions of Regulatory Guide 1.206 and any related guidance documents.

DATES: Comments must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID: NRC–2009–0515 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2009–0515. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at 301–492–3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Junge, Chief, Operator Licensing and Human Performance Branch, Division of Construction Inspection and Operational Programs, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone at 301–415–7745 or e-mail at *Michael.Junge@nrc.gov*.

SUPPLEMENTARY INFORMATION: This SRP, NUREG–0800, has been prepared to establish criteria that the NRO staff use to evaluate if DC and COL applications meet the NRC's regulations. The SRP is not a substitute for the NRC's regulations, and compliance with it is not required. However, applicants are required to identify differences in design features, analytical techniques, and procedural measures proposed for a facility and corresponding SRP acceptance criteria, and evaluate how the proposed alternatives to the acceptance criteria provide an acceptable method of complying with the NRC's regulations.

The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800*).

The NRC staff is issuing this notice to solicit public comments on proposed Appendix 18–A, which is being issued for the first time. After the NRC staff considers any public comments, it will make a determination regarding proposed Appendix 18–A.

Dated at Rockville, Maryland, this 20th day of November 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–28376 Filed 11–25–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0512]

Receipt of Request for Action

In the Matter of:

Entergy Nuclear Operations, Inc., Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station).	Docket No. 50–293, License No. DPR–35.
Entergy Nuclear Indian Point 2, LLC (Indian Point Nuclear Generating Unit Nos. 1 and 2).	Docket Nos. 50–003, 50–247, and 72–51, License Nos. DPR–5 and DPR–26.

Entergy Nuclear Indian Point 3, LLC (Indian Point Nuclear Generating Unit No. 3).	Docket No. 50–286, License No. DPR–64.
Entergy Nuclear Fitzpatrick, LLC (James A. FitzPatrick Nuclear Power Plant).	Docket Nos. 50–333 and 72–12, License No. DPR–59.
Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station).	Docket Nos. 50–271 and 72–59, License No. DPR–28.
Entergy Nuclear Palisades, LLC (Palisades Nuclear Plant) (Big Rock Point).	Docket Nos. 50–255 and 72–7, License No. DPR–20; Docket Nos. 50–155 and 72–43, License No. DPR–6.

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear Generation Company (Entergy Nuclear) are co-holders of the Facility Operating License, No. DPR–35, which authorizes the possession, use, and operation of the Pilgrim Nuclear Power Station (Pilgrim). Pilgrim is a boiling water nuclear reactor that is owned by Entergy Nuclear and operated by ENO. The facility is located on the western shore of Cape Cod in the town of Plymouth on the Entergy Nuclear site in Plymouth County, Massachusetts.

ENO and Entergy Nuclear Indian Point 2, LLC (ENIP2) are co-holders of the Facility Operating License, No. DPR–5, which authorizes the possession of the Indian Point Nuclear Generating Unit No. 1 (IP1). IP1 is a pressurized water nuclear reactor that is owned by ENIP2 and maintained by ENO. IP1 was permanently shut down in 1974 and placed in a safe storage condition pending decommissioning. The facility is located in Westchester County, New York.

ENO and ENIP2 are co-holders of the Facility Operating License, No. DPR–26, which authorizes the possession, use, and operation of the Indian Point Nuclear Generating Unit No. 2 (IP2). ENO and Entergy Nuclear Indian Point 3, LLC (ENIP3) are co-holders of the Facility Operating License, No. DPR–64, which authorizes the possession, use, and operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). IP2 and IP3 are both pressurized water nuclear reactors that are owned by ENIP2 and ENIP3, respectively, and operated by ENO. The facilities are located in Westchester County, New York.

ENO and Entergy Nuclear FitzPatrick, LLC (EN–FitzPatrick) are co-holders of the Facility Operating License, No. DPR–59, which authorizes the possession, use, and operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a boiling water nuclear reactor that is owned by EN–FitzPatrick and operated by ENO. The facility is located in Scriba, Oswego County, New York.

ENO and Entergy Nuclear Vermont Yankee, LLC (EN–Vermont Yankee) are co-holders of the Facility Operating License, No. DPR–28, which authorizes the possession, use, and operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee). Vermont Yankee is a boiling water nuclear reactor that is owned by EN–Vermont Yankee and operated by ENO. The facility is located in the town of Vernon, Windham County, Vermont.

ENO and Entergy Nuclear Palisades, LLC (EN–Palisades) are co-holders of the Renewed Facility Operating License, No. DPR–20, which authorizes the possession, use, and operation of the Palisades Nuclear Plant (Palisades). Palisades is a pressurized water nuclear reactor that is owned by EN–Palisades and operated by ENO. The facility is located in Van Buren County, Michigan.

ENO and EN–Palisades are co-holders of the Facility Operating License, No. DPR–06, which authorizes the possession of Big Rock Point. Big Rock Point is an independent spent fuel storage installation (ISFSI) that is owned by EN–Palisades and operated by ENO. The facility is located in Charlevoix County, Michigan.

II

The NRC's Orders dated July 28, 2008, consented to the indirect transfer of control of the licenses of the above facilities pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations in connection with a proposed corporate restructuring and establishment of Enexus Energy Corporation. By its terms, the Orders of July 28, 2008, would become null and void if the license transfers were not completed by July 28, 2009, unless upon application and for good cause shown, such date was extended by the Commission.

By letter dated May 15, 2009, as supplemented by letter dated May 29, 2009, ENO, acting on behalf of itself, Entergy Nuclear, ENIP2, ENIP3, EN–FitzPatrick, EN–Vermont Yankee, and EN–Palisades, submitted a request for an extension of the effectiveness of the Orders of July 28, 2008, such that they would remain effective until January 28, 2010. By Order dated July 24, 2009, the effectiveness of the Orders dated July 28, 2008, was extended through January 28, 2010. Similarly, by its terms, the Orders of July 28, 2008, become null and void if the license transfers are not completed by January 28, 2010, unless upon application and for good cause shown, such date is extended by the Commission.

By letter dated November 3, 2009, ENO, acting on behalf of itself, Entergy Nuclear, ENIP2, ENIP3, EN–FitzPatrick, EN–Vermont Yankee, and EN–Palisades, submitted a further request for an extension of the effectiveness of the Orders of July 28, 2008, such that they would remain effective through August 1, 2010, in order to allow ample time for completion of the proposed corporate restructuring.

III

Notice is hereby given that by letter dated November 3, 2009, ENO, acting on behalf of itself, Entergy Nuclear, ENIP2, ENIP3, EN–FitzPatrick, EN–Vermont Yankee, and EN–Palisades, has requested that the NRC take action to extend the effectiveness of the Orders of July 28, 2008, such that they would remain effective through August 1, 2010. The NRC staff is currently reviewing this request.

IV

A copy of this request is available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.Resource@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 18th day of November 2009.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28379 Filed 11–25–09; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Customer Satisfaction Surveys and Focus Groups

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information consisting of customer service focus groups and surveys (OMB control number 1212–0053; expires December 31, 2009). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 28, 2009.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202 395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1 800 877–8339 and ask to be connected to 202 326–4040.) The request is also available at *http://www.reginfo.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202 326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1 800 877–8339 and ask to be connected to 202 326–4024.)

SUPPLEMENTARY INFORMATION: 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.

PBGC is requesting that OMB extend its approval, for a three-year period, of a generic collection of information consisting of customer satisfaction focus groups and surveys (OMB No. 1212–0053; expires December 31, 2009). The information collection will further the goals of Executive Order 12862, Setting Customer Service Standards, which states the Federal Government must seek to provide ''the highest quality of service delivered to customers by private organizations providing a comparable or analogous service.''

PBGC uses customer satisfaction focus groups and surveys to find out about the needs and expectations of its customers and assess how well it is meeting those needs and expectations. By keeping these avenues of communication open, PBGC can continually improve service to its customers, including plan participants and beneficiaries, plan sponsors and their affiliates, plan administrators, pension practitioners, and others involved in the establishment, operation and termination of plans covered by PBGC's insurance program. Because the areas of concern to PBGC and its customers vary and may quickly change, it is important that PBGC have the ability to evaluate customer concerns quickly by developing new vehicles for gathering information under this generic approval. The focus groups and surveys will provide important information on customer attitudes about the delivery and quality of agency services and will be used as part of an ongoing process to improve PBGC programs.

Participation in the focus groups and surveys will be voluntary. PBGC estimates that the annual burden for this collection of information will total 710 hours for 2,000 respondents. PBGC further estimates that the cost to respondents per burden hour will average $72, resulting in a total cost of $51,120 ($72 × 710). PBGC will consult with OMB regarding each specific information collection during the approval period.

PBGC published in the **Federal Register** a notice of intention to request extension of OMB approval of this collection. 74 FR 40244 (August 11, 2009). No comments were received in response to the notice.

Issued at Washington, DC, this 19th day of November 2009.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E9–28165 Filed 11–25–09; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–11 and CP2010–11; Order No. 345]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due: December 7, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On November 17, 2009, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Product List.[1] The Postal Service asserts that Inbound Air Parcel Post is a competitive product within the meaning of 39 U.S.C. 3632(b)(3).

The Postal Service states that prices and classifications underlying these rates are supported by Governors' Decision No. 09–15.[2] *Id.* at 1–2. This

[1] Request of the United States Postal Service to Add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Products List, Notice of Establishment of Prices and Classifications Not of General Applicability for Inbound Air Parcel Post at UPU Rates Established in Governors' Decision No, 09–15, and Application for Non-Public Treatment of Materials Filed Under Seal, November 17, 2009 (Request).

[2] The Request and Governors' Decision both note that the classification for Inbound Air Parcel Post was originally proposed by the Postal Service for the Mail Classification Schedule language in response to PRC Docket No. RM2007–1, Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43). *Id.* at 1.

Request has been assigned Docket No. MC2010–11.

The Postal Service states that Governors' Decision No. 09–15 establishes the prices for Inbound Air Parcel Post at UPU Rates and the changes in classification necessary to implement those prices. *Id.* at 3. The rates authorized by Governors' Decision No. 09–15 are inward land rates when there is no contractual relationship with the tendering postal operator at the highest possible inward land rate eligible for the United States under the Parcel Post regulations. *Id.* These rates are assigned Docket No. CP2010–11.

Request. In support of its Request, the Postal Service filed the following materials: (1) An application for non-public treatment of pricing and supporting documents filed under seal;[3] (2) a Statement of Supporting Justification as required by 39 CFR 3020.32;[4] (3) a redacted version of Governors' Decision No. 09–15 establishing prices and classifications for Inbound Air Parcel Post at UPU Rates, certification of the Governors' vote, a certification of compliance with 39 U.S.C. 3633 (a), proposed Mail Classification Schedule (MCS) language, and a Management Analysis of Inbound Air Parcel Post at UPU Rates.[5]

Air parcels comprise inbound parcels eligible to receive transportation by air rather than surface. Governors' Decision No. 09–15 at 2. The Postal Service indicates that the United States receives both air and surface parcels from foreign postal administrations which compensate the Postal Service for delivery of these parcels in the United States. Request at 2. It maintains that it has negotiated separate agreements for parcel rates with certain foreign posts, but most compensate it at the United States default rates for inbound parcel delivery. *Id.* The default rates are known as inward land rates. The Postal Service notes that inward land rates are set according to formulas in the UPU Parcel Post Regulations which constitute international law. *Id.* More specifically, the UPU Postal Operations Council sets rates.[6] The Postal Service states that UPU Parcel Post Regulations require that rates are based on a percentage of each member's inward land rate in 2004. *Id.* at 3. UPU members may qualify for percentage ''bonuses'' to their base rate based upon their provision of certain value-added services.[7] *Id.* The Postal Service states it is responsible for gathering information that the UPU Postal Operations Council uses to calculate the rates including completion of a questionnaire on service bonus eligibility, and submission of annual inflation information from the Consumer Price Index for All Urban Consumers. *Id.* It explains that the UPU uses this information from the member posts and publishes an annual notice in the fall establishing the postal administration's parcel rates for the following year. *Id.*

The Postal Service states that because of the unique situation of setting inward land rates, it chose to establish rates for inbound air parcels by reference to the Universal Postal Convention. *Id.*

In the Statement of Supporting Justification, Brian Hutchins, Manager, International Postal Relations, asserts that adding Inbound Air Parcel Post at UPU Rates to the competitive product list improves the Postal Service's competitive posture, will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 2. Thus, Mr. Hutchins contends there will be no issue of subsidization of competitive products by market dominant products as a result of this product addition. *Id.*

W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Request, Attachment 3. He asserts that the prices for Inbound Air Parcel Post at UPU Rates ''should cover its attributable costs and preclude the subsidization of competitive products by market dominant products.'' *Id.*

The Postal Service filed much of the supporting materials under seal. In its Request, the Postal Service maintains that certain portions of Governors' Decision 09–15 and related financial information should remain confidential including portions of the management financial analysis of Inbound Air Parcel Post at UPU Rates and the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. Request at 2. Prices and classification changes established in Governors' Decision No. 09–15 are scheduled to take effect January 1, 2010. Governors' Decision No. 09–15 at 2.

[3] Attachment 1 to the Request.

[4] Attachment 2 to the Request.

[5] Attachment 3 to the Request.

[6] The UPU Postal Operations Council is a designated body of the UPU which is responsible for rate setting.

[7] The Postal Service states that services such as ''track and trace, home delivery, published delivery standards, and use of a common inquiry system'' qualify UPU members for bonuses. *Id.* Members may also seek an inflation-related adjustment to the base rate which is capped at 5 percent per year.

II. Notice of Filings

The Commission establishes Docket Nos. MC2010–11 and CP2010–11 for consideration of the Request pertaining to the proposed Inbound Air Parcel Post at UPU Rates product and the related rates and classifications, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than December 7, 2009. The public portions of these filings can be accessed via the Commission's Web site *http://www.prc.gov*.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2010–11 and CP2010–11 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 7, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–28377 Filed 11–25–09; 8:45 am]

BILLING CODE 7710–FW–S

UNITED STATES POSTAL SERVICE

Board of Governors; Sunshine Act Meeting; Notice

Board Votes To Close December 8, 2009, Meeting

At its closed session meeting on November 12, 2009, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting to be held on December 8, 2009, in Washington, DC, via teleconference. The

Board determined that no earlier public notice was possible.

Items Considered

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting is properly closed under the Government in the Sunshine Act.

Contact Person For More Information

Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–28587 Filed 11–24–09; 4:15 pm]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before January 26, 2010.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandy Johnston, Program Analyst, Office Financial Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandy Johnston, Program Analyst, 202–205–7528, *sandra.johnston@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 7(a) of the Small Business Act (15 U.S.C.) subsection 626(a) authorizes the Small Business Administration to guaranty loans in the SBA Express and Pilot Loan Programs. The regulations covering these and other loan programs at 13 CFR part 120 require certain information from loan applicants and lenders. These forms are the means of collecting the information.

Title: ''SBA Express and Pilot Loan Programs (Export Express, Community Express and Patriot Express).''

Description of Respondents: Small Business Clients.

Form Numbers: 1919, 1920SX, A, B, C, 2237, 2238.

Annual Responses: 98,200.

Annual Burden: 52,474.

SBA collects loan status information on all guaranteed loans all lenders with at least one guaranteed loan outstanding. The information is used to track lender portfolio performance and to model program subsidy rates.

Title: ''Lenders Disbursement & Collection Report.''

Description of Respondents: Eligible Dealers associated with the Dealer floor plan.

Form Number: 1502R.

Annual Responses: 300.

Annual Burden: 140.

The seller of a loan or pool certificate must disclose the information on this form Including a constant annual prepayment rate based upon the seller's analysis of the prepayments histories of SBA guaranteed loans with similar maturities and additional disclosure information on the terms conditions and yield of the security.

Title: ''Form of detached assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate.''

Description of Respondents: Secondary market participants.

Form Number: 1088.

Annual Responses: 6,500.

Annual Burden: 9,750.

FOR FURTHER INFORMATION CONTACT: Martin Gold, Deputy National Ombudsman, 202–205–7549, *martin.gold@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Regulatory Enforcement Fairness Act of 1966, 15 U.S.C. 657(b)(2)(B), requires the SBA National Ombudsman to establish a means for SBA to receive comments on regulatory and compliance actions. This one-page form covers any written narrative submitted by a small entity to explain disagreement with a Federal agency's action. The Ombudsman uses it to obtain the agency's response, encourage a fresh look by the agency at a high level, and build a more small business-friendly regulatory environment.

Title: ''Federal Agency Comment Form.''

Description of Respondents: Small Business Owners and Farmers.

Form Number: 1993.

Annual Responses: 400.

Annual Burden: 300.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Program Analyst, 202–619–1816, *rachel.newman-karton@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Development Centers (SBDC) must provide semi-annual financial and programmatic reports outlining accomplishments.

Title: ''Federal Cash Transaction Report, Financial Status Report, Program Income Report, Narrative Program Report.''

Description of Respondents: SBDC Directors.

Form Number's: SF 269, SF 272, SBA Form 2113.

Annual Responses: 126.

Annual Burden: 8,568.

FOR FURTHER INFORMATION CONTACT: LeAnn Delaney, Deputy Associate Administrator for Business Development, 202–205–6731, *leann.delaney@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Respondents are small businesses that are seeking 8(a) or Small Disadvantaged Business certification by the SBA. SBA uses the information collected to make a determination on the eligibility for certification of the applicant and/or their suitability to participate in the 8(a) Business Development Program.

Title: ''Application for 8(a) Business Development (BD) and Small Disadvantage Business (SDB) Certification.''

Description of Respondents: Eligible Small Disadvantage Businesses & 8(a) businesses.

Form Number's: 1010, 1010–IND, 1010–AIT, 1010–ANC, 1010–CDC, 1010–NHO, 1010–REP, 1010–RECERT and 1010C.

Annual Responses: 9,971.

Annual Burden: 36,210.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–28382 Filed 11–25–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11932 and # 11933]

Puerto Rico Disaster # PR–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Puerto Rico dated 11/20/2009.

Incident: Caribbean Petroleum Corporation Explosion.

Incident Period: 10/28/2009.

Effective Date: 11/20/2009.

Physical Loan Application Deadline Date: 01/19/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 08/20/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities: Catano.

Contiguous Municipalities: Puerto Rico Bayamon, Guaynabo, San Juan, Toa Baja.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 11932 4 and for economic injury is 11933 0.

The Commonwealth which received an EIDL Declaration # is Puerto Rico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 20, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–28385 Filed 11–25–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28998; File No. 812–13636]

Pioneer Floating Rate Trust and Pioneer High Income Trust; Notice of Application

November 20, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(a)(1)(A) and 18(a)(1)(B) of the Act.

APPLICANTS: Pioneer Floating Rate Trust and Pioneer High Income Trust (each, an ''Applicant'' and collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order (''Order'') granting an exemption from sections 18(a)(1)(A) and 18(a)(1)(B) of the Act for a period from the date of the Order until October 31, 2010. The Order would permit each Applicant to issue or incur debt that would be used to redeem all or a portion of the auction market preferred shares (''AMPS'') that it issued prior to February 1, 2008 and that are outstanding at the time of such issuance or incurrence of debt (''post-Order debt''), and to refinance such post-Order debt, subject to the 200% asset coverage requirement ordinarily applicable to a senior security that is stock. The Order also would permit each Applicant to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that any such post-Order debt has asset coverage of at least 200% after deducting the amount of such transaction.

FILING DATES: The application was filed on February 27, 2009, and amended on August 25, 2009 and November 19, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Dorothy E. Bourassa, Esq., Pioneer Investment Management, Inc., 60 State Street, Boston, MA 02109–1820.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Applicant is organized as a Delaware statutory trust and is registered under the Act as a non-diversified closed-end management investment company. Each Applicant is advised by Pioneer Investment Management, Inc. and has issued and outstanding a class of common shares and a class of one or more series of AMPS.

2. Applicants state that they issued their AMPS for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, they seek to enhance the investment return available to the holders of their common shares by earning a rate of portfolio return (which includes the return obtained from securities that are purchased from the proceeds of AMPS offerings) that exceeds the dividend rate that each Applicant pays to the AMPS holders. Applicants represent that the AMPS

holders are entitled to receive a stated liquidation preference amount of $25,000 per share (plus any accumulated but unpaid dividends) in any liquidation, dissolution, or winding up of the relevant Applicant before any distribution or payment to holders of the Applicant's common shares. They state that dividends declared and payable on their AMPS have a similar priority over dividends declared and payable on their common shares. In addition, Applicants state that their AMPS are ''perpetual'' securities and that Applicants are not required to redeem them so long as certain asset coverage tests are met. Further, Applicants state that their AMPS are redeemable at each Applicant's option.

3. Applicants state that prior to February 2008, dividend rates on the AMPS for each dividend period were set at the market clearing rate determined through an auction process that brought together bidders, who sought to buy AMPS, and AMPS holders, who sought to sell AMPS. Applicants represent that each Applicant's Statement of Preferences setting forth the terms and conditions of the AMPS (the ''Statement of Preferences'') provides that if an auction fails to clear (because of an imbalance of sell orders over bids), the dividend payment rate over the next dividend period is set at a specified maximum applicable rate (the ''Maximum Rate'') determined by reference to a short-term market interest rate (such as LIBOR or a commercial paper rate). Applicants state that an unsuccessful auction is not a default; the relevant Applicant continues to pay dividends to all AMPS holders, but at the specified Maximum Rate rather than a market clearing rate. Applicants represent that they experienced no unsuccessful auctions prior to February 2008.

4. Applicants state that if investors did not purchase all of the AMPS tendered for sale at an auction prior to the failure of the auction market, dealers historically would enter into the auction and purchase any excess shares to prevent the auction from failing. Applicants represent that this auction mechanism had generally provided readily available liquidity to holders of AMPS for more than twenty years. Applicants state that they understand that many investors may have invested short-term cash balances in AMPS believing they were safe short-term investments and, in many cases, the equivalent of cash. Applicants state that in February 2008, the financial institutions that historically provided ''back stop'' liquidity to AMPS auctions stopped participating in them and the auctions began to fail. Applicants further state that, beginning in February 2008, Applicants experienced auction failures due to an imbalance between buy and sell orders. Applicants believe that there is no established secondary market that would provide holders of the Applicants' AMPS with the liquidation preference of $25,000 per share. Applicants state that neither of the Applicants would be able to replace its AMPS entirely with new debt without the Order providing temporary relief from the 300% asset coverage test. As a result, Applicants state that there is currently no reliable mechanism for holders of their AMPS to obtain liquidity, and believe that the current lack of liquidity is causing distress and creating severe hardship for holders of their AMPS.

5. Applicants seek relief for a temporary period from the date on which the Order is granted until October 31, 2010 (''Exemption Period''). The proposed replacement of AMPS with debt would provide liquidity for holders of the AMPS, while Applicants continue their diligent efforts to obtain a more permanent form of financing, such as a new type of senior security that is equity.[1] Applicants submit that the gradual reduction of leverage through the use of proceeds of any common share issuances or the development of an alternative form of preferred stock might take several months, if at all, after the Order has been issued. Applicants state that it is uncertain when, or if, the securities and capital markets will return to conditions that would enable the Applicants to achieve compliance with the asset coverage requirements that would apply in the absence of the Order. Given the uncertainty and the current and continuing unsettled state of the securities and capital markets, applicants believe that the Exemption Period is reasonable and appropriate. Each Applicant's incurrence of debt to redeem its AMPS would be subject to approval by the Applicant's board of trustees (''Board'').

Applicants' Legal Analysis

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless the class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.[2]

2. Section 18(a)(1)(B) prohibits a registered closed-end investment company from declaring a dividend or any other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300% immediately after deducting the amount of such dividend, distribution or purchase price.[3] Section 18(a)(2)(B) prohibits a registered closed-end investment company from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request that the Commission issue an Order under

[1] *See, e.g.,* Eaton Vance Management, SEC No-Action Letter (June 13, 2008) (permitting the issuance of ''liquidity protected preferred shares'' to supplement or replace Eaton Vance funds' auction rate preferred stock).

[2] Section 18(h) of the Act defines asset coverage of a class of senior security representing an indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of the preferred stock of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the aggregate amount the class of senior security would be entitled to on involuntary liquidation.

[3] An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. *See* section 18(a)(1)(B) of the Act. Further, section 18(g) of the Act provides, among other things, that ''senior security,'' for purposes of section 18(a)(1)(B), does not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed.

section 6(c) of the Act to exempt each Applicant from the 300% asset coverage requirements set forth in sections 18(a)(1)(A) and (B) of the Act. Specifically, Applicants seek relief to permit each Applicant, for the Exemption Period, to issue or incur post-Order debt for the purpose of redeeming all or a portion of its AMPS that were issued prior to February 1, 2008 and that are outstanding at the time of such issuance or incurrence, as well as any refinancing of such debt until the expiration of the Exemption Period, subject to asset coverage of 200% ordinarily applicable to a senior security that is stock, rather than the asset coverage of 300% ordinarily applicable to a senior security constituting indebtedness. Applicants also seek relief to permit each Applicant to declare dividends or any other distributions on, or purchase, capital stock during the Exemption Period, provided that any such post-Order debt has asset coverage of at least 200% after deducting the amount of such transaction. Applicants state that, except as permitted under the Order, the Applicants would meet all of the asset coverage requirements of section 18(a) of the Act. In addition, Applicants state that within the Exemption Period each Applicant that borrows in reliance on the Order will either pay down or refinance the post-Order debt so that the Applicant would, upon expiration of the Exemption Period and thereafter, have asset coverage of at least 300% for each class of senior security representing indebtedness to the extent required by the Act.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

6. Applicants note that the illiquidity of AMPS is a unique, exigent situation that is posing severe hardships on AMPS holders. Applicants represent that the proposed replacement of their AMPS with debt would provide liquidity for the Applicants' AMPS holders while the Applicants continue their efforts to obtain a more permanent form of financing (such as through the issuance of preferred equity-based instruments) that fully complies with the asset coverage requirements of section 18.[4]

7. Applicants represent that the Order would help avoid the potential harm to common shareholders that could result if the Applicants were to deleverage their portfolios in the current difficult market environment [5] or that could result if a reduction in investment return reduced the market price of common shares. Applicants also state that the Order would permit Applicants to continue to provide their common shareholders with the enhanced returns that leverage may provide.

8. Applicants believe that the interests of both classes of the Applicants' current investors would be well served by the requested order—the AMPS holders because they would achieve the liquidity that the market currently cannot provide (as well as full recovery of the liquidation value of their shares), and the common shareholders because the adverse consequences of forced deleveraging would be avoided and each Applicant's investment return would be enhanced to the extent that the cost of the new form of leverage is lower than the cost of continuing to pay the Maximum Rate on their outstanding AMPS.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in rule 144A(a)(1) under the Securities Act of 1933) who would be capable of assessing the risk associated with the transaction. Applicants also state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Applicants' common shares because the relief is temporary and the Applicants would be no more highly leveraged if they replace the existing AMPS with borrowing.[6] Applicants also state that the proposed liquidity solution would not make Applicants' capital structure more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants state that the current state of the credit markets, which has affected their AMPS, is an historic event of unusual severity, which requires a creative and flexible response on the part of both the public and private sectors. Applicants believe that these issues have created an urgent need for limited, quick, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each Applicant that borrows subject to 200% asset coverage under the Order will do so only if such Applicant's Board, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), shall have determined that such borrowing is in the best interests of such Applicant, its common shareholders, and its AMPS shareholders. Each Applicant shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such determination, and the basis of such determination.

2. Upon expiration of the Exemption Period, each Applicant will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of an Applicant that has borrowed in reliance on the Order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Trustees) regarding and assessing the efforts that the Applicant has undertaken, and the progress that the Applicant has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 by the expiration of the Exemption Period. The Board, including a majority of the Independent Trustees, will make such adjustments as it deems necessary or appropriate to ensure that the

[4] *See supra* note 1.

[5] Applicants state that each Applicant invests a portion of its assets in either senior securities loans or preferred securities. Applicants believe that it is difficult to sell such securities in the current market because the liquidity of that market has been reduced in substantial part as a result of the market makers' own impaired capital positions. Applicants thus believe that it would be disadvantageous to sell these portfolio securities in the current market.

[6] Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to deleverage, which could be disadvantageous to the portfolio's common shareholders.

Applicant comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Applicant will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28352 Filed 11–25–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28999]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 20, 2009.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 2009. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 2009, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Nicholas-Applegate Fund, Inc. [File No. 811–5019]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 17, 2009, applicant transferred its assets to Jennison Mid-Cap Growth Fund, Inc., based on net asset value. Expenses of $112,056 incurred in connection with the reorganization were paid by applicant and Jennison Associates LLC, the acquiring fund's subadviser.

Filing Dates: The application was filed on September 3, 2009, and amended on October 19, 2009 and November 10, 2009.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

BlackRock Insured Municipal 2008 Term Trust, Inc. [File No. 811–6721];

BlackRock California Insured Municipal 2008 Term Trust, Inc. [File No. 811–7090];

BlackRock Florida Insured Municipal 2008 Term Trust, Inc. [File No. 811–7092];

BlackRock New York Insured Municipal 2008 Term Trust, Inc. [File No. 811–7094]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 24, 2009, each applicant made a final liquidating distribution to its shareholders, based on net asset value. Each applicant had issued preferred shares, which were redeemed prior to the liquidating distributions. Expenses of $15,500, $11,500, $11,500 and $11,500, respectively, incurred in connection with the liquidations were paid by applicants.

Filing Dates: The applications were filed on March 2, 2009, and amended on October 29, 2009.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

The Kensington Funds [File No. 811–21316]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 12, 2009, applicant transferred its assets to corresponding series of the Forward Funds, based on net asset value. Expenses of approximately $253,500 incurred in connection with the reorganization were paid by Kensington Investment Group, Inc., applicant's investment adviser, and Forward Management, LLC, investment adviser and sponsor of the acquiring fund.

Filing Dates: The application was filed on September 25, 2009, and amended on October 23, 2009.

Applicant's Address: 4 Orinda Way, Suite 200C, Orinda, CA 94563.

Oppenheimer International Value Trust [File No. 811–21369]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 11, 2008, applicant transferred its assets to Oppenheimer Quest International Value Fund, based on net asset value. Expenses of $58,790 incurred in connection with the reorganization were paid by OppenheimerFunds, Inc., investment adviser to applicant and the surviving fund.

Filing Dates: The application was filed on September 3, 2009, and amended on October 19, 2009 and November 4, 2009.

Applicant's Address: 6803 S Tucson Way, Centennial, CO 80112.

Janus Adviser Series [File No. 811–9885]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 6, 2009, applicant transferred its assets to Janus Investment Fund, based on net asset value. Expenses of approximately $6,922,758 incurred in connection with the reorganization were paid by Janus Capital Management LLC, applicant's investment adviser.

Filing Date: The application was filed on November 10, 2009.

Applicant's Address: 151 Detroit St., Denver, CO 80206.

Allianz RCM Global EcoTrends SM Fund [File No. 811–21975]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 2, 2008, applicant transferred its assets to a corresponding series of Allianz Funds Multi-Strategy Trust, based on net asset value. Expenses of approximately $300,725 incurred in connection with the reorganization were paid by Allianz Global Investors Fund Management LLC, applicant's investment adviser.

Filing Date: The application was filed on November 10, 2009.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

First Trust Tax-Advantaged Preferred Income Fund [File No. 811–21876]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an

investment company. On July 30, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Payment was made on applicant's senior securities at the liquidation preference per share in accordance with their terms. Expenses of $57,389 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on October 22, 2009.

Applicant's Address: 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

PIMCO Municipal Advantage Fund Inc. [File No. 811–7532]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 24, 2009, applicant redeemed its auction rate preferred shares at the $50,000 liquidation preference plus accrued and unpaid dividends. On August 31, 2009, applicant made a final liquidating distribution to its common shareholders, based on net asset value. Expenses of approximately $130,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on November 2, 2009.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Post/Claymore High Yield Fund [File No. 811–21696];

Claymore Municipal High Income Fund [File No. 811–21706];

Claymore S&P Equity Long/Short Index Fund [File No. 811–21747];

Dreman/Claymore Enhanced Opportunity Fund [File No. 811–22042]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on October 28, 2009.

Applicants' Address: 2455 Corporate West Dr., Lisle, IL 60532.

Government Securities Delaware LLC [File No. 811–10181]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 17, 2009, applicant made a final liquidating distribution to its unitholders, based on net asset value. Expenses of approximately $30,000 incurred in connection with the liquidation were paid by Merrill Lynch Pierce Fenner & Smith Incorporated, applicant's administrator.

Filing Dates: The application was filed on August 19, 2009, and amended on October 30, 2009.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Credit Suisse Global Fixed Income Fund, Inc. [File No. 811–6143];

Credit Suisse Institutional Fund, Inc. [File No. 811–6670];

Credit Suisse Global Small Cap Fund, Inc. [File No. 811–7715];

Credit Suisse International Focus Fund, Inc. [File No. 811–8459]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 20, 2009, each applicant transferred its assets to corresponding series of Aberdeen Funds, based on net asset value. Expenses of approximately $83,118, $81,614, $83,031 and $82,970, respectively, incurred in connection with the reorganizations were paid by Credit Suisse Asset Management, LLC, applicants' investment adviser, and Aberdeen Asset Management Inc., investment adviser to Aberdeen Funds.

Filing Dates: The applications were filed on September 21, 2009, and amended on October 28, 2009.

Applicants' Address: Eleven Madison Ave., New York, NY 10010.

DeGreen Emerging Market Managers Fund [File No. 811–22249]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on August 27, 2009, and amended on November 3, 2009.

Applicant's Address: 8401 Chagrin Rd., Suite 17, Chagrin Falls, OH 44023.

WM Variable Trust [File No. 811–7462]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 5, 2007, applicant transferred its assets to corresponding series of Principal Variable Contracts Fund, Inc., based on net asset value. Expenses of $1,397,175 incurred in connection with the reorganization were paid by New American Capital, Inc. and Principal Management Corporation, investment adviser to the acquiring fund.

Filing Dates: The application was filed on November 9, 2007, and amended on June 9, 2009 and November 19, 2009.

Applicant's Address: 1201 Third Avenue, 8th Floor, Seattle, Washington 98101

RiverSource Variable Portfolio—Managed Series, Inc. [File No. 811–4252];

RiverSource Variable Portfolio—Managers Series, Inc. [File No. 811–10383];

RiverSource Variable Portfolio—Investment Series, Inc. [File No. 811–3218];

RiverSource Variable Portfolio—Income Series, Inc. [File No. 811–3219];

RiverSource Variable Portfolio—Money Market Series, Inc. [File No. 811–3190];

RiverSource Variable Portfolio—Select Series, Inc. [File No. 811–21534]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 1, 2008, each applicant transferred its assets to corresponding series of RiverSource Variable Series Trust, a newly-organized Massachusetts business trust, based on net asset value. Expenses of approximately $1,284,357 were incurred in connection with each reorganization and were paid by RiverSource Investments, LLC, applicants' investment adviser.

Filing Dates: The applications were filed on March 30, 2009, and amended on September 14, 2009 and November 19, 2009.

Applicants' Address: 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28353 Filed 11–25–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61030; File No. SR–NYSEAmex–2009–83]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or March 30, 2010

November 19, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 16, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') 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 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 Exchange proposes to extend the operation of its New Market Model Pilot currently scheduled to expire on November 30, 2009, until the earlier of Securities and Exchange Commission approval to make such pilot permanent on March 30, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot (''NMM Pilot'') that was adopted pursuant to its merger with the New York Stock Exchange LLC.[4] The NMM Pilot was approved by the Securities and Exchange Commission (''SEC'' or ''Commission'') to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009.[5] The Exchange now seeks to extend the operation of the NMM Pilot from November 30, 2009, until the earlier of Securities and Exchange Commission approval to make such pilot permanent on March 30, 2010.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC.[6]

Background [7]

In December 2008, NYSE Amex implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, NYSE Amex eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[8] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement [9] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[10]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[11] CCS provides the Display Book® [12] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange BBO. CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's best bid or Exchange's best offer. During the operation of the NMM Pilot orders or portions thereof that establish priority [13] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot to November 30, 2009 [14] in order to

[4] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger). Subsequently NYSE Alternext US LLC was renamed NYSE Amex LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act''). NYSE Alternext US LLC was subsequently renamed NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR [sic] (October 7, 2009) (SR–NYSEAmex–2009–65).

[6] *See* SR–NYSE–2009–83 [sic].

[7] The information contained herein is a summary of the NMM Pilot. For a fuller description of the pilot see Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[8] *See* NYSE Amex Equities Rule 103.

[9] *See* NYSE Amex Equities Rule 104.

[10] *See* NYSE Amex Equities Rule 60; *See also* 104 and 1000.

[11] *See* NYSE Amex Equities Rule 1000.

[12] The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[13] *See* NYSE Amex Equities Rule 72(a)(ii).

[14] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR [sic] (October 7, 2009) (SR–NYSEAmex–2009–65).

prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before November 30, 2009.

Proposal To Extend the Operation of the NMM Pilot

NYSE Amex established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until March 30, 2010, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent rules; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 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) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on November 30, 2009, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.[19]

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–NYSEAmex–2009–83 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–NYSEAmex–2009–83. 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 also will be available for inspection and copying at the principal office of the Exchange. All comments

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to 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 has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEAmex–2009–83 and should be submitted on or before December 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28348 Filed 11–25–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61035; File No. SR–NYSEArca–2009–105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the $1.00 Strike Program To Allow Low-Strike LEAPS

November 19, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 18, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') 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 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 proposes to amend Commentary .04 to Rule 6.4 Series of Options Open for Trading to permit the expansion of the $1.00 Strike Program. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The proposed rule change is based on a filing submitted by Chicago Board Options Exchange Incorporated (''CBOE'') that was recently approved by the Commission.[4]

The purpose of the proposed rule change is to expand the $1.00 Strike Program (''Program'') in a limited fashion to allow NYSE Arca to list new series in $1.00 intervals up to $5.00 in long-term option series (''LEAPS'') in up to 200 option classes on individual stocks. Currently, under the Program, NYSE Arca may not list LEAPS at $1.00 strike price intervals for any class selected for the Program. NYSE Arca also is restricted from listing any series that would result in strike prices being $0.50 apart, unless the series are part of the $0.50 Strike Program.[5]

NYSE Arca believes that this proposal is appropriate and will allow investors to establish option positions that are better tailored to meet their investment objectives, vis-à-vis credit risk, using deep out-of-the-money put options. Deep out-of-the-money put options are viewed as a viable, liquid alternative to OTC-traded credit default swaps (''CDS''). These options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing. Moreover, deep out-of-the-money put options and CDS are functionally similar, as there is a high correlation between low-strike put prices and CDS spreads.[6]

NYSE Arca notes that its proposal is limited in scope, as $1.00 strikes in LEAPS may only be listed up to $5.00 and in only 200 option classes. As is currently the case, NYSE Arca would not list series with $1.00 intervals within $0.50 of an existing $2.50 strike price in the same series. As a result, NYSE Arca does not believe this proposal will cause a significant increase in quote traffic.

Moreover, as the Commission is aware, NYSE Arca has a vigorous quote mitigation strategy in place in an effort to lessen the growth rate of quotations. When it expanded the Program several months ago, NYSE Arca included a delisting policy that would be applicable with regard to this proposed expansion.[7] NYSE Arca and the other options exchanges amended the Options Listing Procedures Plan (''OLPP'') in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume per underlying class to qualify for an additional year of LEAP series.[8] Most recently, NYSE Arca, along with the other options exchanges, amended the OLPP to adopt objective exercise price range limitations applicable to equity option classes, options on ETFs and options on trust issued receipts.[9] NYSE Arca believes that these price range limitations will have a meaningful quote mitigation impact.

The margin requirements of NYSE Arca Rule 4 and the position and exercise requirements set forth in Rule 6.8 and Rule 6.9 will continue to apply to these new series, and no changes are being proposed to those requirements by this rule change.

With regard to the impact on system capacity, NYSE Arca has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR–CBOE–2009–68).

[5] *See* Exchange Act Release No. 60721 (September 25, 2009) 74 FR 50858 (October 1, 2009).

[6] More information on this trading strategy may be found at the website of the CBOE at *http://www.cboe.com/institutional/DOOM.aspx.*

[7] The delisting policy includes a provision that states NYSE Arca may grant OTP Holder requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting.

[8] *See* Exchange Act SEC Release No. 58630 (September 24, 2008), 73 FR 57166 (October 1, 2008).

[9] *See* Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (approving Amendment No. 3 to the OLPP). NYSE Arca's proposal to list $1.00 strikes in LEAPS to $5.00 would not be subject to the exercise price range limitations contained in new paragraph (3)(g)(ii) of the OLPP.

6(b)[10] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by giving investors more flexibility to closely tailor their investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 change 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 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.[14] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it recently approved a proposal from CBOE which is identical to the current proposal in all material respects and on which no comments were received.[15] Therefore, the proposal is operative upon filing.

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–NYSEArca–2009–105 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–NYSEArca–2009–105. 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 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–NYSEArca–2009–105 and should be submitted on or before December 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28349 Filed 11–25–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give 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 Commission has waived this requirement in this case.

[14] For 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).

[15] *See* Securities Exchange Act Release No. 60978, *supra* note 4.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61031; File No. SR–NYSE–2009–113]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or March 30, 2010

November 19, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 16, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 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 Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on November 30, 2009, until the earlier of Securities and Exchange Commission approval to make such pilot permanent or March 30, 2010. The text of the proposed rule change is available at the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot [4] (''NMM Pilot'') approved by the Securities and Exchange Commission (''SEC'' or ''Commission'') currently scheduled to expire on November 30, 2009 until the earlier of Securities and Exchange Commission approval to make such pilot permanent or March 30, 2010.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex LLC.[5]

Background [6]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement [8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[10] CCS provides the Display Book® [11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange BBO. CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's best bid or Exchange's best offer. During the operation of the NMM Pilot orders or portions thereof that establish priority [12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot to November 30, 2009, in order to prepare a rule filing seeking permission to make the above described changes permanent.[13] The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before November 30, 2009.

Proposal To Extend the Operation of the NMM Pilot

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to have its market maker be a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until March 30, 2010, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the Pilot will permit adequate time for: (i) the Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46); *See also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the NMM Pilot until the earlier of Securities and Exchange Commission approval to make such pilot permanent or November 30, 2009).

[5] *See* SR–NYSE Amex–2009–83.

[6] The information contained herein is a summary of the NMM Pilot, for a fuller description of the pilots *see supra* note 1 [sic].

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rules 104.

[9] *See* NYSE Rule 60; *See also* NYSE Rules 104 and 1000.

[10] *See* NYSE Rule 1000.

[11] The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[12] *See* NYSE Rule 72(a)(ii).

[13] *See* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 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) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on November 30, 2009, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.[18]

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–NYSE–2009–113 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–NYSE–2009–113. 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–113 and should be submitted on or before December 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28350 Filed 11–25–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to 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 has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61036; File No. SR–NYSEAmex–2009–84]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the $1.00 Strike Program to Allow Low-Strike LEAPS

November 19, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 18, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') 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 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 proposes to amend Commentary .06 to Rule 903, Series of Options Open for Trading to permit the expansion of the $1.00 Strike Program. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

The proposed rule change is based on a filing submitted by Chicago Board Options Exchange Incorporated (''CBOE'') that was recently approved by the Commission.[4]

The purpose of the proposed rule change is to expand the $1.00 Strike Program (''Program'') in a limited fashion to allow NYSE Amex to list new series in $1.00 intervals up to $5.00 in long-term option series (''LEAPS'') in up to 200 option classes on individual stocks. Currently, under the Program, NYSE Amex may not list LEAPS at $1.00 strike price intervals for any class selected for the Program. NYSE Amex also is restricted from listing any series that would result in strike prices being $0.50 apart, unless the series are part of the $0.50 Strike Program.[5]

NYSE Amex believes that this proposal is appropriate and will allow investors to establish option positions that are better tailored to meet their investment objectives, vis-à-vis credit risk, using deep out-of-the-money put options. Deep out-of-the-money put options are viewed as a viable, liquid alternative to OTC-traded credit default swaps (''CDS''). These options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing. Moreover, deep out-of-the-money put options and CDS are functionally similar, as there is a high correlation between low-strike put prices and CDS spreads.[6]

NYSE Amex notes that its proposal is limited in scope, as $1.00 strikes in LEAPS may only be listed up to $5.00 and in only 200 option classes. As is currently the case, NYSE Amex would not list series with $1.00 intervals within $0.50 of an existing $2.50 strike price in the same series. As a result, NYSE Amex does not believe this proposal will cause a significant increase in quote traffic.

Moreover, as the SEC is aware, NYSE Amex has a vigorous quote mitigation strategy in place in an effort to lessen the growth rate of quotations. When it expanded the Program several months ago, NYSE Amex included a delisting policy that would be applicable with regard to this proposed expansion.[7] NYSE Amex and the other options exchanges amended the Options Listing Procedures Plan (''OLPP'') in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume per underlying class to qualify for an additional year of LEAP series.[8] Most recently, NYSE Amex, along with the other options exchanges, amended the OLPP to adopt objective exercise price range limitations applicable to equity option classes, options on ETFs and options on trust issued receipts.[9] NYSE Amex believes that these price range limitations will have a meaningful quote mitigation impact.

The margin requirements of NYSE Amex Rule Section 9 and the position and exercise requirements set forth in Rule 904 and Rule 905 will continue to apply to these new series, and no changes are being proposed to those requirements by this rule change.

With regard to the impact on system capacity, NYSE Amex has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[10] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by giving investors more flexibility to closely tailor their investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 change 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 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.[14] The Commission believes

[4] *See* Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR–CBOE–2009–68).

[5] See Exchange Act Release 60720 (September 25, 2009), 74 FR 51205 (October 5, 2009).

[6] More information on this trading strategy may be found at the Web site of the CBOE at *http://www.cboe.com/institutional/DOOM.aspx.*

[7] The delisting policy includes a provision that states NYSE Amex may grant ATP Holder requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting.

[8] *See* Exchange Act Release No. 58630 (September 24, 2008), 73 FR 57166 (October 1, 2008).

[9] *See* Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (approving Amendment No. 3 to the OLPP). NYSE Amex's proposal to list $1.00 strikes in LEAPS to $5.00 would not be subject to the exercise price range limitations contained in new paragraph (3)(g)(ii) of the OLPP.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give 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 Commission has waived this requirement in this case.

[14] For 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).

that waiver of the operative delay is consistent with the protection of investors and the public interest because it recently approved a proposal from CBOE which is identical to the current proposal in all material respects and on which no comments were received.[15] Therefore, the proposal is operative upon filing.

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–NYSEAmex–2009–84 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–NYSEAmex–2009–84. 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 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–NYSEAmex–2009–84 and should be submitted on or before December 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

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[15] *See* Securities Exchange Act Release No. 60978, *supra* note 4.

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6819]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the United States Institutes on U.S. Foreign Policy for East Asian Student Leaders

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–10–26.

Catalog of Federal Domestic Assistance Number: 19.009.

Key Dates: July—August 2010.

Application Deadline: Thursday, January 14, 2010.

Executive Summary: The Branch for the Study of the United States, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, invites proposal submissions for the design and implementation of ''The Study of the U.S. Institute on U.S. Foreign Policy for East Asian Student Leaders'' to take place over the course of five weeks beginning in July, 2010, pending availability of funds. The Institute will take place at an accredited post-secondary education institution, and will provide a group of up to 20 East Asian undergraduates with an academic program examining U.S. Foreign Policy. The program should also give the students a deeper understanding of U.S. society and culture, while enhancing their leadership skills.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Study of the U.S. Institute for East Asian Student Leaders aims to foster mutual understanding between the people of the United States and the people of East Asia. The Study of the U.S. Institutes for undergraduates are intensive academic programs whose purpose is to provide a group of foreign students an introduction to a specific field of study, while also heightening the participants' general knowledge of U.S. society, culture, and values.

In addition to promoting a better understanding of the United States, an important objective of the Institutes is to develop the participants' leadership skills. In this context, the leadership component should be experiential in nature and include group discussions, training, and exercises that focus on leadership theories, teambuilding, collective problem-solving skills, effective communication, and management skills for diverse organizational settings. Additionally, there should be a community service component, in which the students experience firsthand how not-for-profit organizations and volunteerism play a role in U.S. civil society.

The program should also include cultural activities, local site visits, and an educational travel component within the United States to illustrate the various topics explored in class and to gain an understanding of the regional differences within the country. Finally, the program should include opportunities for participants to meet U.S. citizens from a variety of backgrounds, to interact with U.S. peers, and to speak to appropriate student and

civic groups about life in their home countries.

Overview

The Study of the U.S. Institute on U.S. Foreign Policy for East Asian Student Leaders should introduce participants to U.S. foreign policy, briefly covering the history of U.S. foreign policy and theories of foreign policy, and focusing primarily on current foreign policy issues for the United States in different regions of the world. The program will also explore current U.S. foreign policy issues with East Asia. The program should explain how foreign policy is formulated in the United States, the role played by the President and Congress in creating policy, and the influence of the media, think tanks, and public opinion. Specific topics of discussion could include worldwide and regional counterterrorism efforts; energy issues; food security; public health initiatives; economic cooperation and trade agreements; foreign assistance and humanitarian aid; environmental and climate change; and women's issues. Issues specific to the East Asian region such as the U.S. military presence in East Asian countries; the role of ASEAN and APEC in international foreign relations; the Six-Party Talks on non-proliferation; and bilateral relationships can also be explored.

Recipient Organization

ECA is seeking detailed proposals from U.S. colleges, universities, and other not-for-profit organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the study of the United States.

Program Design

The Study of the U.S. Institute on U.S. Foreign Policy for East Asian Student Leaders should provide a group of up to 20 students with a uniquely designed program that provides a broad, historical overview of U.S. foreign policy with a particular focus towards East Asia including recent developments and issues in the region. The Institute must not replicate existing or previous lectures, workshops, or group activities designed for American students but should be tailored for the particular group of students. The recipient institution should take into account that the participants may have little or no prior knowledge of the United States and varying degrees of experience in expressing their opinions in a classroom setting and should tailor the curriculum and classroom activities accordingly. Every effort should be made to encourage active student participation in all aspects of the Institute. The program should provide ample time and opportunity for discussion and interaction among students, lecturers, and guest speakers. The program should incorporate a variety of classroom approaches such as panel presentations, seminar discussions, debates, individual and group activities, lectures, and reading assignments for the academic sessions.

The program should be five weeks in length; participants will spend four weeks at the host institution for the academic program, and approximately one week on a related educational study tour, including three or four days in Washington, DC at the conclusion of the Institute.

Program Administration

The recipient organization should designate an academic director, who will be present throughout the program to ensure the continuity, coherence, and integration of all aspects of the academic program, including the related educational study tour. In addition to the academic director, an administrative director should be assigned to oversee all student support services, including supervision of the program participants and budgetary, logistical, and other administrative arrangements. It is important that the recipient organization also retain qualified mentors or escorts who exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to accompany the students throughout the program.

Participants

Up to 20 participants will be selected from China, Japan, and South Korea. The students will be identified and nominated by the U.S. Embassies, Consulates and/or Fulbright Commissions in the participating countries, with final selection made by ECA.

Participants in the Study of the U.S. Institutes on U.S. Foreign Policy for East Asian Student Leaders will be highly motivated undergraduate students from colleges, universities, and other institutions of higher education in selected countries who have demonstrated leadership through academic work, community involvement, and extracurricular activities. Their major fields of study will be varied, and will include the sciences, social sciences, humanities, education, and business.

Every effort will be made to select a balanced mix of male and female participants and to recruit participants from a variety of backgrounds who have had little or no prior experience in the United States or elsewhere outside of their home country.

Program Dates

The Institute should be five weeks in length beginning in July, 2010.

Program Guidelines

It is essential that the proposal provide a detailed and comprehensive narrative describing how the host institution will achieve the objectives of the Institute; the title, scope and content of each session; planned site visits, including educational travel; and how each session relates to the overall Institute theme.

Overall, the proposal will be reviewed on the basis of its responsiveness to RFGP criteria, coherence, clarity, and attention to detail.

Please note: In a cooperative agreement, ECA is substantially involved in program activities above and beyond routine grant monitoring. ECA will assume the following responsibilities for the Institute: Participate in the selection of participants; review and confirm syllabi and proposed speakers for the Institute; monitor the Institute through one or more site visits; meet with participants in Washington, DC at the conclusion of the Institute; work with the recipient organization to publicize the program through various media outlets; and engage in follow-on communication with the participants after they return to their home countries.

ECA may request that the recipient institution make modifications to the academic residency and/or educational travel components of the program. The recipient institution will be required to obtain approval from ECA of any significant program changes in advance of their implementation.

Note: All materials, publicity, and correspondence related to the program must acknowledge this as a program of the Bureau of Educational and Cultural Affairs, U.S. Department of State. ECA will retain copyright use of and distribute materials related to this program as it sees fit.

II. Award Information

Type of Award: Cooperative Agreement ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2010.

Approximate Total Funding: $240,000.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, March 1, 2010.

Anticipated Project Completion Date: March 31, 2011.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* (a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $240,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact the Sanda Chao, Branch for the Study of the U.S., ECA/A/E/USS, SA–5, 4th Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504, *Telephone:* (202) 632–3339, *Fax:* (202) 632–9411, *E-mail: ChaoSL@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–10–26 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Sanda L. Chao and refer to the Funding Opportunity Number ECA/A/E/USS–10–26 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from ECA's Web site at: *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals, and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. *Please take into consideration the following information when preparing your proposal narrative:*

IV.3d.1 Adherence To All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and

proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting, and other requirements.

ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom, and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' ECA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. ECA recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. ECA expects that the recipient organization will track participants and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to ECA in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, January 14, 2010.

Reference Number: ECA/A/E/USS–10–26.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) Electronically through *http://www.grants.gov*.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 7 copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/USS–10–26, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a CD–ROM. ECA will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov*. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

ECA will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal

Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards *cooperative agreements* resides with ECA's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Plan and Ability to Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to the ECA's mission. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and flexible. Proposals should demonstrate clearly how the institution will meet the program's objectives and plan.

2. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, presenters, and resource materials).

3. *Evaluation and Follow-Up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. Proposals also should discuss provisions made for follow-up with returned participants as a means of establishing longer-term individual and institutional linkages.

4. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

5. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past ECA grants as determined by ECA Grants Staff. The ECA will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without ECA support) ensuring that ECA supported programs are not isolated events.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from ECA's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://fa.statebuy.state.gov*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus *two* copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to ECA in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Sanda L. Chao, Study of the U.S. Branch, ECA/A/E/USS, SA–5, 4th Floor, Department of State, 2200 C Street, NW., Washington, DC 20522–0504. *Telephone:* (202) 632–3339, Fax: (202) 632–9411, *E-mail: ChaoSL@state.gov*.

All correspondence with ECA concerning this RFGP should reference the above title and number ECA/E/USS–10–26.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and

evaluation requirements per section VI.3 above.

Dated: November 18, 2009.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–28280 Filed 11–25–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6811]

U.S. Department of State Advisory Committee on Private International Law: Public Meeting of the Study Group on International Transport Law Regarding Implementation of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the ''Rotterdam Rules'')

The United States signed the Rotterdam Rules on September 23. The Executive Branch intends to recommend to the Congress the manner in which the Rotterdam Rules should be implemented if the United States becomes a party to the Rotterdam Rules. A public meeting of the Study Group on International Transport Law will be held, under the auspices of the Advisory Committee on Private International Law, to discuss issues regarding the domestic implementation of the Rotterdam Rules.

Time and Place: The public meeting will take place in Room 240, South Building, 2430 E Street, NW., Washington, DC on December 9, 2009. Visitors should appear at the gate at the southwest corner of 23rd and C Streets by 8:30 a.m. The meeting will begin at 9 a.m. and is expected to last no later than 12 p.m. It is possible that the subject matter of this meeting will continue to be discussed in subsequent teleconferences. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: It is requested that persons wishing to attend contact Trish Smeltzer prior to December 2, 2009 at *smeltzertk@state.gov* or 202–776–8423 and provide their name, date of birth for pre-clearance purposes, as well as e-mail address and affiliation. Members of the public who are not pre-cleared might encounter delays with security procedures. A member of the public requesting reasonable accommodation should make his or her request upon registering for the meeting. Such requests received after December 2nd will be considered but might not be possible to fulfill. Please contact Ms. Smeltzer for additional meeting information, including teleconferencing details.

Dated: November 12, 2009.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. E9–28427 Filed 11–25–09; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 6809]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on December 14th and December 15th at the Department of State, 2201 ''C'' Street, NW., Washington, DC. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Margaret Morrissey, Office of the Historian (202–663–3529) no later than December 10, 2009, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/State, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Margaret Morrissey for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made no later than December 7, 2009. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill. The Committee will meet in open session from 1:30 p.m. through 2:30 p.m. on Monday, December 14, 2009, in the Department of State, 2201 ''C'' Street, NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 2:45 p.m. until 5 p.m. on Monday, December 14, 2009, and 9 a.m. until 12 p.m. on Tuesday, December 15, 2009, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Questions concerning the meeting should be directed to Ambassador Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: November 18, 2009.

Ambassador Edward Brynn,

Executive Secretary, Department of State.

[FR Doc. E9–28422 Filed 11–25–09; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0114]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for changes to a currently approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 26, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0114, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, S.E., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Jensen, 202–366–2048, Office of Planning, Environment & Realty, HEP–2, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Scenic Byways Program.

OMB Control #: 2125–0611.

Form #: FHWA–1569, FHWA–1570, FHWA–1577.

Background: The National Scenic Byways Program was established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century. Under the program, the U.S. Secretary of Transportation recognizes certain roads as National Scenic Byways or All-American Roads based on their archaeological, cultural, historic, natural, recreational, and scenic qualities. There are 151 such designated byways in 46 states, which the FHWA promotes as the America's Byways. It is a voluntary, grassroots program that recognizes and supports outstanding roads while providing resources to help manage the intrinsic qualities within the broader byway corridor to be treasured and shared. The vision of the FHWA's National Scenic Byways Program is to create a distinctive collection of American roads, their stories and treasured places. The program's mission is to provide resources to the byway community in creating a unique travel experience and enhanced local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways. Title 23, Section 162 of the United States Code lays out the statutory structure of the National Scenic Byways Program. This legislation was most recently amended in 2005 upon passage of the Public Law 109–59 Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). The legislation includes provisions for review and dissemination of grant monies by the U.S. Secretary of Transportation. Grant applications are solicited on an annual basis. Eligible projects are on State designated byways, National Scenic Byways, All-American Roads, or Indian Tribe Scenic Byways. Applications are completed by Federal, State, or local governmental agencies; Tribal Governments; and non-profit organizations. The application information is collected electronically via the online Grant system and is used to determine project eligibility. The legislation also includes information about the nomination of scenic byways to become one of America's Byways, a collection of distinct and diverse roads designated by the U.S. Secretary of Transportation. America's Byways include the National Scenic Byways and All-American Roads. Additional information on the National Scenic Byways Program, its grant program, and the nomination process is available at *http://www.bywaysonline.org.*

Grants Respondents: In a typical grants cycle, it is estimated that 400 applications will be received. These applications will be submitted online and reviewed for eligibility through a process involving State Byway or Indian Tribe Scenic Byway Coordinators and FHWA division offices before being submitted to FHWA Headquarters for funding consideration. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way Department), Federal Land Management Agencies, State and local governments, non-profit agencies, and Tribal Governments.

Frequency: Annual.

Estimated Average Burden per Response: 16 hours.

Estimated Sub-Total Annual Burden Hours: 6,400 hours.

Nominations Respondents: Based on previous nomination cycles, it is estimated that a total of 75 nominations will be received, originating from any local government, including Tribal Governments, or any private group or individual. Nominations may also originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs. Roads determined to be appropriate for nomination by the State, an Indian tribe, or a Federal land management agency based on its intrinsic qualities must first be designated as a State Scenic Byway, an Indian Tribe Scenic Byway, or, in the case of a road on federal land, as a Federal Land Management Agency Byway.

Frequency: Biannual.

Estimated Average Burden per Response: 200 hours.

Estimated Sub-Total Annual Burden Hours: 15,000 hours.

Estimate Total Annual Burden Hours: 21,400.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 20, 2009.

Tina Campbell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–28410 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2009–0142]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 10, 2009 (74 FR 3991–3992).

DATES: Comments must be submitted on or before December 28, 2009.

ADDRESSES: Direct all written comments to the U.S. Department of Transportation Dockets, 1200 New Jersey Ave, SE., W46–474, Washington, DC 20590. Docket No. NHTSA–2009–0142.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Ph.D., Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–132), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., W46–495, Washington, DC, 20590. Dr. Roberts' phone number is 202–366–5594 and his e-mail address is *Scott.Roberts@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Evaluation Surveys for Distracted and Unsafe Driving Interventions.

Type of Request: New information collection requirement.

Abstract: The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of l970 (23 U.S.C. 101) to carry out

a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA proposes to conduct a series of telephone and intercept surveys that will examine (a) trends in attitudes, perceptions, and behaviors associated with the use of mobile electronic devices like cell phones while driving, and (b) the effectiveness of high visibility enforcement demonstration programs to increase public awareness of the dangers of, and legislation related to, distracted and unsafe driving behaviors. An essential part of this evaluation effort is to compare baseline and post-intervention measures of attitudes, intervention awareness, and (relevant) self-reported behaviors to determine if the high visibility enforcement activity was associated with changes on those indices. NHTSA proposes to conduct national and community-level surveys during the mid 2010 to mid 2012 time period. In addition, NHTSA proposes a limited number of focus group sessions with members of the general public to test and refine its strategic messaging.

Affected Public: The 20 minute national telephone survey will be administered annually to 6,000 randomly selected members of the general public age 16 and older, including those in landline telephone households as well as those who primarily or exclusive use a cellular phone. One of two 10 minute community-level surveys, either a telephone survey or an intercept survey handed out at Department of Motor Vehicle (DMV) offices, will be administered over three years to a maximum of 3,200 randomly selected drivers age 16 and older. A maximum of 24 focus group sessions, lasting 90 minutes, will be held with nine participants in each session. Participation by all respondents would be voluntary and anonymous.

Estimated Total Annual Burden: 3,175 hours.

Comments are invited on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. E9–28329 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–001–N–27]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request For Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on September 2, 2009 (74 FR 45516).

DATES: Comments must be submitted on or before December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey, SE., Mail Stop 17, Washington, DC 20590 (*telephone:* (202) 493–6292), or Ms. Kimberly Toone, Office of Support Systems, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 2, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 74 FR 45516. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. These requirements are being submitted for clearance by OMB as required by the PRA.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The collection of information is set forth under 49 CFR Part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

Annual Estimated Burden Hours: 119.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroad Employees.

Form Number(s): N/A.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-

sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR Part 209, Subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Annual Estimated Burden: 5 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503; *Attention:* FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov*.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on November 20, 2009.

Donna Alwine,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–28412 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0113]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 27, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0113, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, S.E., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Truck Parking Initiatives Grant Program, please contact Thomas Kearney, Office of Freight Management and Operations, HOFM–1, at (518) 431–4125 ext. 218, Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Parking Initiative .

OMB Control #: 2125–0610.

Background

The shortage of long-term truck parking on the National Highway System (NHS) is a problem that needs to be addressed. It is nationally recognized that truck drivers frequently cannot find adequate, safe parking in order to obtain rest needed to comply with the Federal Motor Carrier Safety Regulations and ensure safety. Further, parking areas are often designed or maintained for short-term parking only, and as a result, allow parking for limited time periods. Section 1305 of the Safe, Accountable, Flexible, Efficient, and Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directed the Secretary of Transportation to establish a Pilot program to address the long-term parking shortages along the NHS. Eligible projects under Section 1305 include:

1. Promoting the real-time dissemination of publicly or privately provided commercial motor vehicle parking availability on the NHS using ITS and other means;
2. Opening non-traditional facilities to commercial motor vehicle parking, including inspection and weigh stations, and park and ride facilities;
3. Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year round;
4. Constructing turnouts along the NHS to facilitate commercial motor vehicle access to parking facilities, and/or improving the geometric design of interchanges to improve access to commercial motor vehicle parking facilities;
5. Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas;
6. Constructing safety rest areas that include parking for commercial motor vehicles.

In considering the award of funds to projects applications, the Secretary was directed to give priority to projects that:

1. Demonstrate a severe shortage of commercial vehicle parking capacity in the corridor;
2. Have consulted with affected State and local governments, community groups, private providers of commercial vehicle parking and trucking and motorist organizations; and
3. Demonstrate that implementation will likely contribute to positive effects

on highway safety, traffic congestion or air quality.

It is the belief of FHWA that, given the limited resources available, the broad dissemination of information regarding the availability of public or private long-term parking spaces provides the greatest opportunity to maximize the effectiveness of this pilot program.

Guidelines and Administration

To administer this program, the FHWA will collect information necessary to evaluate and rank projects. The information collection is intended to only address the project funding allotted through the program.

1. Projects funded under this section shall be treated as projects on a Federal-Aid System under Chapter 1 of Title 23, United States Code.

2. Grants may be funded at an 80 to 100 percent funding level based on the criteria specified in Section 120 of Title 23, U.S. Code.

As soon as practicable, a **Federal Register** Notice will be published with information and guidance relating to the application process. Also, a solicitation letter will be sent to all FHWA Division Offices containing the same information. This information will also be posted on the FHWA Web site, *http://www.fhwa.dot.gov/.* All applications must be submitted thru a State Department of Transportation to FHWA's Office of Freight Management and Operations, via the FHWA Division Office in the state in which the application was submitted. Awarded projects will be administered by the applicable State Department of Transportation as a Federal aid grant.

Information Proposed for Collection

Information recommended under SAFETEA–LU and proposed for the current program includes the following:

1. *Project Description.* The proposal should include a detailed project description, which would include the extent of the long-term truck parking shortage in the corridor/area to be addressed, along with contact information for the project's primary point of contact, and whether funds are being requested under 120 U.S.C. (b) or (c) of Title 23. Data helping to define the shortage may include truck volume (Average Daily Truck Traffic—ADTT) in the corridor to be addressed, current number of long-term commercial motor vehicle parking spaces, utilization of current long-term parking spaces, driver surveys, observational field studies, proximity to freight loading/unloading facilities, proximity to the NHS, etc.

2. *Project Rationale.* The proposal should set forth the rationale for the project and should include an analysis and demonstration of how the proposed project will positively affect truck parking, safety, traffic congestion, or air quality in the identified corridor. Examples may include: advance information on availability of parking that may help to reduce the number of trucks parked on roadsides and increase the utilization of available truck parking spaces, etc.

3. *Scope of work.* The scope of work should include a complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements. Also to be included should be a 3-year performance measurement plan that continues beyond the demonstration period of the project.

4. *Stakeholder identification.* Stakeholder identification should include evidence of prior consultation and/or partnership with affected Metropolitan Planning Organizations (MPO), local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. It should include a listing of all public and private partners, and the role each will play in the execution of the project. Consultation examples may include: Memorandums of Agreement, Memorandums of Understanding, contracts, meeting minutes, letters of support/commitment, documentation in a Transportation Improvement Program (TIPS) or Statewide Transportation Improvement Program (STIPS) plans, etc.

5. *Cost estimate.* Applicants should provide a detailed quantification of eligible project costs by activity, an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-federal commitment) will be considered by FHWA as an in-kind match contributing to the project. State matching funds will be required for projects eligible under 120 U.S.C. (b).

6. *Timeline.* Applicants should also submit a timeline that includes work to be completed and anticipated funding cycles. Gantt charts are preferred.

7. *Environmental process.* Applicants should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.

8. *Project map.* Applicants should include a project map consisting of schematic illustrations depicting the project and connecting transportation infrastructure.

9. Proposals should not exceed 20 pages in length.

Burden Hours for Information Collection

Frequency: Annual.

Respondents: The 50 State DOTs and Puerto Rico and the District of Columbia.

Estimated Average Burden per response: Burden hours estimates and discussions are provided for each item presented and required within the application submittal process.

- *Project Description (16 hours)*—The project description will be submitted through the submitting State agency, in conjunction with local governments, MPO's, and other potential partners.
- *Project Rationale (8 hours)*—Project rationale should include an analysis and demonstration of how the proposed project will positively effect truck parking, safety, traffic congestion, or air quality in the identified corridor.
- *Scope of Work (6 hours)*—A complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, operational improvements, and a 3 year performance measurement plan that continues beyond the demonstration period of the project.
- *Stakeholder Identification (1 hour)*—Evidence of prior consultation and/or partnership with affected MPOs, local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. A listing of all public and private partners, and the role each will play in the execution of the project should also be included.
- *Cost estimate (4 hours)*—A detailed quantification of eligible project costs by

activity, and an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-federal commitment) will be considered. State matching funds will be required for projects eligible under 120 U.S.C. (b).

• *Project Timeline (1 hour 30 minutes)*—That includes work to be completed and anticipated funding cycles. Gantt charts preferred

• *Environmental process (2 hours)*—Applicant should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.

• *Project Map (1 hour)*—Consisting of schematic illustrations depicting the project and connecting transportation infrastructure.

• *Contact information for the State DOT, Local Agency or MPO (if applicable), FHWA Division Office (5 minutes)*—This requires providing a list of contacts and involves a nominal amount of time.

The total amount of time estimated to complete the application is 39 hours and 35 minutes.

Estimated Total Annual Burden Hours: 1187 hours and 30 minutes. It is estimated 30 applications will be processed annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on November 20, 2009.

Tina Campbell,

Acting Chief, Management Programs, and Analysis Division.

[FR Doc. E9–28411 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35318]

Gabriel D. Hall—Continuance in Control Exemption—U S Rail Corporation of New Jersey

Gabriel D. Hall (Hall), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of U S Rail Corporation of New Jersey (U S RCNJ), upon U S RCNJ becoming a Class III rail carrier.

This transaction is related to the concurrently filed verified notices of exemption in: (1) STB Finance Docket No. 35310, *U S Rail Corporation of New Jersey—Lease Exemption—County of Salem, NJ,* wherein U S RCNJ seeks to lease from the County of Salem, NJ, an approximately 17.24 mile rail line between milepost 10.86 in Swedesboro, NJ, and milepost 28.10 in Salem, NJ (the line); and (2) STB Finance Docket No. 35317, *U S Rail Corporation—Operation Exemption—U S Rail Corporation of New Jersey,* wherein U S Rail Corporation, an affiliate of U S RCNJ, seeks to operate over the line.

The transactions are scheduled to be consummated on or after December 12, 2009 (30 days after the notices of exemption were filed).

Hall is a noncarrier that currently controls directly or indirectly through equity ownership two rail carriers: USRP and U S Rail Holding, LLC.

Mr. Hall states that: (1) The rail line to be acquired by lease does not connect with the lines of any other railroad controlled by Hall; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line with any railroads controlled by Hall; and (3) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 4, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35318, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at: ''*http://www.stb.dot.gov.*''

Decided: November 23, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–28434 Filed 11–25–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35310]

U S Rail Corporation of New Jersey—Lease Exemption—County of Salem, NJ

U S Rail Corporation of New Jersey (U S RCNJ), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the County of Salem, NJ (County), approximately 17.24 miles of the County's rail line (the Line), extending between milepost 10.86 in Swedesboro, NJ, and milepost 28.10 in Salem, NJ.[1]

This transaction is related to the concurrently filed verified notices of exemption in: (1) STB Finance Docket No. 35317, *U S Rail Corporation—Operation Exemption—U S Rail Corporation of New Jersey,* whereby USRP has filed a verified notice of exemption to operate the line; and (2) STB Finance Docket No. 35318, *Gabriel D. Hall—Continuance in Control—U S Rail Corporation of New Jersey,* whereby Gabriel D. Hall has filed a verified notice of exemption to continue in control of U S RCNJ upon U S RCNJ becoming a Class III rail carrier.

U S RCNJ certifies that its projected annual revenues as a result of the

[1] U S RCNJ is contracting with its affiliate U S Rail Corporation (USRP) to perform the operations on the line, with U S RCNJ retaining a residual common carrier obligation.

transaction will not result in U S RCNJ becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or after December 12, 2009, the effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 4, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35310, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided November 23, 2009.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–28430 Filed 11–25–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2009–0178]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: National Emergency Medical Services Advisory Council (NEMSAC); notice of Federal Advisory Committee Meeting.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The meeting will be held on December 15, 2009, from 8 a.m. to noon, and December 16, 2009, from 8 a.m. to 11:30 a.m. A public comment period will take place on December 15, 2009, between 11:15 a.m. and 11:45 a.m.

Comment Date: Written comments or requests to make oral presentations must be received by December 8, 2009.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below and must be received by December 8, 2009.

All submissions received must include the docket number NHTSA–2009–0178, and may be submitted by any one of the following methods: You may submit or retrieve comments online through the Document Management System (DMS) at *http://www.regulations.gov/* under the docket number listed at the beginning of this notice. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help guidelines are available under the help section of the Web site. An electronic copy of this document may be downloaded from the **Federal Register's** home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. *E-mail: drew.dawson@dot.gov* or *susan.mchenry@dot.gov. Fax:* (202) 366–7149.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, NHTSA, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590. Telephone number (202) 366–9966; e-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) The NEMSAC will be holding its eighth meeting on Tuesday and Wednesday, December 15 and 16, 2009, at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Agenda of Council Meeting, December 15–16, 2009

The tentative agenda includes the following:

Tuesday, December 15, 2009

(1) Opening Remarks;
(2) Introduction of Members and all in attendance;
(3) Review and Approval of Minutes of Last Meeting;
(4) NHTSA Update;
(5) FICEMS Update;
(6) Federal Partners' Update;
(7) Public Comment Period.

Note: The NEMSAC Committees will hold their meetings the afternoon of the 15th—these are not part of the larger public meeting.

Wednesday, December 16, 2009

(1) Introductions and Review of 15 December Discussion;
(2) Committee Reports and Discussion/Action;
(3) Unfinished Business from 15 December;
(4) Next Steps and Adjourn.

A public comment period will take place on December 15, 2009, between 11:15 a.m. and 11:45 a.m.

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Drew Dawson of their anticipated special needs as early as possible. Members of the public who wish to make comments on Tuesday, December 15 between 11:15 a.m. and 11:45 a.m. are requested to

register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *drew.dawson@dot.gov* or by telephone at (202) 366–9966 no later than December 8, 2009. There will be limited seating, so please register early. Pre-registration is necessary to enable proper arrangements.

Minutes of the NEMSAC Meeting will be available to the public online through *http://www.ems.gov.*

Issued on: November 20, 2009.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. E9–28323 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35317]

U S Rail Corporation—Operation Exemption—U S Rail Corporation of New Jersey

U S Rail Corporation (USRP), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 17.24 miles of rail line between milepost 10.86 in Swedesboro, NJ, and milepost 28.10 in Salem, NJ. The rail line is owned by the County of Salem, NJ (County), and is currently operated by Southern Railroad Company of New Jersey. U S Rail Corporation of New Jersey (U S RCNJ), USRP's affiliate, and USRP are entering into an agreement providing for USRP to operate the rail line, with U S RCNJ retaining a residual common carrier obligation.

This transaction is related to the concurrently filed verified notices of exemption in: (1) STB Finance Docket No. 35310, *U S Rail Corporation of New Jersey—Lease Exemption—County of Salem, NJ,* whereby U S RCNJ has filed a verified notice of exemption to lease the line from the County; and (2) STB Finance Docket No. 35318, *Gabriel D. Hall—Continuance in Control—U S Rail Corporation of New Jersey,* whereby Gabriel D. Hall has filed a verified notice of exemption to continue in control of U S RCNJ upon U S RCNJ becoming a Class III rail carrier.

USRP certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or after December 12, 2009, the effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U SC. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U SC. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 4, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35317, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: November 23, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–28433 Filed 11–25–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT)

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of General Motors Corporation's (GM) petition for an exemption of the Cadillac CTS vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Standards, NHTSA, W43–439, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated September 25, 2009, GM requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Cadillac CTS vehicle line beginning with MY 2011. The petition has been filed pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Cadillac CTS vehicle line. GM stated that all Cadillac CTS vehicles will be equipped with a passive, transponder-based, electronic immobilizer device as standard equipment beginning with MY 2011. Vehicles will have either the (PASS–Key III+) or the Keyless Access system. GM stated that both devices will

provide protection against unauthorized use (*i.e.*, starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.*, flashing lights or horn alarm).

The PASS–Key III+ device is designed to be active at all times without direct intervention by the vehicle operator. The system is fully armed immediately after the ignition has been turned off and the key removed. Components of the antitheft device include an electronically-coded ignition key, a PASS–Key III+ controller module and an engine control module. The ignition key contains electronics molded into the key head, providing billions of possible electronic combinations. The electronics receive energy and data from the controller module. Upon receipt of the data, the key will calculate a response to the data using secret information and an internal encryption algorithm, and transmit the response back to the vehicle. The controller module translates the radio frequency signal received from the key into a digital signal and compares the received response to an internally calculated value. If the values match, the key is recognized as valid and one of 65,534 ''Vehicle Security Passwords'' is transmitted to the engine control module to enable fueling and starting of the vehicle. If an invalid key code is received, the PASS–Key III+ controller module will send a ''Disable Password'' to the engine control module and starting, ignition, and fuel will be inhibited.

The Keyless Access device is automatically armed after the vehicle is put into the Off mode, no additional operator action is required to protect the vehicle. This system will utilize a special electronic key, two low-frequency antennas, an authorization module, a Body Control Module, and an Engine Control Module. The authorization module verifies the electronic key prior to allowing vehicle operation. Verification of the electronic code is also required to allow the transmission shift level to unlock. The electronic key resides in the form of a remote key fob in which the key fob contains buttons to perform normal remote keyless entry functions, and also contains special electronics to communicate with the vehicle without direct customer intervention. The electronic key will transmit a response via a Radio Frequency channel and the authorization module will receive the Radio Frequency transmission and compares the received response with an internally calculated response. If the values match, authorization is communicated to the Body Control Module to allow the vehicle to enter operating modes.

In addressing the specific content requirements of 543.6, GM provided information on the reliability and durability of the proposed device. To ensure reliability and durability of the device, GM conducted tests based on its own specified standards. GM stated that the design and assembly processes of the system and components are validated for a vehicle life of 10 years and 150,000 miles of performance. GM also provided a detailed list of the tests conducted used to validate integrity, durability and reliability, and after each test, components must operate as designed.

GM stated that the PASS–Key III+ system and the Keyless Access System have been designed to enhance the functionality and theft protection provided by GM's first, second and third generation PASS–Key, PASS–Key II, and PASS–Key III systems. GM also stated that there is data provided by the American Automobile Manufacturers Association to Docket 97–042; Notice 1, that in confidence, these systems will be effective in reducing and deterring motor vehicle theft.

GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), are lower for exempted GM models equipped with the electronically coded systems which have exemptions from the parts-marking requirements of 49 CFR Part 541, than the theft rates for earlier models with similar appearance and construction which were parts-marked. Based on the performance of the PASS–Key, PASS–Key II, and PASS–Key III systems on other GM models, and the advanced technology utilized in PASS–Key III+ and the Keyless Access System, GM believes that these systems will be more effective in deterring theft than the parts-marking requirements of 49 CFR Part 541. GM believes that the agency should find that inclusion of the PASS–Key III+ or the Keyless Access system on all vehicles in the Cadillac CTS line is sufficient to qualify this vehicle line for full exemption from the parts-marking requirements.

Based on the evidence submitted by GM, the agency believes that the antitheft device for the Cadillac CTS vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Based on comparison of the reduction in the theft rates of Chevrolet Corvettes using a passive theft deterrent system along with an audible/visible alarm system to the reduction in theft rates for the Chevrolet Camaro and the Pontiac Firebird models equipped with a passive theft deterrent system without an alarm, GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as PASS–Key III+ system and the Keyless Access System.

GM's proposed device lacks an audible or visible alarm. Therefore, this device cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines equipped with comparable devices that have received full exemptions from the parts-marking requirements. In these instances, the agency has concluded that the lack of a audible or visible alarm has not prevented these antitheft devices from being effective protection against theft.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that GM has provided adequate reasons for its belief that the antitheft device for the Cadillac CTS vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information GM provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the GM Cadillac CTS vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions.

Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 23, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–28440 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0144]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Northern Lights.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0144 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted.

Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before December 28, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0144. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel Northern Lights is:

Intended Commercial Use of Vessel: ''Sportfishing in Hawaii.''

Geographic Region: ''Hawaii.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: November 17, 2009.

By order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–28324 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0145]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the coastwise trade laws for the vessel Casamar.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–XXXX at *http://www.regulations.gov.*

Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before December 28, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0145. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Casamar is:

Intended Commercial Use of Vessel: ''Time charters.''

Geographic Region: ''Florida, Georgia, South Carolina, North Carolina, Virginia, Delaware, Maryland, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: November 17, 2009.

By order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–28325 Filed 11–25–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Waivers To Buy American Under the American Reinvestment and Recovery Act for Grants-in-Aid for Airports

AGENCY: Federal Aviation Administration (FAA), U.S. DOT.

ACTION: Notice of waiver to Buy American preferences for grants-in-aid grant projects.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA) requires publication of the waivers that have been issued under ARRA. This notice provides information on the waivers that have been issued for Federal Aviation Administration grants-in-aid projects.

DATES: *Effective Date:* November 18, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Frank SanMartin, Manager, Airports Financial Assistance, APP 500, Room 620, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION: Section 1605 of the American Reinvestment and Recovery Act requires that agencies meet Buy American requirements for the use of American iron, steel, and manufactured goods. It further requires that agencies publish a **Federal Register** notice giving a detailed written justification explaining any waivers that are given to the Buy American requirements of the Act.

Title XII of the Act provides $1,100,000,000 to make grants for airports. The Act requires that the grants issued by the Federal Aviation Administration follow the guidelines and requirements of subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, United States Code (U.S.C.). These subchapters require following 49 U.S.C. 50101, the Buy American Preferences section that is used for airport grants-in-aid projects.

Under 49 U.S.C. 50101(b)(3), the Secretary may waive the Buy American preference requirement if the Secretary finds that facility or equipment is composed of more than 60 percent components and subcomponents that are produced in the United States (U.S.) and that final assembly of the facility or equipment has occurred in the U.S. To meet Buy American requirements, airports using grant funding must seek a waiver from FAA to use any product that is not made up of 100 percent U.S. components or subcomponents. However it is well known that many of the U.S. products used on airport grant projects contain some small percentage of non-U.S. goods. In order to help airports comply with Buy American, FAA has reviewed many of the most-commonly used airport products and determined whether the products are eligible to receive a waiver under 49 U.S.C. 50101(b)(3). Products that do meet the waiver criteria are granted a ''Nationwide Waiver.'' This ''Nationwide Waiver'' allows the product to be used on airport projects without having to receive separate project waivers. Having a nationwide waiver allows construction to start quickly without having to wait for the Buy American analysis to be completed for every project, while still assuring the funds used for airport projects under the Act are being directed to U.S. manufacturers.

Because of the ''Nationwide Waiver,'' only a handful of the over 300 airport projects under the Act have needed a waiver to Buy American. In nearly every case, the waivers were granted for products that were later granted nationwide waivers. Waivers were required simply because the Nationwide Buy American compliance review had not been completed. The remaining waivers are for items for which a nationwide waiver has not been issued.

The items that have been granted a ''Nationwide Waiver'' can be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/* at the tab entitled, Equipment Meeting Buy American Requirements.

Project waivers issued under ARRA, including those for which nationwide waivers have since been issued are as follows:

Airport	Product	Final assembly location
Tuscaloosa Regional Airport, Tuscaloosa, Alabama	Palladin Light Construction Group Lighted Closure "X".	Dexter, Michigan.
St. Petersburg-Clearwater International Airport, Clearwater, Florida	Various Products in Terminal Building Construction.	Clearwater, Florida.
Mid-Continent Airport, Wichita, Kansas	Oshkosh Corporation Airport Rescue and Firefighting Vehicle.	Oshkosh, Wisconsin.
White Sulphur Springs Airport, White Sulphur Springs, Montana; Billings Logan International Airport, Billings, Montana.	Sherwin Williams Pavement Marking Glass Beads.	Victorville, California and Canby, Oregon.
Helena Regional Airport, Helena, Montana; Bowman Field Airport, Anaconda, Montana.	Liberty Airport Systems Regulator	Lancaster, New York.
Helena Regional Airport, Helena, Montana; Bowman Field Airport, Anaconda, Montana.	Airport Lighting Company Edge Light.	Manilus, New York.
Helena Regional Airport, Helena, Montana; Bowman Field Airport, Anaconda, Montana.	Ridgeline Pipe Manufacturing PVC Conduit.	Eugene, Oregon.
Mitchell Municipal Airport, Mitchell, South Dakota	Crouse Hinds Lighting Equipment	Mitchell Municipal Airport, Mitchell, SD.
Muskegon County Airport, Muskegon, Michigan	Rosenbauer Airport Rescue and Firefighting Vehicle.	Wyoming, Minnesota.
Dayton International Airport, Dayton, Ohio	Olson Industries Light Base	Atkinson, Nebraska.
Bowman Field Airport, Anaconda, Montana	Airfield Signs	AGM, Inc, Manlius, New York.

Authority: Public Law 111–5, Section 1605.

Issued in Washington, DC, November 18, 2009.

Frank San Martin,

Manager, Airports Financial Assistance Branch.

[FR Doc. E9–28442 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2010 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. section 3241). Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2010 apply to compensation paid in calendar year 2010.

FOR FURTHER INFORMATION CONTACT: Michelle R. Weigelt, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–0047 (not a toll-free number).

Tier 2 Tax Rates: The tier 2 tax rate for 2010 under section 3201(b) on employees is 3.9 percent of compensation. The tier 2 tax rate for 2010 under section 3221(b) on employers is 12.1 percent of compensation. The tier 2 tax rate for 2010 under section 3211(b) on employee representatives is 12.1 percent of compensation.

Dated: November 18, 2009.

Nancy Marks,

Division Counsel/Associate Chief Counsel, (Tax Exempt and Government Entities).

[FR Doc. E9–28331 Filed 11–25–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on December 14–15, 2009, in the Carlton Ballroom at the St. Regis, 923 16th and K Streets, NW., Washington, DC, from 8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs. Time will be allocated for receiving public comments on the afternoon of December 14. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or *Ersie.farber@va.gov*.

Dated: November 19, 2009.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. E9–28388 Filed 11–25–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will conduct a telephone conference call meeting from 2 p.m. to 4 p.m. on Thursday, December 10, 2009, in Room 844 at VA Central Office, 810 Vermont Avenue, NW., Washington,

DC. The toll-free number for the meeting is 1–800–767–1750, and the access code is 57165#. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas and discusses ways to improve and enhance VA services for these Veterans.

The Committee will discuss the draft of its first Annual Report to the Secretary of Veterans Affairs, which includes formal recommendations on Veteran rural health care policy.

A 15-minute period will be reserved at 3:45 p.m. for public comments. Individuals who speak are invited to submit a 1–2 page summaries of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Christina White, Designated Federal Officer, at *rural.health.inquiry@va.gov* or (202) 461–7100.

Dated: November 19, 2009.

By direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. E9–28321 Filed 11–25–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Health Professional Scholarship Program—VA'' (73VA14) as set forth in the **Federal Register** 58 FR 40852. VA is amending the system of records by revising the System Location, Purpose, Routine Use of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, System Manager and Address, and Record Access Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than December 28, 2009. If no public comment is received, the amended system will become effective December 28, 2009.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: *VA is also proposing to add the following routine use disclosure of information maintained in the system:*

- Routine Use 13 was added. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44 U.S.C.
- Routine Use 14 was added. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement, or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.
- Routine Use 15 was added. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature, and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.
- Routine Use 16 was added. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.
- Routine Use 17 was added. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved November 9, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

73VA14

SYSTEM NAME:

Health Professional Scholarship Program—VA.

SYSTEM LOCATION:

Active records will be maintained at the Office of Academic Affiliations (OAA), Veterans Health Administration, Veterans Administration Central Office (VACO), 810 Vermont Avenue, NW., Washington, DC 20420, and the Data Processing Center, Department of Veterans Affairs, 1615 East Woodward Street, Austin, TX 78772. Complete records will be maintained only at the VACO address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for and are awarded scholarships under the provisions of the Veterans Administration Health Professional Scholarship Program in the fields of medicine, osteopathy and nursing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: Personal identification information related to the application material, to award processes, to employment, and to obligated service, such as (1) name, (2) address, (3) telephone number, (4) social security number, (5) award amounts, (6) obligated service incurred; and payment information such as name and address of the educational institution or any amount of indebtedness (accounts receivable) arising from the scholarship and owed to VA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C. 210(c), 4141–4146 and 4118.

PURPOSE(S):

These records support the Health Professional Scholarship Program. The Health Professional Scholarship Program was established by Public Law 96–330, and awarded scholarships from 1982 through 1995 to 3,330 students earning baccalaureate and master's degrees in nursing and other health professions. These records consist of application materials and records that document the completion of the service obligation. Occasionally, there is a record of waiver of financial payback or default on obligation for service. Records of individuals who default remain indefinitely in the program office because records are required for review and decision-making in the case of waiver requests years in the future. If the scholarship program is re-authorized, additional records will be accrued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, *i.e.*, individually identifiable health information, and 38 U.S.C. 7332, *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system may be disclosed to a Federal, state or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by that agency.

3. Any information in this system may be disclosed to a Federal, state or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and personal or educational background in order for VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

4. Any information in this system may be disclosed to a Federal agency in order to determine if an applicant has an obligation for service under another Federal program, thus rendering the applicant ineligible for a VA scholarship. (38 U.S.C. 4142(a)(4)).

5. Any information in this system pertaining to individuals eligible for scholarships may be disclosed to educational institutions in order to assist in the administration of this program.

6. Award payment information may be disclosed to the Treasury Department to permit delivery of scholarship-related checks to students and to educational institutions.

7. Any information in this system, including available identifying information regarding the debtor, such as name, place of birth, and date of birth of the debtor may be disclosed under this routine use to Federal, state or consumer reporting agencies in order to obtain current name, address, locator and credit report in connection with any proceeding for the collection of an amount owed to the United States by virtue of an individual's participation in the VA Health Professional Scholarship Program.

8. Any information in this system may be disclosed to the Department of Justice (DOJ), including U.S. Attorneys, in order for VA to respond to pleadings, interrogatories, orders or inquiries from DOJ, and to supply DOJ with information in any phase of litigation or in any case or controversy involving VA.

9. Any information in this system may be disclosed to educational institutions, previous employers or individuals providing references to verify the authenticity of the application.

10. Records from this system of records may be disclosed to a Federal Agency or to a state or local government licensing board and to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

11. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring or clinical privileging/reprivileging of health care practitioners, and other times as deemed

necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank or State Licensing Board in the state(s) in which a practitioner is licensed, in which the VA facility is located, or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

13. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44 U.S.C.

14. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

15. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

16. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

17. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records are maintained on magnetic tape and computer printouts at the VA Data Processing Center (DPC), and in file folders, computer printouts and electronic files at VACO.

RETRIEVABILITY

Records are retrievable by use of the award number, social security number and the name of the individual.

SAFEGUARDS

Access to the basic file in the Austin DPC is restricted to authorized VA employees and vendors. Access to the computer room where the magnetic tape is located within the DPC is further restricted to specifically authorized employees and is protected by an alarm system, the Federal Protective Service and other VA security personnel. Records at VA Central Office will be kept in locked files and made available only to authorized personnel on a need-to-know basis. During non-working hours the file is locked and the building is protected by the Federal Protective Service.

RETENTION AND DISPOSAL

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Academic Affiliations Officer, Office of Academic Affiliations (14), Department of Veterans Health Administration, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such records, should submit a written request or apply in person to the Chief Academic Affiliations Officer, Office of Academic Affiliations (14), Veterans Health Administration, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

RECORD ACCESS PROCEDURE

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Chief Academic Affiliations Officer, Office of Academic Affiliations (14), Veterans Health Administration, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORD PROCEDURES

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES

Information contained in the records is obtained from the individual, references given in application material, educational institutions, VA medical

facilities, the VA DPC, other Federal agencies, state agencies and consumer reporting agencies.

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Federal Register

Friday,
November 27, 2009

Part II

Department of Health and Human Services

48 CFR Chapter 3
Health and Human Services Acquisition Regulation; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 CFR Chapter 3

Health and Human Services Acquisition Regulation

AGENCY: Department of Health and Human Services.

ACTION: Issuance of direct final rule and opportunity for comment.

SUMMARY: The Department of Health and Human Services (HHS) is revising its Federal Acquisition Regulation (FAR) Supplement—the HHS Acquisition Regulation (HHSAR) in its entirety to reflect statutory, FAR, and government-wide and HHS policy changes since the last revision to the HHSAR in December 2006.

DATES: Comments are due on or before December 28, 2009. If HHS does not receive adverse comments, this direct final rule will be effective on January 26, 2010.

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

- *Access the Federal eRulemaking Portal: [http://www.regulations.gov],* and follow the instructions;
- *Mail them to:* Cheryl Howe, Procurement Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, Room 336–E, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201;
- *E-mail them to cheryl.howe@hhs.gov;* or
- *Via facsimile* to 202–690–8772.

Due to potential delays in receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments electronically to ensure timely receipt. HHS cannot guarantee that comments mailed will be received before the comment closing date.

If providing comments via e-mail, please include ''HHS Acquisition Regulation'' in the subject line of your e-mail message. Also, please include the full body of your comments in the text of the electronic message, as well as in an attachment, and include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

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

FOR FURTHER INFORMATION CONTACT: Cheryl Howe, Procurement Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, telephone (202) 690–5552.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services (HHS) is revising the entire HHSAR (48 CFR chapter 3, parts 301 through 370) to reflect changes since the last revision was published in the **Federal Register** in December 2006. The decision to revise the document in its entirety is based on the number of changes rather than their collective substance.

The amendments generally fall into several categories: (1) Changes to make the document easier to read; (2) changes to reflect internal procedural matters which are administrative in nature and which will not have a major effect on the general public or on contractors or offerors supporting HHS acquisition programs; (3) changes which HHS previously issued on an interim basis (and posted on its publicly available Web site), following coordination with the HHS Operating Divisions' (OPDIVs) Heads of Contracting Activity; (4) changes that involve implementation of statutes or government-wide mandates enacted or issued since December 2006; (5) necessary conforming changes, such as addition of new or revised definitions; and (6) deletion of outdated material.

The majority of the HHSAR revisions fall into the first category, *i.e.,* they are editorial and include (1) using plain English, such as using active rather than passive voice; (2) standardizing terminology usage and formatting; (3) making minor adjustments to reflect current internal coordination procedures among departmental organizations; (4) citing current titles for various acquisition officials and organizations; and (5) providing a table that specifies the abbreviations and acronyms commonly used throughout the HHSAR.

II. Summary of Key Changes

The following summarizes changes that involve implementation of statutes or government-wide mandates enacted or issued since December 2006. The editorial changes are not individually summarized.

A. Federal-Wide and HHS Acquisition Certification Programs

The HHSAR coverage in Subpart 301.6 of requirements for training and certification of acquisition officials, as well appointment of Contracting Officers, has been rewritten to reflect the HHS implementation of the Federal Acquisition Certification Programs for contracting staff (FAC–C) (based on guidance provided by the Office of Federal Procurement Policy (OFPP) in April, 2005); Contracting Officer's Technical Representatives (FAC–COTR) (based on the government-wide COTR certification standards established by OFPP in November, 2007), and Program/Project Managers (FAC–P/PM) (in response to the Services Acquisition Reform Act of 2003 (SARA), Public Law 108–136, and the requirements established by OFPP in April, 2007).

Implementation of the FAC–COTR program also has resulted in HHS changing the terminology it uses to describe the official who represents the requiring office after award. Where previously, HHS used only one term—Project Officer—to signify the person responsible for the pre-award and post-award responsibilities of the requiring office, the HHSAR now distinguishes between the pre-award responsibilities of the Project Officer and the post-award responsibilities of the COTR, even if the same individual performs both sets of responsibilities.

These certification programs establish prerequisites for those who seek certification, as well as for others involved in the acquisition process. For example, HHS added a new section 301.605, Contracting Officer designation of Contracting Officer Technical Representative, to specify Contracting Officer responsibilities for designation of a COTR, including documenting that a proposed COTR meets certification requirements.

Subpart 301 also addresses the HHS-unique simplified acquisition certification program (SAC–C); HHS-specific training requirements, including those for purchase card holders; and prerequisites and authorities for issuance of Contracting Officer warrants.

B. Improvements in the Quality of Contract Data

Consistent with the statutory requirements of the Federal Funding and Transparency Act of 2006 (Pub. L. 109–282) and the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) and OFPP's initiative to improve the quality and timeliness of the award information stored in the Federal Procurement Data System—Next Generation, HHS is making efforts to improve the quality and timeliness of its contract data as reported in FPDS–NG, USA.Spending.gov, and Recovery.gov. To accomplish this, in Subpart 304.6, HHS has established clear lines of responsibility and accountability for the quality and timeliness of contract data.

C. Internal Initiatives To Provide Common Formats and Templates

A new HHSAR Subpart—302.71—lists the areas where HHS has developed standards for documentation or approaches that provide consistency across the HHS OPDIVs. These internal business standards encompass: Acquisition planning, competition reporting, the organization and content of contract files, and market research notices.

D. Homeland Security Presidential Directive-12 (HSPD–12)

A new Subpart 304.13, *Personal Identity Verification,* and section 304.1300, *Policy,* have been added to implement HSPD–12 in HHS. The HHS implementation includes applicable solicitation provisions and contract clauses and (1) reflects the implementing guidance established by Office of Management and Budget Memoranda M–05–24 and M–06–18, Federal Information Processing Standard (FIPS) Publication 201, and Federal Acquisition Regulation (FAR) 4.13; and (2) provides a consistent and systematic approach to ensure the security of HHS facilities and information systems.

E. Competition and Acquisition Planning

Consistent with government-wide efforts to increase competition, in Parts 306, 307, and 308, as applicable, HHS included HHSAR coverage concerning (1) appropriate use of sources sought notices (Research and development (R&D) and non-R&D and small businesses) and requests for information (2) content requirements for Justifications for Other Than Full and Open Competition (JOFOCs) and Limited Source Justifications (LSJs), (3) the requirement to use a standard JOFOC and LSJ format, and (4) the Contracting Officer's approval authority for JOFOCs and LSJs for acquisitions exceeding $100,000.

HHS also—

—Specified that each HHS OPDIV competition advocate must prepare an annual Competition Advocate Report; and provided a standard format for the report's preparation.

—Updated the requirements for preparing an Annual Acquisition Plan and provided a standard template for the plan's preparation.

—Established a standard format for development of an Acquisition Plan; and provided procedures for the plan's review, coordination, and approval.

—Addressed preparation and approval of a LSJ for acquisitions awarded under the General Services Administration multiple award schedule program; and provided a standard format for preparing an LSJ.

—Addressed preparation and approval of an acquisition strategy for major information technology capital investments and, as applicable, other major investments.

F. Section 508 Electronic Information Technology Accessibility Standards

In a new Subpart 315.70, HHS added coverage for acquisition of electronic information technology (EIT) products and services to implement the requirements of Section 508 of the Rehabilitation Act of 1973 [29 U.S.C. 794(d)], as amended by the Workforce Investment Act of 1998. In that subpart and, as a result of conforming changes in other parts of the HHSAR, HHS established a policy preference for commercially available products; indicated what must be addressed in solicitations, contracts, and orders, and added documentation and contract administration requirements that relate to the Section 508 accessibility standards and requirements.

G. Multi-Year Contracting and Awards Made During a Continuing Resolution

HHS added a new Subpart 317.1 to address its policy on multi-year contracting and amended Subpart 332.7 to provide coverage regarding awards made during a continuing resolution.

H. Multi-Agency and Intra-Agency Contracts

HHS added a new subpart 317.70 to address its expectations regarding the use of intra-agency and multi-agency contracts. Such contracting has been the subject of audit scrutiny and has been addressed by OFPP. As a result, to avoid possible misuse, HHS is stating the conditions for use of such vehicles within HHS.

I. Green Purchasing Requirements

HHS added a new subpart 323.71 to establish its requirements for green purchasing.

J. Earned Value Management

HHS added a new Subpart 334.2 to implement the FAR coverage of earned value management (EVM), including: Use of full and partial EVM; use of solicitation provisions and contract clauses addressing documentation offerors must provide to demonstrate compliance with EVM system requirements; and criteria for use of pre-award or post-award integrated baseline reviews.

K. Other Changes

Under section 331.101–70, *Salary Rate Limitation,* HHS provided a revised prescription for use of, and made minor revisions to, the Salary Rate Limitation clause in 352.231–70.

HHS added the following coverage in Part 339 for information technology-related acquisition:

—A new subpart, 339.70, to address the use of General Services Administration Blanket Purchase Agreements for the acquisition of independent risk analysis services, and

—A new subpart 339.1 that provides standards for security configuration, encryption, and information security.

HHS revised the coverage in Part 333 related to internal handling of protests to specify revised legal review, concurrence, and approval procedures related to protests to HHS and the Government Accountability Office before and after award.

HHS added language in section 319.270–1 concerning use of the mentor-protege program in HHS.

HHS added a new subpart 322.8 to provide a contract clause regarding contractor cooperation in equal employment opportunity investigations.

HHS added a new subpart 370.6 to provide guidance, including a contract clause, concerning conference funding, sponsorship, and disclaimers.

HHS added a new subpart 370.7 to provide a solicitation provision and a contract clause to be used (i) in connection with the implementation of HIV/AIDS programs under the President's Emergency Plan for AIDS Relief; or (ii) when the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003.

III. Procedural Review Requirements

A. Executive Order 12866, Regulatory Planning and Review

It has been determined that this revision of the HHSAR is not a significant regulatory action. The 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 Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Unfunded Mandates Reform Act [2 U.S.C. 1501(7)]

It has been certified that this revision of the HHSAR 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.

C. Regulatory Flexibility Act (5 U.S.C. 601)

The Regulatory Flexibility Act requires that a Federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of rulemaking. This rule consists of a general statement of policies and procedures and amends HHS regulations for contracts. Each part of today's direct final rule is exempt from the requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(a)(2). Therefore, the Regulatory Flexibility Act does not apply to this rulemaking.

D. Paperwork Reduction Act (44 U.S.C. 35)

It has been determined that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act beyond those provided in the FAR.

E. Small Business Regulatory Enforcement Fairness Act

As required by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801, HHS has determined that this rule is not a major rule under 5 U.S.C. 801(2).

F. Executive Order 12988, Civil Justice Reform

Each agency promulgating new regulations shall adhere to the following requirements: The agency's proposed regulations shall (1) be reviewed by the agency to eliminate drafting errors and ambiguity; (2) be written to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. HHS determined that this rule meets these standards.

List of Subjects in 48 CFR Chapter 3, Parts 301–370

Government procurement.

■ For the reasons stated in the preamble, HHS revises 48 CFR Chapter 3, parts 301 through 370, to read as follows:

Title 48—Federal Acquisition Regulations System

CHAPTER 3—HEALTH AND HUMAN SERVICES

SUBCHAPTER A—GENERAL

PART 301—HHS ACQUISITION REGULATION SYSTEM
PART 302—DEFINITIONS OF WORDS AND TERMS
PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
PART 304—ADMINISTRATIVE MATTERS

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 305—PUBLICIZING CONTRACT ACTIONS
PART 306—COMPETITION REQUIREMENTS
PART 307—ACQUISITION PLANNING
PART 308—REQUIRED SOURCES OF SUPPLIES AND SERVICES
PART 309—CONTRACTOR QUALIFICATIONS
PART 310—MARKET RESEARCH
PART 311—DESCRIBING AGENCY NEEDS
PART 312—ACQUISITION OF COMMERCIAL ITEMS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 313—SIMPLIFIED ACQUISITION PROCEDURES
PART 314—SEALED BIDDING
PART 315—CONTRACTING BY NEGOTIATION
PART 316—TYPES OF CONTRACTS
PART 317—SPECIAL CONTRACTING METHODS

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS PROGRAMS
PART 322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
PART 323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE
PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 327—PATENTS, DATA, AND COPYRIGHTS
PART 328—BONDS AND INSURANCE
PART 330—COST ACCOUNTING STANDARDS
PART 331—CONTRACT COST PRINCIPLES AND PROCEDURES
PART 332—CONTRACT FINANCING
PART 333—PROTESTS, DISPUTES, AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION
PART 335—RESEARCH AND DEVELOPMENT CONTRACTING
PART 337—SERVICE CONTRACTING—GENERAL
PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 342—CONTRACT ADMINISTRATION

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
PART 353—FORMS

SUBCHAPTERS I, J, K AND L ARE RESERVED

SUBCHAPTER M—HHS SUPPLEMENTATIONS

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

SUBCHAPTER A—GENERAL

PART 301—HHS ACQUISITION REGULATION SYSTEM

Subpart 301.1—Purpose, Authority, and Issuance

Sec.
301.101 Purpose.
301.103 Authority.
301.106 Office of Management and Budget Approval under the Paperwork Reduction Act.

Subpart 301.2—Administration

301.270 Executive Committee for Acquisition.

Subpart 301.4—Deviations From the FAR

301.403 Individual deviations.
301.404 Class deviations.
301.470 Procedure.

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

301.602 Contracting Officers.
301.602–3 Ratification of unauthorized commitments.
301.603 Selection, appointment, and termination of appointment of Contracting Officers.
301.603–1 General.
301.603–2 Selection and appointment.
301.603–3 Interim appointments.
301.603–4 Termination of appointments.
301.603–70 Delegation of Contracting Officer responsibilities.
301.603–71 Waivers to warrant standards.
301.603–72 FAC–C and HHS SAC certification requirements.
301.603–73 Additional HHS training requirements.
301.603–74 Requirement for retention of FAC–C and HHS SAC certification.
301.604 Training and certification of Contracting Officers' Technical Representatives.
301.604–70 General.
301.604–71 HCA authorities and responsibilities.
301.604–72 Requirements for certification maintenance.
301.604–73 Certification policy exception.
301.604–74 Additional COTR training requirements.
301.605 Contracting Officer designation of Contracting Officer Technical Representative.
301.606 Training requirements for Project Officers.
301.606–70 General.
301.606–71 Project Officer training.
301.606–72 Delegation of authority to HCAs.
301.606–73 Training policy exception.
301.606–74 Additional Project Officer training requirements.
301.607 Certification of Program and Project Managers.
301.607–70 General.
301.607–71 FAC–P/PM levels and requirements.
301.607–72 Applicability.
301.607–73 Certification waivers.
301.607–74 Certification transfers.
301.607–75 Maintenance of FAC–P/PM certification.
301.607–76 FAC–P/PM application process.
301.607–77 Input and maintenance of FAC–P/PM information.
301.607–78 Governance.
301.607–79 Contracting Officer designation of a Program/Project Manager as the Contracting Officer's Technical Representative.
301.608 Training Requirements for Purchase Cardholders, Approving Officials, and Agency/Organization Program Coordinators.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 301.1—Purpose, Authority, and Issuance

301.101 Purpose.

(a) The Department of Health and Human Services (HHS) Acquisition Regulation (HHSAR) establishes uniform HHS acquisition policies and procedures that conform to the *Federal Acquisition Regulation (FAR)* System.

(b) The HHSAR implements *FAR* policies and procedures and provides additional policies and procedures that supplement the *FAR.*

(c) The HHSAR contains HHS policies and procedures that govern the acquisition process or otherwise control acquisition relationships between HHS' contracting activities and contractors.

301.103 Authority.

(b) The Assistant Secretary for Financial Resources (ASFR) prescribes the HHSAR under the authority of 5 U.S.C. 301 and section *205(c) of the Federal Property and Administrative Services Act of 1949,* as amended (40 U.S.C. 486(c), as delegated by the Secretary.

(c) The HHSAR is issued in the Code of Federal Regulations (CFR) as *Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation.* It may be referenced as ''48 CFR Chapter 3.''

301.106 Office of Management and Budget approval under the Paperwork Reduction Act.

(a) The Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting the same information from 10 or more members of the public.

(b) The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this chapter:

HHSAR segment No.	OMB control No.
315.4	0990–0139
342.7101	0990–0131
352.233–70	0990–0133
352.270–1	0990–0129
352.270–2	0990–0129
352.270–3	0990–0129
352.270–5	0990–0130
352.270–8	0990–0128
352.270–9	0990–0128
370.1	0990–0129
370.2	0990–0129

(c) The Contracting Officer shall insert the clause in *352.201–70,* Paperwork Reduction Act, in solicitations, contracts, and orders that include a requirement to collect the same information from 10 or more persons.

Subpart 301.2—Administration

301.270 Executive Committee for Acquisition.

(a) The Associate Deputy Assistant Secretary for Acquisition (Associate DAS for Acquisition) has established the Executive Committee for Acquisition (ECA) to facilitate the planning, development, and implementation of HHS acquisition policies and procedures and to share successful acquisition practices.

(b) The ECA consists of members and alternates from the following organizations:

(1) ASFR/Office of Grants and Acquisition Policy and Accountability (OGAPA)/Division of Acquisition (DA).

(2) Agency for Healthcare Research and Quality (AHRQ).

(3) Biomedical Advanced Research and Development Authority (BARDA).

(4) Centers for Disease Control and Prevention (CDC).

(5) Centers for Medicare and Medicaid Services (CMS).

(6) Food and Drug Administration (FDA).

(7) Health Resources and Services Administration (HRSA).

(8) Indian Health Service (IHS).

(9) National Institutes of Health (NIH).

(10) Program Support Center (PSC).

(11) Substance Abuse and Mental Health Services Administration (SAMHSA).

(c) The Associate DAS for Acquisition is the Chair of the ECA. The Chair will call all meetings and direct all ECA activities.

Subpart 301.4—Deviations From the FAR

301.403 Individual deviations.

Contracting activities shall prepare requests for individual deviations to either the *FAR* or HHSAR in accordance with *301.470.*

301.404 Class deviations.

Contracting activities shall prepare requests for class deviations to either the *FAR* or HHSAR in accordance with *301.470.*

301.470 Procedure.

(a) Contracting activities shall prepare deviation requests in memorandum form and forward them through the Head of the Contracting Activity (HCA) to the Associate DAS for Acquisition. The Associate DAS for Acquisition (non-delegable) is the official authorized to approve all deviation requests.

Contracting activities may request a deviation telephonically or by e-mail in an exigent situation, but shall confirm the request by memorandum as soon as possible.

(b) A deviation request shall clearly set forth the—

(1) Nature of the deviation, including what contract(s)/contractor(s) is involved;

(2) Identification of the *FAR* or HHSAR citation from which the deviation is needed;

(3) Circumstances under which the deviation will be used;

(4) Intended effect of the deviation;

(5) Period of applicability;

(6) Rationale for the deviation (**NOTE:** The Contracting Officer shall include a copy of pertinent background papers, such as a contractor's request, as part of the deviation request.); and

(7) Suggested wording for the deviation, if applicable.

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

301.602 Contracting Officers.

301.602–3 Ratification of unauthorized commitments.

(b) Policy.

(1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority. However, an authorized official may later ratify and execute otherwise proper contracts that were made by individuals without contracting authority or by Contracting Officers in excess of their delegated authority. The ratification shall be in the form of a written document that clearly states that ratification of a previously unauthorized act is intended.

(2) The HCA is the official authorized to ratify an unauthorized commitment—but *see* paragraph (b)(3) of this section.

(3) The HCA may redelegate ratification authority for actions up to $100,000 to the Chief of the Contracting Office (CCO). No other redelegations are authorized.

(c) Limitations.

(5) The concurrence of legal counsel concerning an unauthorized commitment is optional. If a contracting activity determines that a legal review is necessary, the HCA or CCO shall coordinate the request for ratification with the Office of General Counsel (OGC), General Law Division (GLD).

(e) Procedures.

(1) The individual who is responsible for the unauthorized commitment shall provide the reviewing Contracting Officer all records and documents concerning the commitment and a complete written statement of facts, including a description of the requirement; the estimated or agreed upon price; the funds citation; an explanation of why the contracting office was not used and why the proposed contractor was selected; a list of other sources considered; and a statement as to whether the contractor has commenced work or an item has been delivered.

(2) The Contracting Officer shall review the submitted material and, if the Contracting Officer determines that the ratification request has merit, prepare it for ratification. The Contracting Officer shall forward the ratification document and related materials to the HCA or CCO, as appropriate, with any comments or information which the approving official should consider in evaluating the ratification request.

(3) If the HCA or CCO approves the ratification request, the Contracting Officer shall issue a purchase order or contract, as appropriate, upon return of the approved ratification document and file.

301.603 Selection, appointment, and termination of appointment of Contracting Officers.

301.603–1 General.

(a) The HCA (non-delegable) shall select, appoint, and terminate the appointment of Contracting Officers—*i.e.,* those individuals who are authorized to obligate the Government to the expenditure of funds for contracts and orders with dollar values that exceed (or are expected to exceed) the micro-purchase threshold. The procedures for selecting and appointing Contracting Officers apply to HHS employees. HCAs may not issue HHS Contracting Officer warrants to contractor personnel. OPDIVs shall follow local procedures in the event that the signature of another authorized official, in addition to that of the HCA, is required to appoint or terminate the appointment of Contracting Officers.

(b) The HCA shall use *Standard Form (SF) 1402,* ''Certificate of Appointment,'' (also known as a warrant) to appoint personnel, whether in the General Schedule (GS) 1102 series or other series, as Contracting Officers. The SF 1402 shall indicate the Contracting Officer's warrant level—*i.e.,* maximum dollar signature authority (*e.g.,* $1 million or ''unlimited'') and any other limitations or restrictions. The HCA shall make changes to a Contracting Officer appointment (other than a termination of an appointment as provided in *301.603–4*) by issuing a revised SF 1402. *FAR 1.603–1* prescribes the requirements for preparing and maintaining Contracting Officer warrants.

(c) Before an HCA may appoint an individual as a Contracting Officer, the individual must be certified in accordance with either the Federal Acquisition Certification in Contracting (FAC–C) program or the HHS Simplified Acquisition Certification (SAC) program, as appropriate, at the level required for the warrant authority requested. *See 301.603–72* and the HHS Contracting Workforce Training and Certification Handbook.

(d) The dollar amount of an individual transaction determines whether a Contracting Officer has the authority to sign it in accordance with the delegated authority specified on the SF 1402. For new or follow-on awards, the dollar amount of an individual transaction is the amount obligated at the time of contract or order award plus any potential option amounts or future funding amounts established by the transaction. However, under an existing contract or order, when an option is subsequently exercised or a contact or order is otherwise modified to add funding, the dollar amount of the modification (individual transaction) determines whether a Contracting Officer has the necessary delegated authority to sign it.

(e) For individuals that will exercise acquisition authorities (other than solely purchase card authorities) at or below the micro-purchase threshold, the HCA may—

(1) Use a document other than the SF 1402, such as a memorandum, that indicates a maximum dollar signature authority for individual transactions; and

(2) Determine training requirements for individuals who will exercise acquisition authorities at dollar levels below the micro-purchase threshold level.

301.603–2 Selection and appointment.

Contracting activities shall provide nominations for appointment of Contracting Officers through appropriate acquisition channels to the HCA for review. The HCA shall appoint an individual as a Contracting Officer only when a valid organizational need is demonstrated and after considering such factors as volume of actions, complexity of work, and structure of the requesting organization. The HCA shall also ensure that a Contracting Officer candidate meets the FAC–C or HHS SAC certification requirements, as

appropriate. Consistent with *FAR 1.603–2,* the HCA shall determine the documentation required when the requested appointment and authority will not exceed the micro-purchase threshold.

301.603–3 Interim appointments.

If it is essential to appoint an individual as a Contracting Officer who does not yet fully meet the FAC–C or HHS SAC certification requirements for the signature authority sought, the HCA (non-delegable) may make an interim appointment for up to 2 years. If an extension of time has been granted, but the individual does not complete the certification requirements by the extended date, the HCA's approval for the interim appointment will automatically terminate on that date.

301.603–4 Termination of appointments.

The HCA shall terminate or revoke Contracting Officer appointments in accordance with *FAR 1.603–4.*

301.603–70 Delegation of Contracting Officer responsibilities.

(a) Contracting Officers may re-delegate their acquisition responsibilities that do not involve the obligation or deobligation of funds, but involve the expenditure of previously obligated funds (such as approval of contractor scientific meeting travel and subcontract consent) to acquisition staff (for example, those in the GS–1100 series) by means of a written memorandum that clearly delineates the delegation and its limits. *See 301.604* for responsibilities that Contracting Officers may delegate to technical personnel.

(b) Contracting Officers may designate individuals as ordering or approving officials to make purchases or place/approve orders under blanket purchase agreements (BPAs), indefinite-delivery, indefinite quantity (IDIQ) contracts, or other pre-established mechanisms. Ordering officials are not Contracting Officers.

301.603–71 Waivers to warrant standards.

There may be an unusual circumstance that requires issuance of a warrant to an individual who does not fully meet the FAC–C or HHS SAC certification program requirements. Contracting activities shall provide any request for a waiver of the FAC–C program requirements and policies in writing to the Senior Procurement Executive (SPE), through the HCA, for review and approval. The SPE (non-delegable) will either approve or disapprove in writing the request for waiver. The HCA (non-delegable) may approve or disapprove a waiver of the HHS SAC program requirements.

301.603–72 FAC–C and HHS SAC certification requirements.

(a) The FAC–C certification program is available to all acquisition staff who are/will be involved as Contracting Officers or Contract Specialists in acquisitions exceeding the simplified acquisition threshold. Personnel who, as part of prior certification programs, have completed some or all of the required training or have attained certification thereunder are not required to re-take training courses, but shall follow FAC–C training requirements when considering additional or required core training, if needed. *See 301.603–74* for information regarding retention of certification, including the requirement to earn continuous learning points (CLPs). FAC–C certification also does not apply to—

(1) The SPE;

(2) Senior level officials responsible for delegating acquisition authority;

(3) Personnel who are not in the GS–1102 series whose warrants are used to acquire emergency goods and services; or

(4) Personnel who are not in the GS–1102 series whose warrants are so limited as to be outside the scope of this program, as determined by the Chief Acquisition Officer (CAO). (**Note:** The HHS CAO has determined that individuals with warrants which are limited to simplified acquisitions are deemed to be outside the scope of the FAC–C program.)

(b) HHS does not require personnel with Contracting Officer warrants issued prior to January 1, 2007 to be FAC–C certified unless they are seeking a change in authority on or after that date. Individuals applying for a new Contracting Officer warrant or an increase in warrant authority on or after January 1, 2007, regardless of GS series, *must* be FAC–C certified at the level appropriate for the warrant authority sought. To obtain an unlimited warrant, FAC–C Level III certification is required. (*Note:* New Contracting Officer warrants are defined in the Office of Federal Procurement Policy's (OFPP's) FAC–C memorandum, dated January 20, 2006, as warrants issued to employees for the *first time* at a department or agency.)

(c) The FAC–C certification is based on three sets of requirements: Education, training, and experience, and the requirements are cumulative—*i.e.,* an individual must meet the requirements of each previous certification level before attaining a higher level certification. The FAC–C certification requirements, including additional HHS-specific training requirements for certain types of acquisitions, are specified in the HHS Contracting Workforce Training and Certification Handbook.

(d) HHS SAC certification is based on three sets of requirements: Training, experience, and satisfactory performance rating. Personnel who are involved in the award of simplified acquisitions must meet the appropriate HHS SAC certification requirements. (**Note:** While personnel who are FAC–C certified are not required to obtain HHS SAC certification in order to award simplified acquisitions, they should obtain appropriate training before doing so.) The HHS SAC certification requirements, including additional HHS-specific training requirements for certain types of acquisitions, are specified in the HHS Contracting Workforce Training and Certification Handbook.

301.603–73 Additional HHS training requirements.

HHS acquisition personnel are required to complete, as applicable, the additional training requirements specified below. These courses may be used as electives for the purpose of satisfying FAC–C requirements or as continuous learning for maintenance of FAC–C or SAC certifications.

(a) *Earned value management training.* Effective January 1, 2010, all personnel in the GS–1102 series who are responsible for, or may become responsible for, the award or administration of any contract to which earned value management (EVM) is applied pursuant to *334.201(a) or (b)* must successfully complete an EVM training course before they commence administration of the contract or are authorized to award the contract. After completion of the initial course, a refresher course is required every 2 years. This course is in addition to the training requirements for FAC–C certification at the specified levels. Determination of course suitability shall be made by the Operating Division (OPDIV) HCA, in conjunction with HHS' Office of the Chief Information Officer (OCIO) or Office of Facilities Management and Policy (OFMP), as appropriate. To be eligible, the basic and refresher courses must each be 8 hours or more in length.

(b) *Performance based acquisition training.* Effective January 1, 2010, all GS–1102s, who award or administer service contracts, are required to complete a Performance-Based Acquisition (PBA) course prior to assuming such responsibilities. Refresher training in PBA is required

every 4 years. To be eligible, a course must be 8 hours or more in length. Determination of course suitability shall be made by the HCA.

(c) *Federal appropriations law training.* Effective January 1, 2010, all GS–1102s and GS–1105s are required to complete both HHS University's classroom-based and on-line Federal appropriations law course, by January 1, 2011 (for current employees) and within 1 year of entering on duty (for new employees). Employees are required to take the HHS University on-line course as refresher training every year. Determination of course equivalency shall be made by the HCA.

(d) *Green purchasing training.* Effective January 1, 2010, all GS–1102s and GS–1105s are required to complete green purchasing training by January 1, 2011 (for current employees) and within 1 year of entering on duty (for new employees). Refresher training is required every 2 years. To be eligible, a course must be 4 hours or more in length. Determination of course suitability shall be made by the HCA.

(e) *Section 508 training.* Effective January 1, 2010 (or when the HHS Office on Disability so requires), all GS–1102s, GS–1105s, and GS–1106s who award or administer acquisitions that exceed the micro-purchase threshold and involve electronic information technology (EIT) products or services (subject to Section 508 of the Rehabilitation Act of 1973 and pertinent HHSAR provisions), must complete all applicable training courses sponsored by the HHS Office on Disability. For information on frequency, timing, and duration of the training requirement, personnel shall consult with the HHS Office on Disability.

(f) *Training policy exceptions.*

(1) *EVM training.* In the event that there is an urgent requirement for a Contracting Officer/Contract Specialist to award or administer a project to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 9 months from the date of assignment to the contract. If the individual does not complete the training requirement within 9 months, the HCA's approval for the individual's assignment to the contract will automatically terminate on that date. The Contract Specialist is not required to take the class as long as the Contract Specialist is working under the direction of a Contracting Officer who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to an individual to complete the PBA, Federal appropriations law, green purchasing, and Section 508 training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA's approval will automatically terminate on that date.

301.603–74 Requirement for retention of FAC–C and HHS SAC certification.

To maintain FAC–C certification, all warranted Contracting Officers, regardless of series, as well as Contract Specialists, must earn 80 CLPs every 2 years. To maintain HHS SAC certification, all individuals with delegated Contracting Officer authority, including those in the GS–1102, GS–1105, GS–1106, and non-1100 series, must earn a minimum of 40 hours (CLPs) every 2 years after completing all mandatory training requirements. FAC–C and HHS SAC certification will expire if the CLPs are not earned every 2 years (from the date of initial certification or re-certification) and, if applicable, may result in a loss of warrant authority. (**Note:** The certification programs' continuous learning requirement applies to all applicable personnel, including those who were certified under prior certification programs.)

301.604 Training and certification of Contracting Officers' Technical Representatives.

301.604–70 General.

In accordance with the Federal Acquisition Certification for Contracting Officers' Technical Representatives (FAC–COTR) program, HHS has established a training program for certification and designation of personnel as COTRs—*see* HHS' Federal Acquisition Certification for Contracting Officers' Technical Representative Program Handbook, dated January 2009, for information on the methods for earning FAC–COTR certification. *See* also *302.101(c)* for further information regarding the definition of a COTR and when designation of a COTR is appropriate. All references to COTRs also apply to their alternates.

301.604–71 HCA authorities and responsibilities.

(a) HCAs are authorized to determine (1) equivalencies for the Basic Contracting Officer's Technical Representative Course; (2) course prerequisites; and (3) approve completion of CLP continuous learning activities, education, and training for maintenance of COTR certification. This authority does not apply to EVM training—*see 301.603–73.* Course equivalencies must meet the Federal Acquisition Institute's (FAI's) required COTR competencies. HCAs may re-delegate the authorities in (1) and (2) to OPDIV Acquisition Career Managers (ACMs) or other comparable officials.

(b) In addition to the authorities specified in *301.604–71(a),* HCAs or their designees (except where the authority is shown as non-delegable) are responsible for—

(1) Reviewing a candidate's qualifications to be a COTR;

(2) Granting, suspending, denying, and revoking COTR certifications and their continuance;

(3) Authorizing (non-delegable) an individual to perform COTR duties on an interim basis for up to 90 days—*see 301.604–73;* and

(4) Determining (non-delegable) on a case-by-case basis whether to postpone (for up to 90 days) withdrawal of any interim COTR delegation for failure of a candidate to qualify for certification—*see 301.604–73.*

301.604–72 Requirements for certification maintenance.

Maintaining HHS FAC–COTR certification requires at least 40 relevant CLPs every 2 years. *See* Appendix A of OFPP's FAC–COTR memorandum, dated November 26, 2007, and HHS' Federal Acquisition Certification for Contracting Officers' Technical Representative Program Handbook, dated January 2009, for information on CLPs.

301.604–73 Certification policy exception.

(a) In the event that an individual who is not currently certified under HHS' FAC–COTR program is urgently required to serve as a COTR, the head of the sponsoring program office (Program Manager) or designee (*e.g.,* the immediate supervisor) may request, and the HCA (non-delegable) may authorize, the individual to perform the designated duties on an interim basis for up to 6 months, provided that—

(1) The individual agrees to become certified during that period and provides evidence of training course registration; and

(2) Prior to assignment to the contract, the individual meets with the cognizant Contracting Officer to discuss the role and specific responsibilities of a COTR and the interrelationships, as applicable, among the Project Officer, Contracting Officer, Program/Project Manager, and COTR functions.

(b) If an extension has been granted, but the individual does not complete

the training by the extended date, the HCA's approval for the individual's assignment to the contract will automatically terminate on that date.

301.604–74 Additional COTR training requirements.

HHS COTRs are required to complete, as applicable, the training requirements specified below.

(a) *Earned value management training.* Effective January 1, 2010, all COTRs assigned to any contract to which EVM is applied pursuant to *334.201(a) or (b)* must successfully complete an EVM training course before assuming their COTR duties. In conjunction with ASFR/OGAPA/DA, HHS' OCIO [for information technology (IT)] and OFMP (for construction/facilities), are authorized to designate appropriate EVM courses. At least 8 hours of EVM training is required every 2 years.

(b) *Performance-based acquisition training.* Effective January 1, 2010, all COTRs assigned to a service contract are required to successfully complete a PBA course. To be eligible, a course must be 8 hours or more in length. Determination of course suitability shall be made by the HCA or designee. At least 8 hours of refresher training in PBA is required every 4 years.

(c) *Federal appropriations law training.* Effective January 1, 2010, all COTRs are required to successfully complete HHS University's classroom-based or on-line Federal appropriations law course within 3 years after an initial certification is issued. COTRs are required to take the HHS University on-line appropriations law course as refresher training every 4 years.

(d) *Green purchasing training.* Effective January 1, 2010, all COTRs are required to complete green purchasing training within the first certification period. The individual's immediate supervisor shall make the determination of course suitability. At least 4 hours of refresher training is required every 4 years.

(e) *Training policy exceptions.*

(1) *EVM training.* In the event that there is an urgent requirement for a COTR to administer a contract to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 9 months from the date of assignment to the contract. If the individual does not complete the training requirement within 9 months, the HCA's approval for the individual's assignment to the contract will automatically terminate on that date. In addition, during any extension period, the COTR must work under the direction of a COTR, or Program/Project Manager who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to a COTR to complete the PBA, Federal appropriations law, and green purchasing training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA's approval will automatically terminate on that date.

301.605 Contracting Officer designation of Contracting Officer Technical Representative.

The Contracting Officer shall ensure that a COTR candidate is currently certified under HHS' FAC–COTR program before delegating authority to that individual to act as a COTR. Even if an individual is FAC–COTR-certified, a candidate becomes a COTR only when a Contracting Officer provides in writing the authorities the individual may exercise for a specified contract or order. Authority for such designations rests solely with the Contracting Officer. The Contracting Officer shall retain in the contract or order file the individual's active FAC–COTR certificate. In the event that the HCA has granted an exception—*see 301.604–73,* the Contracting Officer shall include the HCA's approval in the file.

301.606 Training requirements for Project Officers.

301.606–70 General.

HHS has established a program for training personnel for certification and designation as Project Officers. *See 302.101(g)* for further information regarding the definition of a Project Officer and when designation of a Project Officer is appropriate. All references to Project Officers also apply to their alternates. Program Managers or their designees are authorized to designate individuals to serve as Project Officers. (*Note:* If an individual will also serve as the COTR for a proposed project, the individual shall comply with the training certification requirements for COTRs—*see 301.604.*)

301.606–71 Project Officer training.

Before an individual may perform the duties of a Project Officer, including development of an Acquisition Plan (AP) or other acquisition request documentation—*see 307.71,* for a proposed project, the Program Manager or designee shall designate an individual as a Project Officer in writing by means of a memorandum to the Project Officer candidate with a copy to the cognizant Contracting Officer. A Project Officer must successfully complete HHS University's Basic Contracting Officer's Technical Representative Course or equivalent and any OPDIV-specific course prerequisites. The Project Officer must provide a course completion certificate to the Contracting Officer with any AP or other acquisition request documentation submitted. *See* HHS guidance on the training requirement for technical proposal evaluators in *315.305(a)(3)(ii).*

301.606–72 Delegation of authority to HCAs.

HCAs are authorized to determine equivalencies for the Basic Contracting Officer's Technical Representative Course and any OPDIV-specific course prerequisites. This authority may be re-delegated to OPDIV acquisition ACMs or other comparable officials.

301.606–73 Training policy exception.

(a) In the event that an individual who has not successfully completed the required training course is urgently required to serve as a Project Officer, the Program Manager or designee may authorize the individual to perform the designated duties on an interim basis for up to 6 months, provided that—

(1) The individual agrees to take the Basic Contracting Officer's Technical Representative course during that period and provides evidence of course registration; and

(2) The individual meets, prior to assignment to the project, with the cognizant Contracting Officer to discuss the specific role and responsibilities of a Project Officer and the interrelationships, as applicable, among the Project Officer, Contracting Officer, Program/Project Manager, and COTR functions.

(b) If an extension of time has been granted, but the individual fails to complete the training by the extended date, the Program Manager's or designee's approval for the individual's assignment to the project will automatically terminate on that date.

301.606–74 Additional Project Officer training requirements.

HHS Project Officers are required to complete, as applicable, the training requirements specified below.

(a) Earned value management training. All Project Officers assigned to any contract project to which EVM is applied pursuant to *334.201(a) or (b)* must successfully complete an EVM

training course before assuming their Project Officer duties. In conjunction with ASFR/OGAPA/DA, HHS' OCIO (for IT) and OFMP (for construction/facilities) are authorized to designate appropriate EVM courses.

(b) *Performance-based acquisition training.* Effective January 1, 2010, all Project Officers assigned to a service contract are required to successfully complete a PBA course. To be eligible, a course must be 8 hours or more in length. Determination of course suitability shall be made by the HCA or designee. At least 8 hours of refresher training in PBA is required every 4 years.

(c) *Federal appropriations law training.* Effective January 1, 2010, all Project Officers are required to successfully complete HHS University's classroom-based or on-line Federal appropriations law course. Project Officers are required to take the HHS University on-line appropriations law course as refresher training every 4 years.

(d) *Green purchasing training.* Effective January 1, 2010, all Project Officers are required to complete green purchasing training. The individual's immediate supervisor shall make the determination of course suitability. At least 4 hours of refresher training is required every 4 years.

(e) *Training policy exceptions.*

(1) *EVM training.* In the event that there is an urgent requirement to assign a Project Officer to a contract project to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 3 months from the date of submission of the AP or other acquisition request documentation to the contracting office. If the individual does not complete the training requirement within the extension period, the HCA's approval for the individual's assignment to the project will automatically terminate on that date. In addition, during any extension period, the Project Officer must work under the direction of a Project Officer, COTR, or Program/Project Manager who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to a Project Officer to complete the PBA, Federal appropriations law, and green purchasing training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA's approval will automatically terminate on that date.

301.607 Certification of Program and Project Managers.

301.607–70 General.

In accordance with the Federal Acquisition Certification—Program and Project Managers (FAC–P/PM) program, HHS has established a certification program for Program or Project Managers. *See* HHS' Federal Acquisition Certification—Program and Project Managers Handbook (P/PM Handbook) for information on the methods for earning FAC–P/PM certification.

301.607–71 FAC–P/PM levels and requirements.

(a)(1) The FAC–P/PM certification program specifies three different levels of certification, depending on the core competency, training, and experience required to manage different types of acquisitions—

(i) Entry/Apprentice—Level I;

(ii) Mid-level/Journeyman—Level II; and

(iii) Senior/Expert—Level III.

(2) Each FAC–P/PM certification level is independent of the others—*i.e.,* applicants for the Senior/Expert level need not have been certified at the Mid-level/Journeyman or Entry/Apprentice levels. General and specific core competencies, training, and required experience vary by certification level. (*Note:* Individuals certified under the FAC–P/PM program meet the general competency and experience standards for P/PM certification. However, IT Program and Project Managers should attain/demonstrate IT-specific P/PM requirements. *See* Appendix C, Federal Acquisition Certification—Program and Project Managers—Information Technology Technical Competencies, in the P/PM Handbook for additional information.

(b)(1) *Competencies.* An applicant can satisfy the competency requirements through:

(i) Successful completion of training;

(ii) Completion of comparable education or certification programs;

(iii) Demonstration of knowledge, skills, and abilities; or

(iv) Any combination of these three.

(2) The FAI describes the following three sets of general core competencies on its Web site:

(3) *General Business Competencies:* Includes decision-making, interpersonal skills, oral communication, team-building, and writing.

(4) *Technical Competencies:* Includes contracting, financial management, quality assurance, and risk management.

(5) *Essential Competencies and Proficiencies:* Includes management processes, systems engineering, test and evaluation, contracting, and business.

(6) Specific core competencies also apply to the three certification levels. *See* Chapter 2, Federal Acquisition Certification—Program and Project Managers—Requirements and Performance Accountability, in the P/PM Handbook for additional information.

(c) *Training.* (1) Suggested training includes coursework, varying from 16–24 hours in duration, in:

(i) Acquisition;

(ii) Project management;

(iii) leadership and interpersonal skills;

(iv) Government-specific training; and

(v) Earned value management and cost estimating.

(2) The depth of the training for each course required may vary by certification level.

(d) *Experience.* Experience requirements vary by certification level. For example, for certification at the Entry/Apprentice—Level I, at least 1 year of project management experience within the last 5 years is required. The Mid-level/Journeyman—Level II requires at least 2 years of program or project management experience within the last 5 years. The Senior/Expert—Level III requires at least 4 years of program and project management experience on *Federal* projects within the last 5 years.

(e) *Additional OPDIV guidance.* OPDIVs may issue supplemental guidance and requirements for selection and assignment of Program and Project Managers and require additional skills and competencies to meet organizational or mission needs. However, OPDIVs may not reduce the requirements specified in the P/PM Handbook.

301.607–72 Applicability.

(a) The FAC–P/PM certification prerequisites and continuous learning requirements apply to all HHS employees who seek to obtain a FAC–P/PM certification. Although obtaining a FAC–P/PM certification qualifies employees to serve as a Program or Project Manager, it does not ensure their selection or designation as such. (*Note:* Contractors and their employees are not eligible to be certified or to serve as Program or Project Managers.)

(b) Mandatory certification is limited to major and non-major IT and construction capital investment acquisitions. Consistent with OFPP guidance, HHS requires FAC–P/PM Level III certification for Program and

Project Managers responsible for major IT and construction capital investments—*i.e.,* those requiring preparation of an OMB Exhibit 300, HHS Form 300, or equivalent. An individual must obtain FAC–P/PM Level III certification within 1 year from the date of being assigned to such a major capital investment. Also, HHS requires that an individual obtain FAC–P/PM Level II or I certification for non-major IT and construction—*i.e.,* tactical or supporting, capital investments, respectively, within 2 years from the date of being assigned to such a non-major capital investment. *See* Appendix A, Federal Acquisition Certification—Program and Project Managers—HHS Projects and Programs with Associated Certification Levels, in the P/PM Handbook for additional information regarding major and non-major IT and construction capital investments. FAC–P/PM certification for other types of investments [*e.g.,* advanced research and development (R & D)] is encouraged, but is not mandatory.

301.607–73 Certification waivers.

(a) Waivers to certification requirements may be approved in certain situations. Waivers for additional time to complete certification requirements are not necessary for the first year following an assignment to a major IT or construction capital investment and for 2 years following an assignment to a non-major capital investment. For waivers beyond those periods (for up to 1 additional year), the HHS Chief Information Officer (CIO) (for IT programs and projects) and the Deputy Assistant Secretary for Facilities Management and Policy (DASFMP) (for construction programs and projects) are delegated authority to approve waiver requests. The HHS CAO is the only individual authorized to approve waiver requests for additional time beyond the initial 1-year waiver period.

(b) Approval of a waiver request does not relieve an individual from meeting the certification requirements. Also, unlike FAC–P/PM certifications, waivers issued by other Federal departments and agencies do not transfer to HHS, since a waiver is agency-specific.

301.607–74 Certification transfers.

(a) HHS recognizes and accepts FAC–P/PM certifications issued by other Federal departments and agencies. In addition, HHS complies with FAI determinations as to which certifications by organizations outside the Federal government are eligible for full or partial consideration under FAC–P/PM. *See* FAI's Web site, and Chapter 3, Federal Acquisition Certification—Program and Project Managers—Application and Certification Procedures, in the P/PM Handbook for additional information.

(b) A certification transfer should not be initiated when an individual, who holds a current FAC–P/PM certification from another Federal department or agency, becomes an HHS employee. Instead, the individual must apply for recertification (which will result in issuance of an HHS certification) at the time the candidate's immediate supervisor performs the bi-annual assessment to determine whether the individual has met the HHS FAC–P/PM CLP requirements.

301.607–75 Maintenance of FAC–P/PM certification.

(a) FAC–P/PM certification lasts for 2 years. To maintain FAC–P/PM certification, HHS Program and Project Managers are required to earn 80 CLPs of skills currency every 2 years, starting from the date of their initial certification or recertification, and document completion of all training. If the required CLPs are not earned within each 2-year period, a FAC–P/PM certification will lapse. Lapsed certifications may be reinstated when 80 CLPs have been accumulated.

(b) Continuous learning activities related to FAC–P/PM include, but are not limited to—

(1) Training activities, such as teaching, self-directed study, and mentoring;

(2) Courses completed to achieve certification at the next higher level;

(3) Professional activities, such as attending/speaking/presenting at professional seminars/symposia/conferences, publishing papers, and attending workshops;

(4) Educational activities, such as formal training and formal academic programs; and

(5) Experience, such as developmental or rotational assignments.

See Appendix F, Federal Acquisition Certification—Program and Project Managers—Guidance on Meeting Requirements for Continuous Learning Points, in the P/PM Handbook for additional information.

301.607–76 FAC–P/PM application process.

The P/PM Handbook contains application procedures and forms to be completed for basic certification; certification transfer; certification through fulfillment; recertification; and certification waiver. Applicants for HHS FAC–P/PM certification actions shall comply with the requirements and procedures specified in the P/PM Handbook and refer any questions to their OPDIV ACM for resolution.

301.607–77 Input and maintenance of FAC–P/PM information.

FAI's Acquisition Career Management Information System (ACMIS) is HHS' system of record for the FAC–P/PM program. Program and Project Manager candidates and certified Program and Project Managers are responsible for entering, maintaining, and updating their FAC–P/PM training and CLP data in ACMIS. OPDIV ACMs shall periodically review ACMIS records for quality assurance purposes.

301.607–78 Governance.

The Departmental ACM, in ASFR/OGAPA/DA, serves as the Departmental FAC–P/PM Program Manager and is responsible for administering the program. To support the overall management of the FAC–P/PM certification program at the OPDIV level, Executive Officers and their HCAs may either use their existing ACM or designate an additional ACM, whose professional background includes program and project management. *See* Appendix B, Federal Acquisition Certification—Program and Project Managers—Roles and Responsibilities, in the P/PM Handbook for additional information.

301.607–79 Contracting Officer designation of a Program/Project Manager as the Contracting Officer's Technical Representative.

Personnel who are FAC–P/PM certified, at any level, meet the requirements for FAC–COTR certification and are, therefore, not required to obtain FAC–COTR certification to serve as a COTR for an HHS acquisition. However, for those individuals serving as a Program or Project Manager under a FAC–P/PM certification waiver—*see 301.607–73,* the Contracting Officer shall ensure that the individual meets the requirements of HHS' FAC–COTR program before delegating authority to that individual to act as a COTR. *See 301.605* for additional information regarding the Contracting Officer's designation of a COTR.

301.608 Training Requirements for Purchase Cardholders, Approving Officials, and Agency/Organization Program Coordinators.

Training requirements for purchase cardholders, Approving Officials, and Agency/Organization Program Coordinators are listed in the following table:

HHS PURCHASE CARD TRAINING PROGRAM, BY AUTHORITY LEVEL

Authority [a]	Program participant	Required training [b]
Up to $3,000	Prospective/newly appointed purchase cardholders and Approving Officials.	Basic purchase card training (HHS University course or an OPDIV equivalent course).
	Purchase card holders and Approving Officials	Yearly refresher purchase card training.
$3,001 to $25,000	Prospective/newly appointed purchase cardholders and Approving Officials.	• Basic purchase card training (HHS University course or an equivalent). • Basic simplified acquisition procedures (*e.g.,* DAU's CON 237). • Advanced simplified acquisition procedures or Appropriations law.
	Purchase card holders and Approving Officials	Yearly refresher purchase card training.
$25,001 to $100,000	Prospective/newly appointed purchase cardholders and Approving Officials.	• Basic purchase card training (HHS University course or an OPDIV equivalent course). • Basic simplified acquisition procedures (*e.g.,* DAU's CON 237). • Advanced simplified acquisition procedures or Appropriations law. • CON 100 (Shaping Smart Business Arrangements). • CON 110 (Mission Support Planning).
	Purchase cardholders and Approving Officials	Yearly refresher purchase card training.
Not applicable	Prospective/newly appointed Agency/Organization Program Coordinators.	• Basic purchase card training (HHS University course or an OPDIV equivalent course). • Basic simplified acquisition procedures or DAU's CON 237. • Advanced simplified acquisition procedures or appropriations law. • CON 100 (Shaping Smart Business Arrangements). • CON 110 (Mission Support Planning).
	Agency/Organization Program Coordinators	Yearly refresher purchase card training (attendance at GSA's annual training conference satisfies refresher training).

[a] Cardholders and Approving Officials with authorized increases in delegation of procurement authority (DPA) have up to 3 months to complete the training requirements for the new DPA.

[b] CON 237, CON 100, and CON 110 are available at the DAU Web site at *http://www.dau.mil/registrar/enroll.asp.* CON 100 is also offered through HHS University (*see* Web site at: *http://learning.hhs.gov*).

PART 302—DEFINITIONS OF WORDS AND TERMS

Subpart 302.1—Definitions

Sec.
302.101 Definitions.

Subpart 302.2—Definitions Clause

302.201 Contract clause.

Subpart 302.70—Common HHSAR Acronyms and Abbreviations

302.7000 Common HHSAR acronyms and abbreviations.

Subpart 302.71—HHS Standard Templates and Formats

302.7100 HHS standard templates and formats.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 302.1—Definitions

302.101 Definitions.

(a) *Agency head* or *head of the Agency,* unless otherwise stated, means the head of the OPDIV for: AHRQ; CDC; CMS; FDA; HRSA; IHS; NIH; SAMHSA; and ASFR for the Office of the Secretary (OS), including PSC. The Assistant Secretary for Preparedness and Response (ASPR) is the head of the agency for BARDA contracting functions.

(b) *Chief of the Contracting Office* is typically a mid-level management official, usually an office director, division director, or branch chief, who manages and monitors the daily contract operations of an OPDIV or major component of an OPDIV. The CCO is subordinate to the HCA, except where the same individual is the HCA and CCO.

(c) *Contracting Officer's Technical Representative* is a Federal employee whom a Contracting Officer has designated in writing to act as the Contracting Officer's representative in monitoring and administering specified aspects of contractor performance *after* award of a contract or order that exceeds the simplified acquisition threshold. (*Note:* In accordance with local procedures, OPDIVs may designate COTRs for contracts or orders estimated to be less than the simplified acquisition threshold.) These activities may include verifying that:

(1) The contractor's performance meets the standards set forth in the contract;

(2) The contractor meets the contract/order's technical requirements by the specified delivery date(s) or within the period of performance; and

(3) The contractor performs within the fixed price or cost ceiling stated in the contract or order. COTRs must meet the training and certification requirements specified in *301.604.*

(d) *Head of the contracting activity* is an official who has overall responsibility for managing a contracting activity—*i.e.,* the organization within an OPDIV or other HHS organization which has been delegated broad authority regarding the conduct of acquisition functions.

(1) The HHS HCAs are as follows:

AHRQ: Director, Division of Contracts Management
BARDA: Director, Acquisition Management System
CDC: Director, Procurement and Grants Office
CMS: Director, Office of Acquisition and Grants Management
FDA: Director, Office of Acquisitions and Grant Services
HRSA: Director, Office of Acquisition Management and Policy
IHS: Director, Division of Acquisition Policy
NIH: Director, Office of Acquisition and Logistics Management
PSC: Director, Strategic Acquisition Service
SAMHSA: Director, Division of Contracts Management

(2) Each HCA shall conduct an effective and efficient acquisition program; establish adequate controls to ensure compliance with applicable laws, regulations, procedures, and the dictates of good management practices; and conduct periodic reviews to evaluate and determine the extent of adherence to prescribed policies and regulations and the need for guidance and training.

(3) HCAs may redelegate their authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the *FAR,* by the HHSAR, or by other regulations. To ensure proper control of redelegated acquisition authorities, HCAs shall maintain a file containing successive delegations of HCA authority through the Contracting Officer level.

(e) *Program Manager* is a Federal employee whom an OPDIV official or designee one level above the head of the sponsoring program office has designated in writing to act as a Program Manager for a group of related major or non-major IT or construction capital investments—*see* HHS FAC–P/PM Program Handbook. *See* also Appendix D, Relationship between Program Management and Project Management, of OFFP memorandum entitled ''The Federal Acquisition Certification for Program and Project Managers,'' dated April 25, 2007. Program Managers must meet the FAC–P/PM certification requirements in *301.607.* A Program Manager may also be delegated authority to act as the COTR for a major or non-major IT or construction capital investment—*see 301.604.*

(f) *Project Manager* is a Federal employee whom a head of the sponsoring program office (Program Manager) or designee has designated in writing to act as a Project Manager for a major or non-major IT or construction capital investment—*see* HHS FAC–P/PM Program Handbook. *See* also Appendix D, Relationship between Program Management and Project Management, of OFFP memorandum entitled ''The Federal Acquisition Certification for Program and Project Managers,'' dated April 25, 2007. Project Managers must meet the FAC–P/PM certification requirements in *301.607.* A Project Manager may also be delegated authority to act as the COTR for a major or non-major IT or construction capital investment—*see 301.604.*

(g) *Project Officer* is a Federal employee whom a head of the sponsoring program office (Program Manager) or designee has designated in writing to act as a Project Officer and provide guidance, information, and assistance to the Contracting Officer for all technical aspects of a proposed project *before* award of a contract or order that is estimated to exceed the simplified acquisition threshold. (*Note:* In accordance with local procedures, OPDIVs may designate Project Officers for contracts or orders estimated to be less than the simplified acquisition threshold.) Project Officers must meet the training requirements in *301.606.* Project Officers are often delegated authority to also act as the COTR on a contract or order—*see 301.604.*

Subpart 302.2—Definitions Clause

302.201 Contract clause.

The Contracting Officer shall insert the clause in *FAR 52.202–1,* Definitions, in solicitations and contracts, except as cited below. This is an authorized FAR deviation.

(a) In accordance with *FAR 52.202–1(a)(1),* the Contracting Officer shall insert paragraph (a) in *352.202–1* in place of paragraph (a) of the *FAR* clause.

(b) In accordance with *FAR 52.202–1(a)(1),* the Contracting Officer shall insert paragraph (b), or its alternate in *352.202–1,* to the end of the *FAR* clause. The Contracting Officer shall insert paragraph (b) when a fixed-priced contract is contemplated and the alternate to paragraph (b) when a cost-reimbursement contract is contemplated.

Subpart 302.70—Common HHSAR Acronyms and Abbreviations

302.7000 Common HHSAR acronyms and abbreviations.

(a) The HHSAR cites numerous acquisition-related and organizational acronyms and abbreviations. Each of these is established where first cited in the text, following the use of the unabbreviated term, and are used in subsequent subparts of that part or any other part of the HHSAR.

(b) The table below cites, for reference purposes, the most commonly used acronyms and abbreviations—*i.e.,* those that have applicability to *multiple* parts of the HHSAR, and where they are first cited. They are listed alphabetically. The HHSAR also contains other acronyms and abbreviations, which because they are cited only in *one* HHSAR part, subpart, section, or in reference to a particular topic, are not listed in the table. An example is DCIS (Departmental Contracts Information System) cited in subpart *304.602.*

Acronym/abbreviation	Term	Where first cited in the HHSAR
A & E	Architect and engineer (contracts)	304.803–70(b).
AHRQ	Agency for Healthcare Research and Quality	301.270(b).
AP	Acquisition Plan	301.606–71.
ASFR	Assistant Secretary for Financial Resources (in OS)	301.103(b).
Associate DAS for Acquisition	Associate Deputy Assistant Secretary for Acquisition (in OS/ASFR/OGAPA/DA)	301.270(a).
BARDA	Biomedical Advanced Research and Development Authority	301.270(b).
BPA or BPAs	Blanket Purchase Agreement(s)	301.603–70(b).
CA	Competition Advocate	306.202(a).
CAO	Chief Acquisition Officer (for HHS)	301.603–72(a)(4).
CCO	Chief of the Contracting Office	301.602–3(b)(3).
CDC	Centers for Disease Control and Prevention	301.270(b).
CFR	Code of Federal Regulations	301.103(c).
CIO	Chief Information Officer (for HHS)	301.607–73(a).
CMS	Centers for Medicare and Medicaid Services	301.270(b).
COTR	Contracting Officer's Technical Representative	301.604–70.
D&F	Determination and Findings	306.202(b)(1).
DA	Division of Acquisition (in ASFR) in OS	301.270(b).
DASFMP	Deputy Assistant Secretary for Facilities Management and Policy	301.607–73(a).
DAS/GAPA	Deputy Assistant Secretary for Grants and Acquisition Policy and Accountability.	309.403.
EIT	Electronic information technology	301.603–73(e).
EVM	Earned value management	301.603–73(a).

Acronym/abbreviation	Term	Where first cited in the HHSAR
FAR	Federal Acquisition Regulation	301.101(a).
FDA	Food and Drug Administration	301.270(b).
FedBizOpps	Federal Business Opportunities	305.205(a).
FSS	Federal Supply Schedule	304.803–70(b).
GLD	General Law Division (typically referred to with "OGC")	301.602–3(c)(5).
GSA	General Services Administration	304.803–70(b).
GWAC	Government-wide acquisition contract	304.803–70(b).
HCA	Head of the Contracting Activity	301.470(a).
HHS	(Department of) Health and Human Services	301.101(a).
HHSAR	Health and Human Services Acquisition Regulation	301.101(a).
HRSA	Health Resources and Services Administration	301.270(b).
HUBZone	Historically Underutilized Business Zone	305.205(a)(2).
IDIQ	indefinite-delivery, indefinite-quantity (contract type)	301.603–70(b).
IHS	Indian Health Service	301.270(b).
IT	information technology	301.604–74(a).
JOFOC	Justification for Other than Full and Open Competition	306.303–1(b)(1).
NIH	National Institutes of Health	301.270(b).
OCIO	Office of the Chief Information Officer (for HHS)	301.603–73(a).
OFMP	Office of Facilities Management and Policy (for HHS)	301.603–73(a).
OGAPA	Office of Grants and Acquisition Policy and Accountability	301.270(b).
OGC	Office of the General Counsel	301.602–3(c)(5).
OIG	Office of the Inspector General	303.104–7(a)(2)(i).
OMB	Office of Management and Budget	301.106.
OPDIV	Operating Division	301.603–73(a).
OS	Office of the Secretary	302.101(a).
OSDBU	Office of Small and Disadvantaged Business Utilization (in OS)	307.104(a)(4).
Pub. L.	Public Law	304.604.
PWS	performance work statement (typically cited with SOW)	304.1300(c).
PSC	Program Support Center (in OS)	301.270(b).
R&D	research and development	301.607–72(b).
RFI	Request for Information	305.205(a).
SAMHSA	Substance Abuse and Mental Health Services Administration	301.270(b).
SBS	Small Business Specialist (in OSDBU)	307.104(a)(4).
SF	Standard Form	301.603–1(b).
SOW	statement of work [inclusive of specification(s)] and typically cited with PWS	304.1300(c).
SPE	Senior Procurement Executive—*i.e.,* Associate DAS for Acquisition	301.603–71.
STAFFDIV	Staff Division (in OS)	311.7001(b).

Subpart 302.71—HHS Standard Templates and Formats

302.7100 HHS standard templates and formats.

HHS has developed standard templates and formats for preparation of various acquisition documents, reports, and plans. The templates and formats, which contain instructions for their completion, may be accessed on the ASFR/OGAPA/DA Internet Web site. A complete listing of the standard templates and formats and where they are referenced in the text are cited in the table below:

Title of template/format	HHSAR reference
Acquisition Plan	307.7103.
Acquisition Plan Waiver Request	307.7101(b)(2).
Acquisition Strategy	307.104–70.
Annual Acquisition Plan	307.104(a)(5).
Competition Advocate Report	306.502(b).
Contract File Checklists	304.803–70.
FedBizOpps R & D Sources Sought Notice	305.205(a)(3).
FedBizOpps Request for Information	315.201(e)(4).
FedBizOpps Small Business Sources Sought Notice	319.202–2(a)(3).
FedBizOpps Sources Sought Notice	310.001(a)(3)(iv).
Justification for Other than Full and Open Competition	306.303–1(b)(1).
Limited Source Justification	308.405–6(g)(1)(i).
Request for Information	315.201(e)(4).

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 303.1—Safeguards

Sec.

303.101 Standards of conduct.
303.101–3 Agency regulations.
303.1047–7 Violations or possible violations of the Procurement Integrity Act.
303.1003 Requirements.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Subpart 303.3—Reports of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

Subpart 303.4—Contingent Fees

303.405 Misrepresentations or violations of the Covenant Against Contingent Fees clause.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

Subpart 303.8—Limitation on the Payment of Funds to Influence Federal Transactions

303.808–70 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 303.1—Safeguards

303.101 Standards of conduct.

303.101–3 Agency regulations.

(a)(3) The HHS Standards of Conduct are prescribed in 45 CFR part 73.

303.104–7 Violations or possible violations of the Procurement Integrity Act.

(a)(1) The Contracting Officer shall submit to the HCA for review and approval the determination (along with supporting documentation) that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a contractor for award.

(2) The Contracting Officer shall refer the determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a contractor, along with all related information available, to the HCA, if the HCA is in the Senior Executive Service (SES), or to another SES official designated by the OPDIV. That individual shall—

(i) Refer the matter immediately to the Associate DAS for Acquisition for review, who may consult with OGC–GLD and the Office of the Inspector General (OIG), as appropriate; and

(ii) Determine the necessary action in accordance with *FAR 3.104–7(c) and (d).* The HCA shall obtain the approval or concurrence of the Associate DAS for Acquisition before proceeding with an action.

(b) The HCA (non-delegable) shall act with respect to actions taken under the FAR clause *52.203–10,* Price or Fee Adjustment for Illegal or Improper Authority.

303.1003 Requirements.

(b) The Contracting Officer, when notified of a possible contractor violation of Federal criminal law, in accordance with FAR 3.1003(b), shall—

(1) Notify the OIG at *http://www.oig.hhs.gov/fraud/hotline,* 1–800–HHS–TIPS (1–800–447–8477), or *HHSTips@oig.hhs.gov;*

(2) Notify the HCA; and

(3) Cooperate with any investigation by the OIG; and in coordination with the HCA, OIG, OGC and the affected program office, pursue appropriate remedies.

(c)(2) The Contracting Officer shall specify the title of HHS' hotline poster (''Report Fraud'') and the Web site where the poster can be obtained (*http://oig.hhs.gov/fraud/hotline/OIG_Hotline_Poster.pdf*) in subparagraph (b)(3) of the clause at *FAR 52.203–14.*

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

HHS personnel shall report suspected violations of the Gratuities clause to the Contracting Officer, who will in turn report the matter to the OGC Ethics Division for disposition. The OGC Ethics Division shall identify, and notify the Contracting Officer of, the form and content of the required report.

Subpart 303.3—Reports of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

(h) The HCA shall provide a copy of the draft OPDIV report of suspected antitrust violations to the SPE. If the SPE concurs with the draft report, the SPE will provide it to the OGC–GLD for its review. If the OGD–GLD concurs with the draft report, the SPE will provide the signed OGC-approved report to the Attorney General.

Subpart 303.4—Contingent Fees

303.405 Misrepresentations or violations of the Covenant Against Contingent Fees clause.

(a) HHS personnel shall promptly report suspected misrepresentations or violations of the Covenant Against Contingent Fees clause to the Contracting Officer.

(b)(4) The HCA shall provide a copy of the draft OPDIV report of suspected covenant against contingency fees misrepresentations or violations to the SPE. If the SPE concurs with the draft report, the SPE will provide it to the OGC–GLD for its review. If the OGD–GLD concurs with the draft report, the SPE will provide the signed OGC-approved report to the Attorney General.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

The HCA (non-delegable) is the official authorized to approve an exception to the policy stated in *FAR 3.601.*

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

(a) For purposes of implementing *FAR subpart 3.7,* the HCA (non-delegable) shall exercise the authorities granted to the ''agency head or designee.''

Subpart 303.8—Limitation on the Payment of Funds to Influence Federal Transactions

303.808–70 Solicitation provision and contract clause.

The Contracting Officer shall insert the clause in *352.203–70,* Anti-lobbying, in solicitations and contracts that exceed the simplified acquisition threshold.

PART 304—ADMINISTRATIVE MATTERS

Subpart 304.6—Contracting Reporting

Subpart 304.8—Government Contract Files

Sec.
304.602 General.
304.604 Responsibilities.
304.803–70 Contract/order file organization and use of checklists.
304.804–70 Contract closeout audits.

Subpart 304.13—Personal Identity Verification

304.1300 Policy.

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.
304.7001 Numbering acquisitions.

Subpart 304.71—Review and Approval of Proposed Contract Awards

304.7100 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 304.6—Contract Reporting

304.602 General.

HHS' Departmental Contracts Information System (DCIS) captures and stores HHS' Individual Contract Award Reports (ICARs) and forwards copies of them to the Federal Procurement Data System—Next Generation (FPDS–NG).

All HHS contracting activities shall use the DCIS, in accordance with the most current version of the ''User Manual for the Enhanced Departmental Contracts Information System,'' (DCIS Users' Manual) available at *http://dcis.hhs.gov.* For the purposes of this policy, reporting shall include inputting and submitting report data through DCIS into FPDS–NG.

304.604 Responsibilities.

In order for HHS to meet its reporting requirements and ensure compliance with the Federal Funding Accountability and Transparency Act (Transparency Act), Public Law (Pub. L.) 109–282, HHS acquisition officials and staff must report their contract information accurately and timely. Ensuring accuracy and timeliness also requires effective and efficient data verification and validation at the time of and following reporting.

Following are descriptions of the organizational roles and responsibilities associated with contract reporting, including data input, oversight, and quality control; training of acquisition staff on reporting responsibilities; and operating, managing, and maintaining DCIS.

(a) *ASFR/OGAPA/DA.* The ASFR/OGAPA/DA shall do the following:

(1) Oversee and provide policy guidance for OPDIV contract reporting by—

(i) Establishing and implementing an effective HHS-wide ICAR data verification and validation program; and

(ii) Identifying cross-cutting trends through periodic testing of selected ICAR data, including Transparency Act data fields.

(2) Ensure that DCIS is properly managed and maintained, including—

(i) Verifying that data included therein meets FPDS–NG and Transparency Act accuracy and timeliness standards;

(ii) Updating the DCIS Users' Manual periodically; and

(iii) Prescribing standard HHS-wide DCIS training.

(3) Certify annually that HHS ICAR information is complete and accurate.

(b) *HCA.* Each HCA (non-delegable) shall—

(1) Ensure that all reportable ICAR information is collected, submitted, and received within the time frames and under the circumstances specified in *FAR Subpart 4.6.*

Note: Each CCO shall prepare and submit accurate ICAR data in accordance with HCA guidance.;

(2) Provide continuing oversight, including implementing an OPDIV-level data verification and validation program, to ensure ICAR data quality and timeliness;

(3) Establish a continuous training program for acquisition staff to ensure the quality and timeliness of ICAR data; and

(4) Certify annually to HHS' SPE that OPDIV ICAR information is complete and accurate.

(c) *Contracting Officer.* As part of a normal file review, required under *304.7101,* the Contracting Officer shall—

(1) Ensure that all reportable contracts and orders, including BPA orders and modifications thereto, are reported;

(2) Review and approve proposed ICAR data for completeness and accuracy prior to signing contracts/orders and modifications; and

(3) Correct all DCIS data discrepancies before signing the associated contract, order, or modification.

(d) *OPDIV DCIS coordinator/focal point.* The OPDIV DCIS coordinator/focal point shall—

(1) Identify data errors and ensure their timely correction as part of the DCIS quality control process;

(2) Conduct remedial staff training, as appropriate, to improve data accuracy and timeliness; and

(3) Represent the OPDIV as a member of the DCIS Configuration Committee.

(e) *DCIS Configuration Committee.* The DCIS Configuration Committee is composed of the HHS DCIS manager, other ASFR/OGAPA/DA acquisition management staff, as required; and each OPDIV's DCIS coordinator/focal point. The Committee shall ensure that the DCIS is properly maintained and shall evaluate and recommend changes to DCIS to improve its functionality, features, and quality control, as appropriate.

Subpart 304.8—Government Contract Files

304.803–70 Contract/order file organization and use of checklists.

(a) To provide a consistent approach to the organization and content of HHS contract and order files, OPDIVs shall use the folder filing system and accompanying file checklists specified in *304.803–70(b),* in accordance with the guidance therein and the instructions specified as ''Contract and Order File Folders, Checklists, and Instructions. The checklists are available on the ASFR/OGAPA/DA Internet.

(b) The checklist requirements apply to files for (i) negotiated, sealed-bid, and Architect-Engineer (A & E) acquisitions; (ii) orders awarded and BPAs established under General Services Administration (GSA) Federal Supply Schedule (FSS) contracts; (iii) orders placed under all types of indefinite-delivery contracts, including task orders under Government-wide Acquisition Contracts (GWACs); and (iv) modifications under the types of acquisitions specified in (i), (ii), and (iii). Simplified acquisitions, including those for commercial items, are exempt from these checklist requirements. However, HHS contracting activities shall adhere to the simplified acquisition file documentation and retention requirements of *FAR 13.106–3(b).* For commercial item acquisitions using the negotiated or sealed bid methods, HHS contracting activities shall use the applicable checklist.

(1) A complete contract or order file may consist of the following folders that are titled as indicated below for the specified acquisition methods:

Acquisition method	Folder title	Folder title	Folder title	Folder title
Negotiated	Presolicitation to Award	Unsuccessful Proposals	Administration and Close-out.	Reports and Deliverables.
Sealed-bid	Presolicitation to Award	Unsuccessful Bids	Administration and Close-out.	N/A.
A & E	Preannouncement to Award.	Unsuccessful Qualifications Statements.	Administration and Close-out.	Reports and Deliverables.
Task orders	Presolicitation to Award	Unsuccessful Proposals	Administration and Close-out.	Reports and Deliverables.
GSA FSS	Presolicitation to Award	Unsuccessful Quotations/Oral Presentations.	Administration and Close-out.	N/A.

(2) Although the use of the checklists is mandatory, each OPDIV contracting office is permitted to make certain checklist changes or additions as specified in ''Use and modification of checklists'' under ''File checklists and tab dividers'' in the instructions.

(3) OPDIVs using or planning to use electronic filing capabilities shall adhere to the folder and tab nomenclature requirements identified herein to the maximum extent practicable.

304.804–70 Contract closeout audits.

(a) Contracting Officers shall rely, to the maximum extent possible, on single audits to close physically completed cost-reimbursement contracts with colleges and universities, hospitals, non-profit organizations, and State and local governments. In addition, where appropriate, a sample of these contracts or an individual contract may be selected for audit, in accordance with paragraph (b) of this section.

(b) Contracting Officers shall request contract closeout audits on physically completed, cost-reimbursement, contracts with for-profit organizations in accordance with the following:

(1) The OIG and the Associate DAS for Acquisition, in conjunction with the OPDIV's cost advisory/audit focal point, determine which contracts or contractors will be audited, which audit agency will perform the audit, and the type and scope of closeout audit to be performed. These decisions are based on the needs of the customer, risk analysis, return on investment, and the availability of audit resources. When an audit is warranted prior to closing a contract, the Contracting Officer shall submit the audit request to the OIG's Office of Audit Services, through the OPDIV's cost advisory/audit focal point.

(2) Except where a Contracting Officer suspects misrepresentation or fraud, the Contracting Officer shall not request contract closeout field audits, if the cost of performance is likely to exceed the potential cost recovery. Contracting Officers may close contracts that are not selected for a field audit on the basis of a desk review, subject to any later on-site audit findings. In those situations, the release executed by the contractor shall contain the following statement: ''The Contractor agrees, pursuant to the clause in this contract entitled ''Allowable Cost'' or ''Allowable Cost and Fixed Fee,'' as appropriate, that it will refund to the Government the amount of any sustained audit exceptions resulting from any audit made after final payment.''

Subpart 304.13—Personal Identity Verification

304.1300 Policy.

(a) Definitions. The following definitions apply to this subpart:

(1) *Access:* ''Physical'' entry to and/or exit from a facility/area of a facility (such as a building or room in a building) or ''logical'' entry into an information system, such as a researcher up-loading data/information through a secure Web site or a contractor accessing an HHS-controlled information system from its own facility. It does not include access to a public Web site, whether by an HHS contractor or member of the public, because such Web sites do not require permission to access. In the case of sensitive data/information that exists in hard copy, ''access'' means providing a contractor the right to view or use written/typed data or information for the purpose described in a contract.

(2) *Long-term:* Greater than 6 months in duration.

(3) *Routine:* On a regular, non-intermittent basis, which is at least once per week during the contract or order period of performance.

(4) *Sensitive data/information:* As defined by the Computer Security Act of 1987, any data/information, ''the loss, misuse, or unauthorized access to or modification of which, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of the Title 5 of U.S.C. (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an act of Congress to be kept secret in the interest of national defense or foreign policy.'' Examples include individuals' social security numbers; other personal identification information, such as individuals' health, medical, or psychological information; proprietary research data; and confidential legal data.

(5) *Short-term:* Six (6) months or less in duration.

(b) Homeland Security Presidential Directive (HSPD–12), entitled, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' was issued on August 27, 2004, to enhance security and reduce identity fraud related to contractor physical access to Federally-controlled facilities and/or logical access to Federally-controlled information systems.

(1) The HSPD–12 requirements related to routine, long-term physical access to HHS-controlled facilities and logical access to HHS-controlled information systems, including contractor personnel background checks/investigations (termed herein as ''more stringent'' access procedures), apply to all solicitations and new contracts or orders for services, including services incidental to supply contracts/orders, regardless of dollar amount, where the contractor will require such access (*FAR* 4.13*03*). In addition, HHS has determined that, when a contractor has routine, long-term access to sensitive data/information, whether it exists in an HHS-controlled information system or in hard copy, that data/information must also be protected and controlled in accordance with HSPD–12's more stringent access procedures—*see 304.1300(e).*

(2) When a contractor's access to HHS-controlled facilities, information systems, and/or sensitive data/information is of routine but short-term duration, an OPDIV shall use the applicable guidance cited in OMB memorandum M–05–24 related to ''short-term'' access to determine appropriate protections and limit/control contractor access—*see 304.1300(f)*]. However, if the Project Officer determines greater access controls are necessary, an OPDIV may protect and control facilities, information systems, and/or sensitive data information in accordance with HSPD–12's more stringent access procedures.

(3) When a contractor's access to HHS-controlled facilities, information systems, and/or sensitive data/information is not routine, regardless of duration, HHS has determined that OPDIVs shall use the applicable guidance cited in OMB memorandum M–05–24 related to ''occasional visitors'' to determine appropriate protections and limit/control contractor access—*see 304.1300(g).*

(4) *Summary table of contractor access circumstances and HSPD–12 requirements.*

Type of access	HSPD–12 access procedures required	HSPD–12 security notice required in solicitation/contract SOW/PWS? [*see 304.1300(e)*]
Routine, long-term, physical access to HHS-controlled facilities.	More stringent access procedures apply	YES.
Routine, long-term logical access to an HHS-controlled information system that does not contain sensitive HHS data/information.	More stringent access procedures apply	YES.
Routine, long-term access to sensitive HHS data/information, whether it exists in an HHS-controlled information system (logical access) or in hard copy.	More stringent access procedures apply	YES.
Routine, short-term access to HHS-controlled facilities, information systems, and/or sensitive HHS data/information.	If greater access controls are deemed necessary, more stringent access procedures apply.	YES.
If greater access controls are *not* deemed necessary, applicable guidance cited in OMB memorandum M–05–24 related to ''short-term'' access to determine appropriate protections and limit/control contractor access.	NO, but contractor staff must be provided with the OPDIV documentation on the rules of behavior and consequences for violation [*see 304.1300(f)*].	
Non-routine access, regardless of duration, to HHS-controlled facilities, information systems, and/or sensitive HHS data/information.	Applicable guidance cited in OMB memorandum M–05–24 related to ''occasional visitors'' to determine appropriate protections and limit/control contractor access.	NO, but contractor staff must be provided with the OPDIV ''occasional visitor'' policy and procedures [*see 304.1300(g)*].

(c) As part of the acquisition planning process, the Project Officer shall determine whether, based on the nature of the requirement, contractor personnel may require access to HHS-controlled facilities and/or information systems, including sensitive data/information, in order to perform the contract/order Statement of Work (SOW)/Performance Work Statement (PWS). If contractor access is required, the Project Officer must assess, based on information available at that point in the process, the type, frequency, and duration of such access. Following that determination, the Project Officer shall consult with OPDIV and/or local building and IT security officials/staff, and officials/staff involved with personnel security, including the designated personnel security representative, to determine appropriate security requirements and, as necessary, adjust project requirements to minimize security and access issues. The Project Officer shall comply with HSPD–12 and the following implementing guidance in making these judgments and determinations:

(1) OMB memorandum M–05–24, Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 5, 2005.

(2) National Institutes of Standards and Technology Federal Information Processing Standard Publication (FIPS PUB) 201), dated February 25, 2005, which can be accessed at: *http://csrc.nist.gov/publications/.*

(3) FAR (FAR *4.13* and *52.204–9*).

(4) Any HHS and OPDIV implementation thereof.

(d) If, as part of the acquisition planning process, the Project Officer determines that contractor access will not be required, the Project Officer should so state in the AP (or other acquisition request document)—*see 307.7101.* If an AP does not address access issues or indicates contractor access is not required, and it appears an acquisition may involve access requirements, the Contracting Officer shall request that the Project Officer address or reconsider the initial access determination. The Project Officer's determination shall be final.

(e) If HSPD–12's more stringent access procedures are expected to apply, because access will be routine and of long-term duration, or is routine and of short-term duration, but greater access controls are deemed necessary, the Project Officer shall include the following ''HHS-Controlled Facilities and Information Systems Security'' notice in a separate, clearly designated ''Security'' section of the SOW/PWS. (**Note:** The Contracting Officer is responsible for tailoring the language in the solicitation and contract/order in accordance with the instructions provided below.)

''XXX Security.

HHS-Controlled Facilities and Information Systems Security

(a) To perform the work specified herein, Contractor personnel are expected to have routine (1) physical access to an HHS-controlled facility; (2) logical access to an HHS-controlled information system; (3) access to sensitive HHS data or information, whether in an HHS-controlled information system or in hard copy; or (4) any combination of circumstances (1) through (3).

(b) To gain routine physical access to an HHS facility, logical access to an HHS-controlled information system, and/or access to sensitive data or information, the Contractor and its employees shall comply with Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors; Office of Management and Budget memorandum (M–05–24); and Federal Information Processing Standards Publication (FIPS PUB) Number 201; and with the personal identity verification and investigation procedures contained in the following documents:

(1) HHS Information Security Program Policy.

(2) HHS Office of Security and Drug Testing, Personnel Security/Suitability Handbook, dated February 1, 2005.

(3) HHS HSPD–12 Policy Document, v. 2.0.

(4)

Note: Based upon information provided by the Project Officer, the Contracting Officer shall insert references to OPDIV and/or local procedural guideline(s), if any; indicate if they are readily accessible to the public; and, if so, specify where they may be found. If they are not readily accessible, the Contracting Officer shall attach a copy to the solicitation and contract and reference the guideline(s) here.

(c) This contract/order will entail the following position sensitivity level(s):

_____.

Note: At the time of solicitation, based upon information provided by the Project Officer, the Contracting Officer shall specify all known levels. If the position sensitivity levels are not known at that time, the Contracting Officer shall insert the words ''To Be Determined at the Time of Award.'' However, the Contracting Officer must include the definitive position sensitivity levels in the awarded contract/order.

(d) The personnel investigation procedures for Contractor personnel require that the Contractor prepare and submit background check/investigation forms based on the type

of investigation required. The minimum Government investigation for a non-sensitive position is a National Agency Check and Inquiries (NACI) with fingerprinting. More restricted positions—*i.e.,* those above non-sensitive, require more extensive documentation and investigation.

Note: The Contracting Officer shall include the following sentence in each *solicitation* as the concluding sentence in paragraph (d)): ''As part of its proposal, and if the anticipated position sensitivity levels are specified in paragraph (c) above, the Offeror shall notify the Contracting Officer of (1) its proposed personnel who will be subject to a background check/investigation and (2) whether any of its proposed personnel who will work under the contract have previously been the subject of national agency checks or background investigations.''

(The Contracting Officer shall include the following sentence in each *contract/order* as the concluding sentence in paragraph (d) in lieu of the solicitation language: ''The Contractor shall notify the Contracting Officer in advance when any new personnel, who are subject to a background check/investigation, will work under the contract and if they have previously been the subject of national agency checks or background investigations.'')

(e) Investigations are expensive and may delay performance, regardless of the outcome of the investigation. Delays associated with rejections and consequent re-investigations may not be excusable in accordance with the FAR clause, Excusable Delays—*see* FAR 52.249–14.

Note: The Contracting Officer shall include the following sentence in each *solicitation* as the concluding sentence in paragraph (e): ''Accordingly, if position sensitivity levels are specified in paragraph (c), the Offeror shall ensure that the employees it proposes for work under this contract have a reasonable chance for approval.'' The Contracting Officer shall include the following sentence in each *contract/order* as the concluding sentence in paragraph (e) in lieu of the solicitation language: ''Accordingly, the Contractor shall ensure that any additional employees whose names it submits for work under this contract have a reasonable chance for approval.''

(f) Typically, the Government investigates personnel at no cost to the Contractor. However, multiple investigations for the same position may, at the Contracting Officer's discretion, justify reduction(s) in the contract price of no more than the cost of the additional investigation(s).

(g) The Contractor shall include language similar to this ''HHS-Controlled Facilities and Information Systems Security'' language in all subcontracts that require subcontractor personnel to have the same frequency and duration of (1) physical access to an HHS-controlled facility; (2) logical access to an HHS-controlled information system; (3) access to sensitive HHS data/information, whether in an HHS-controlled information system or in hard copy; or (4) any combination of circumstances (1) through (3).

(h) The Contractor shall direct inquiries, including requests for forms and assistance, to the Contracting Officer or designee.

(i) Within 7 calendar days after the Government's final acceptance of the work under this contract, or upon termination of the contract, the Contractor shall return all identification badges to the Contracting Officer or designee.''

(f) When a contractor's access to HHS-controlled facilities, information systems, and/or sensitive data/information is of routine, but short-term duration, and greater access controls are not deemed necessary, the Contracting Officer and Project Officer shall use the applicable guidance cited in OMB memorandum M–05–24, dated August 5, 2005, specifically Attachment A, ''HSPD–12 Implementation Guidance for Federal Departments and Agencies,'' to ensure that—

(1) Adequate OPDIV access controls are applied, and a contractor is granted only limited/controlled access to facilities, systems, and/or sensitive data/information, consistent with the requirements of the acquisition;

(2) Contractor staff are provided with clear OPDIV documentation on the rules of behavior and consequences of their violation before being granted access to facilities, systems, and/or sensitive data/information;

(3) Contractor security violations are documented and reported to the appropriate OPDIV authority within 24 hours of their occurrence; and

(4) Identity credentials issued to contractor staff are visually and electronically distinguishable from credentials issued to individuals to whom the more stringent HSPD–12 access procedures apply.

Note to paragraph (f): However, as indicated in *304.1300(e),* if the Project Officer determines greater access controls are necessary, an OPDIV may protect and control facilities, information systems, and/or sensitive data information in accordance with HSPD–12's more stringent access procedures.

(g) When a contractor's access to HHS-controlled facilities, information systems, and/or sensitive data/information is not routine, regardless of duration, the Contracting Officer and Project Officer shall use the applicable guidance cited in OMB memorandum M–05–24, dated August 5, 2005, specifically Attachment A, ''HSPD–12 Implementation Guidance for Federal Departments and Agencies,'' related to ''occasional visitors'' to determine appropriate protections and limit/control contractor access to ensure that—

(1) Adequate OPDIV access controls are applied, and the contractor is granted only limited/controlled access to facilities, systems, and/or sensitive data/information, consistent with the requirements of the acquisition; and

(2) OPDIV visitor policies, including contractor personnel identity badging requirements, are enforced and are provided to the contractor.

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.

This subpart prescribes policy and procedures for assigning identification numbers to contracts and related instruments, including solicitation documents, purchase orders, and delivery orders. The HCA (non-delegable) shall establish a numbering system within an OPDIV.

304.7001 Numbering acquisitions.

(a) *Acquisitions which require numbering.* Contracting activities shall number the following acquisitions and related instruments in accordance with the system prescribed in paragraphs (b), (c) and (d) of this section:

(1) Contracts, including letter contracts, that exceed the micro-purchase threshold or the acquisition of personal property or nonpersonal services. (*Note:* The Contracting Officer shall also assign the letter contract number to the superseding definitized contract.)

(2) Basic ordering agreements (BOAs) and BPAs.

(3) Requests for proposals and invitations for bids.

(4) Requests for quotations.

(b) *Numbering* system *for contracts.* The Contracting Officer shall assign a number consisting of the following to all contracts which require numbering (paragraph (a)(1) of this section):

(1) The three-digit identification code (HHS) of the Department.

(2) A one-digit alphabetic identification code of the servicing agency.

AHRQ: A
BARDA: O
CDC: D
CMS: M
FDA: F
HRSA: H
IHS: I
NIH: N
PSC: P
SAMHSA: S

(3) The three-digit numeric identification code assigned by ASFR/OGAPA/DA to the contracting office within the servicing agency.

(4) A four-digit fiscal year designation (*e.g.,* 2009, 2010).

(5) A five-digit alphanumeric tracking number, the content of which is

determined by the contracting office within the servicing agency.

(6) A one-digit code describing the type of contract action. For example, the National Cancer Institute, NIH, may number its first contract for fiscal year 2009 as HHSN261200900001C. (*Note:* When more than one code may apply in a specific situation, or for additional codes, refer to the DCIS Users' Manual or consult with the cognizant DCIS coordinator/focal point for guidance on which code governs.):

A Commercial Item Acquisitions (including purchases using simplified acquisition procedures in accordance with the FAR subpart 13.5 Test program)
C New Definitive Contract
P Purchases using simplified acquisition procedures (other than commercial items)
I IDC
O BOA
B BPA
F Facilities Contract
U Contracts placed with or through other Government departments, GSA contracts, or against mandatory source contracts such as AbilityOne and Federal Prison Industries (UNICOR)
L Lease Agreement
W Government-wide Acquisition Contract (GWAC)
E Letter Contract
G Federal Supply Schedule
M Micro-purchase
Q Multi-agency contract

(c) *Numbering system for orders.* The Contracting Officer shall assign order numbers (*e.g.,* task order numbers) to orders issued under contracts. The order number shall be up to a seventeen-digit number consisting of the following:

(1) The three-digit identification code (HHS) of the Department.

(2) A one-digit numeric identification code of the servicing agency:

AHRQ: A
BARDA: O
CDC: D
CMS: M
FDA: F
HRSA: H
IHS: I
NIH: N
PSC: P
SAMHSA: S

(3) The three-digit numeric identification code assigned by ASFR/OGAPA/DA to the contracting office within the servicing agency.

(4) An alphanumeric tracking number, up to ten characters, the content of which is determined by the contracting office within the servicing agency.

(d) *Numbering system for solicitations.* The HCA is responsible for developing a numbering system for solicitations listed in paragraphs (a)(3) and (a)(4) of this section.

(e) *Assignment of identification codes.* ASFR/OGAPA/DA shall assign each contracting office a three-digit identification code. HCAs shall request from ASFR/OGAPA/DA the assignment of codes for newly established contracting offices. A listing of the contracting office identification codes currently in use is contained in the DCIS Users' Manual, available at *http://dcis.hhs.gov.*

Subpart 304.71—Review and Approval of Proposed Contract Actions

304.7100 Policy.

(a) The HCA (non-delegable) shall establish review and approval procedures for proposed contract actions to ensure that—

(1) Contractual documents are in conformance with law, established policies and procedures, and sound business practices;

(2) Contract awards properly reflect the mutual understanding of the parties; and

(3) The Contracting Officer is informed of deficiencies and items of questionable acceptability, and takes corrective action.

(b) The HCA shall designate acquisition officials to serve as reviewers. Each HCA shall establish the criteria for determining which contracts to review.

(c) Officials assigned responsibility for review and approval of contract actions shall possess qualifications in the field of acquisition commensurate with the level of review performed. However, if an official is to serve as the Contracting Officer and sign the contractual document, an appropriate official at least one level above the Contracting Officer shall perform the review and approval function.

(d) The Contracting Officer shall review all contractual documents, regardless of dollar value, prior to award to ensure the requirements of paragraph (a) of this section are met.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 305—PUBLICIZING CONTRACT ACTIONS

Subpart 305.2—Synopsis of Proposed Contract Actions

Sec.
305.202 Exceptions.
305.205 Special situations.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

Subpart 305.5—Paid Advertisements

305.502 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 305.2—Synopsis of Proposed Contract Actions

305.202 Exceptions.

(b) When the Contracting Officer deems an advance notice is not appropriate or reasonable, the Contracting Officer shall prepare a memorandum citing all pertinent facts and details and send it through appropriate acquisition channels, including the HCA, to Associate DAS for Acquisition requesting an exception to synopsizing. The Associate DAS for Acquisition shall review the request and decide whether an exception is appropriate and reasonable. If it is, the Associate DAS for Acquisition shall take the necessary coordinating actions required by *FAR 5.202(b).* ASFR/OGAPA/DA shall promptly notify the contracting office of the Associate DAS for Acquisition's determination on the request.

305.205 Special situations.

(a) An OPDIV may issue an advance notice, entitled ''Research and Development Sources Sought,'' in Federal Business Opportunities (FedBizOpps), in accordance with the requirements of *FAR 5.205(a).* The primary purpose of an R & D Sources Sought notice is to identify all potential sources, regardless of organizational type and size classification, and determine their capabilities to fulfill a potential Government requirement. The notice is not intended to solicit technical, scientific, or business information for project planning purposes regarding existing or possible solutions. In the latter instance, a Request for Information (RFI) may be used—*see FAR 15.201(e)* and *315.201(e).*

(1) When using an R & D Sources Sought notice, an OPDIV shall not request that potential sources provide more than the minimum information necessary—*see FAR 10.001(b),* to determine whether they have the apparent capability to perform a requirement and, therefore, whether they should be included in any future competition. The notice and the information received shall not be used to determine how well respondents can perform a requirement, which can only be evaluated in response to a solicitation. Accordingly, the notice shall not be used to—

(i) Obtain capability statements that are evaluated and determined acceptable or unacceptable;

(ii) Require cost/price proposals or detailed technical solutions;

(iii) Identify a prospective sole source; or

(iv) Exclude small business concerns.

(2) While not the primary intent of an R & D Sources Sought notice, in addition to seeking information regarding all potential qualified R & D sources, the notice may request that respondents provide information regarding their organizational size classification. For example, the notice may ask respondents to identify whether they are small businesses; Historically Underutilized Business (HUB) Zone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; woman-owned small businesses; or small disadvantaged businesses in order to determine the appropriate acquisition method, including whether a set-aside is possible. However, such a notice shall not be used solely to determine the size classification of respondents for a proposed R & D acquisition. In such instances, a ''Small Business Sources Sought'' notice may be used (*see 319.202–2),* in lieu of the procedures in this section.

(3) OPDIVs shall follow the standard HHS instructions for completing an R & D Sources Sought notice. The template for the notice is available on the ASFR/OGAPA/DA Internet Web site. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Sources Sought notice, accessible on the FedBizOpps ''Notices'' page at: *http://www.fedbizopps.gov.* Additional information may be included in the notice in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

(4) In instances where a sufficient number of sources has not been identified to compete for a non-R & D project, an OPDIV may use the procedures specified in *310.001,* including the issuance of a ''Sources Sought'' notice, as appropriate, in lieu of the procedures in this section.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

(a) *Public Announcement.* The Contracting Officer shall report awards over $3.5 million, not otherwise exempt under *FAR 5.303,* to the Office of the Assistant Secretary for Legislation (OASL) (Congressional Liaison). The Contracting Officer shall provide a copy of the contract or award document face page to the referenced office prior to the day of award or in sufficient time to allow OASL to make an announcement by 5 p.m. Washington, DC time on the day of award. The Contracting Officer may also provide notification by e-mail or facsimile.

Subpart 305.5—Paid Advertisements

305.502 Authority.

The Contracting Officer may advertise or place notices in newspapers and periodicals to announce that the contracting office is seeking proposals, quotations, or bids, as appropriate.

PART 306—COMPETITION REQUIREMENTS

Subpart 306.2—Full and Open Competition after Exclusion of Sources

Sec.
306.202 Establishing or maintaining alternative sources.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.
306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
306.302–7 Public interest.
306.303 Justifications.
306.303–1 Requirements.
306.304 Approval of the justification.

Subpart 306.5—Competition Advocates

306.501 Requirement.
306.502 Duties and responsibilities.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 306.2—Full and Open Competition after Exclusion of Sources

306.202 Establishing or maintaining alternative sources.

(a) The reference to the agency head in *FAR 6.202 (a)* shall mean the appropriate Competition Advocate (CA) cited in *306.501.*

(b)(1) The Contracting Officer shall prepare the required determination and findings (D & F) based on the data provided by program personnel. The appropriate CA (non-delegable) shall sign the D & F.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(iv) Follow-on contracts for the continuation of R & D studies on long-term social and health programs, research studies, or clinical trials may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling HHS' or the OPDIV's requirements.

(b) *Application.*

(5) when the head of the sponsoring program office has determined that the activity must acquire only specified makes or models of technical equipment or parts to meet the activity's program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (**Note:** This criterion is limited to testing and evaluation purposes only and not for initial outfitting or repetitive acquisitions. Project Officers shall support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.)

306.302–7 Public interest.

(a) *Authority.*

(2) Agency head, in this instance, means the Secretary.

(c) *Limitations.* The Contracting Officer shall prepare a written request for approval and provide it through appropriate acquisition channels, including the HCA and Associate DAS for Acquisition, to the Secretary. The request shall include a D & F for the Secretary's signature that contains all pertinent information to support the justification for exercising the exemption to competition and a letter for the Secretary's signature notifying Congress of the determination to award a contract under the authority of 41 U.S.C. 253(c)(7).

306.303 Justifications.

306.303–1 Requirements.

(b) The responsible Program Office must provide a written justification whenever it requests that goods or services be acquired without obtaining full and open competition. The justification must be submitted with the AP or other acquisition request document—*see* Subpart *307.71.* The Project Officer has responsibility for preparing the justification with

assistance, as necessary, from the Contracting Officer.

(1) Justifications for acquisitions at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or other acquisition request document. Justifications for acquisitions in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with *FAR 6.303* and *306.303,* and titled ''Justification for Other Than Full and Open Competition'' (JOFOC). HHS requires use of a standard format for a JOFOC. The template for the justification is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the JOFOC template in accordance with OPDIV procedures.

(2) Regardless of the dollar amount of the acquisition, justifications shall—

(i) Fully describe what is to be acquired;

(ii) Provide a specific explanation of why it is not feasible to obtain full and open competition;

(iii) Be supported by verifiable facts, rather than untested or unsubstantiated opinions or conclusions; and

(iv) Be written in a manner to permit an individual without technical knowledge of the requirement to understand the supporting rationale.

(3) Preliminary arrangements with, or verbal or written commitments to, a proposed sole-source contractor shall be avoided given the statutory requirement to obtain full and open competition to the maximum extent practicable.

(4) Justifications for orders to be placed under FSS contracts that limit consideration of contractors shall comply with *FAR 8.405–6* and *308.405–6.*

306.304 Approval of the justification.

Certification, concurrence, and approval requirements. The Project Officer, the Project Officer's immediate supervisor, the head of the sponsoring program office, and the Contracting Officer shall certify that the justification is accurate and complete by signing the JOFOC. For acquisitions in the dollar amount cited in *FAR 6.304(a)(2) through (a)(4),* the CCO, if applicable, and the HCA shall indicate their review of, and concurrence with, the justification by signing the JOFOC.

(a) The approving officials for JOFOCs are as follows:

(1) The Contracting Officer shall exercise this approval authority unless a higher approval level is required by OPDIV procedures.

(2) The CAs are listed in *306.501.* This approval authority is not delegable.

(3) The CA shall exercise this approval authority, except where the individual designated as the CA does not meet the requirements of *FAR 6.304 (a)(3)(ii).* This approval authority is not delegable.

(4) HHS' SPE is the Associate DAS for Acquisition.

(c) A class justification shall be processed in the same manner as an individual justification. A class justification may consist of contracts/orders for the same or related supplies and services or other contract/order actions that require essentially identical justifications.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The HHS CA is the Director, Strategic Acquisition Service, PSC. The CAs for each of HHS' contracting activities are as follows:

AHRQ: Director, Office of Performance Accountability, Resources and Technology
BARDA: Chief of Mission Support and Acquisition Policy
CDC: Chief Information Officer
CMS: Chief Operating Officer
FDA: Deputy Commissioner for Administration
HRSA: Associate Administrator, Office of Operations
IHS: Director, Office of Management Services
NIH: Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (other than R&D)
PSC: Director, Strategic Acquisition Service
SAMHSA: Executive Officer

306.502 Duties and responsibilities.

(a) Each OPDIV CA shall prepare an annual Competition Advocate Report (CAR), covering the prior fiscal year, in accordance with the requirements of *FAR 6.502(b)(2*) and *306.502(b),* and provide it to the HHS CA not later than November 16 of each year or the next business day, if the due date falls on a non-business day. NIH's two CAs shall prepare and sign a joint report covering their respective areas of responsibility.

(b) HHS requires that each CAR be prepared in a standard format. The template for the report is available on the ASFR/OGAPA/DA Internet Web site. As long as the standard headings are included and required information is addressed, the OPDIV may include additional information in accordance with OPDIV procedures.

(1) The CAR shall be based on information and data for all acquisitions that exceed the micro-purchase threshold for the applicable fiscal year, unless otherwise noted in the standard format.

(2) Each OPDIV CA shall obtain the information and data needed for preparation of the CAR from the responsible HCA and/or the CCO, as appropriate, who shall assist the CA in preparing the CAR.

(3) Prior to forwarding the CAR to the HHS CA, each OPDIV CA shall provide the CAR to the responsible HCA, who shall review and approve it for accuracy and completeness.

(c) The HHS CA shall consolidate all OPDIV CARs and provide an HHS-wide CAR that addresses all requirements of *FAR 6.502(b)* to the HHS SPE and the CAO by December 20 of each year or the next business day, if the due date falls on a non-business day.

PART 307—ACQUISITION PLANNING

Subpart 307.1—Acquisition Planning

Sec.
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307.104–70 Acquisition strategy.
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307.7108 Statement of work.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 307.1—Acquisition Planning

307.104 General procedures.

(a) Each contracting activity shall prepare an Annual Acquisition Plan (AAP) as far in advance of each fiscal year as possible, in accordance with the following:

(1) The AAP shall contain all anticipated acquisition actions for the coming fiscal year that exceed the simplified acquisition threshold, including new acquisitions and contract/order modifications. The AAP must include—

(i) The aggregate dollars planned for simplified acquisitions by quarter;

(ii) Any long lead-time acquisitions that will be awarded in future fiscal years (*see* paragraph (c) below); and

(iii) Proposed multi-agency and intra-agency contracts—*see 317.70.*

(2) The HCA or the CCO, as appropriate, shall prepare the AAP and obtain the information needed for its preparation from the responsible program planning/budget office and/or the program offices.

(3) Contracting activities shall use the AAP for reporting purposes and workload scheduling and monitoring.

(4) The HCA/CCO and Small Business Specialist (SBS) in the Office of Small and Disadvantaged Business Utilization (OSDBU) shall review the AAP at least quarterly, with input from the cognizant program office, and modify it, as appropriate, during the fiscal year, with updated information, particularly regarding the specific acquisition method the contracting activity plans to use.

(5) HHS requires use of a standard format for an AAP. The template for the plan is available on the ASFR/OGAPA/DA Internet Web site. For the data elements specified in the AAP format, the HCA/CCO may include information in addition to that required by the standard instructions accompanying the format.

(b) As early as possible following completion of the AAP, the Contracting Officer shall initiate discussions with the assigned Project Officer, in consultation with the OSDBU SBS, for each action that exceeds the simplified acquisition threshold. As appropriate, the discussions shall include—

(1) Determining the intended acquisition strategy and contract/order type, including the use of options;

(2) Reviewing the SOW, if available, for adequacy and ensuring that a PWS is used for services, where practicable;

(3) Evaluating the potential for, and maximizing the use of, competitive procedures;

(4) Performing market research, identifying potential sources, and determining set-aside potential and small business subcontracting opportunities;

(5) Assessing the availability of commercial items;

(6) Determining required clearances/approvals and supporting documentation; and

(7) Preparing an acquisition milestone schedule;

(8) Determining the best multi- or intra-agency contracting activity to assist in awarding a contract on the requiring organization's behalf, if applicable; and

(9) Determining in the case of direct ordering that the chosen acquisition vehicle is the best way to obtain the required product or service, if a vehicle other than those listed in *317.7002(b)* is proposed.

(c) The HCA or designee (not lower than the CCO) shall establish standard lead-times for processing various types of acquisitions and applicable fiscal year deadlines for receipt of requirements to allow for well-planned and timely awards. The Project Officer shall initiate planning, to the extent possible, for certain requirements, such as major capital IT investments, major capital construction investments, and R & D projects that require peer review, at least 24 months before planned award, given the clearance/approval requirements and lead-time required for such complex acquisitions.

(d) The outcome of the discussions referenced in paragraph (b) above shall be an agreement concerning the acquisition approach and documentation required. For those actions that require development of a written AP—*see 307.7101,* for which the Project Officer has ultimate responsibility, these discussions shall also result in an agreement concerning—

(1) Which elements of the AP the Contracting Officer will assist the Project Officer in preparing; and

(2) The date (as specified in the milestone schedule) the Project Officer will provide the AP to the CCO or designee.

307.104–70 Acquisition strategy.

Program and Project Managers responsible for major IT capital investments (and for any other investments designated by the HHS CIO, DASFMP, the CAO, or the cognizant HCA) shall prepare an acquisition strategy using the HHS acquisition strategy template. The template for the acquisition strategy is available on the ASFR/OGAPA/DA Internet Web site. Program and Project Managers must initiate the acquisition strategy for major IT capital investments as part of the planned investment's business case, usually during the Enterprise Performance Life Cycle concept phase.

307.104–71 Purpose and timing.

(a) The purpose of an acquisition strategy is to describe the overall approach for acquiring capabilities needed to fulfill investment/programmatic objectives. Acquisition strategy development requires identification of issues and risks that might impact an acquisition(s) to allow early action to eliminate or mitigate the issues and risks.

(b) An acquisition strategy differs from an AP with respect to the timing of its development and the level of detail required.

(1) An acquisition strategy is established at the inception (concept phase) of an investment/acquisition to support the business case, identify and mitigate risks, and begin the acquisition planning process. An acquisition strategy addresses the major issues surrounding business objectives, competitive forces, and various risks that need to be considered.

(2) An acquisition strategy is a living document used throughout the investment's life-cycle. It should be continuously updated with the active involvement of the Program or Project Manager and the Contracting Officer at appropriate points, as plans for the investment/acquisition mature. An acquisition strategy ultimately will result in an AP—*see 307.71.*

(3) An AP, which is required to support proposed acquisitions expected to exceed $500,000 (inclusive of options, with certain exceptions)—*see 307.7101,* is developed closer to the time of solicitation. The AP addresses not only those issues in the acquisition strategy, but also the tactical details of how the acquisition will be executed.

307.105 Contents of written acquisition plans.

FAR 7.105 specifies the content requirements of a written AP. Subpart *307.71* incorporates and supplements those requirements.

307.108–70 Telecommuting of contractor employees.

(a) SOWs/PWSs shall permit offerors or contractors to specify their own place(s) of performance (hence authorize their employees to telecommute), except as follows:

(1) The Project Officer may restrict place of performance (hence restrict an offeror's or contractor's telecommuting) for any part of an SOW/PWS, after determining that the work or any portion thereof must be performed at a specified place of performance; or security would be compromised. The Project Officer must document this determination in writing and send a copy of the determination, along with the SOW/PWS, to the Contracting Officer. The Project Officer must also address in an HHS AP (or other acquisition request document) any performance requirements or security considerations that restrict place of performance—*see 307.71.*

(2) In accordance with *FAR 7.108(a),* if the Contracting Officer concurs with the Project Officer's determination in (a)(1) above, then the Contracting Officer must sign the Project Officer's

determination; include it in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(3) In accordance with *FAR 7.108(a),* if the Contracting Officer decides to restrict a place of performance that the Project Officer did not restrict, then the Contracting Officer must document in writing the determination to preclude telecommuting in part or in whole; include the determination in the official contract file; and specify any prohibition against telecommuting in the solicitation and resultant contract.

(b) If the Contracting Officer disagrees with the Project Officer's determination in (a)(1) above, then the Contracting Officer shall return both the SOW/PWS and determination to the Project Officer for further consideration.

(c) The Contracting Officer shall ensure that authorized telecommuting of contractor employees does not result in increased cost or price to the Government.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments to fulfill program needs consistent with 31 U.S.C. 6301–6308. This subpart explains the use of the contract as the award instrument for acquisition relationships and a grant or cooperative agreement as instruments for financial assistance relationships.

307.7001 Distinction between acquisition and assistance.

(a) 31 U.S.C. 6301–6308 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to eligible entities to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) OPDIVs shall use a contract as the legal instrument to reflect a relationship between the Government and an entity whenever the—

(1) Principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Government; or

(2) Government determines in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and requires the Associate DAS for Acquisition's prior approval.

(c) OPDIVs shall use a grant or cooperative agreement as the legal instrument to reflect a relationship between the Government and an entity whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) OPDIVs shall use a grant when no substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

(2) OPDIVs shall use a cooperative agreement when substantial programmatic involvement is anticipated between the Government and the recipient during performance of the contemplated activity.

(d) As a general rule, OPDIVs shall use contracts for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Production of publications or audiovisual materials the Government requires primarily for the conduct of its direct operations.

(7) Design or development of items for Government use or pursuant to agency definition or specifications.

(8) Conferences conducted on the Government's behalf.

(9) Generation of management information or other data for Government use.

307.7002 Procedures.

(a) OPDIV program officials shall use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. OPDIV program officials shall meet with the HCA and the Chief Grants Management Officer, or their designees, as necessary, to determine whether award is to be made through the acquisition or assistance process. This determination shall normally occur prior to the time when the AAP is reviewed and approved so that the AAP will reflect all known proposed contract actions. The HCA shall fully document a shift from one award instrument to another in the appropriate files to show a fundamental change in program purpose that unequivocally justifies the rationale for the shift.

(b) The Contracting Officer shall confirm the appropriateness of the use of the contract instrument when reviewing the AP or other acquisition request document.

(c) OPDIVs shall ensure that the choice of instrument is in accordance with 31 U.S.C. 6301–6308 and applicable HHS policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other instrument, OPDIVs shall obtain guidance from ASFR/OGAPA/DA, through appropriate acquisition channels, including the HCA, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals, or request for quotations shall indicate whether the intended relationship will be one of acquisition or financial assistance and specify the award instrument the OPDIV will use.

Subpart 307.71—Acquisition Plan

307.7100 Scope of subpart.

FAR 7.102 requires acquisition planning for all acquisitions. This subpart establishes: (a) when a written AP is required; (b) its contents and format; and (c) the need for review of the AP to certify that it is accurate, complete, and in the proper format. This subpart also establishes the documentation requirements for those acquisitions not requiring an AP.

307.7101 Policy.

(a) An AP is required for all acquisitions, to be placed by an HHS contracting office, expected to exceed $500,000 (inclusive of options) with the following exceptions:

(1) Letter contracts.

(2) Unsolicited proposals.

(3) Regulated utility services available from only one source.

(4) Proposals under the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(5) Acquisition of commercial items/services—*see FAR 2.101,* including orders placed under FSS contracts meeting the definition of a commercial item/service, and not exceeding $5.5 million [$11 million for acquisitions as described in FAR *13.500(e)*].

(6) Task orders or delivery orders of any dollar amount placed under—

(i) An IDIQ contract, other than a GWAC; or

(ii) A BPA, provided there is an approved acquisition planning document for the original action, and there is no significant deviation from that plan.

(7) Orders of any dollar amount placed under HHS-wide strategic sourcing vehicles.

(8) Contract/order modifications that—

(i) Exercise options;

(ii) Only provide additional funding; or

(iii) Make changes authorized by the Changes clause.

(9) Assisted acquisitions processed pursuant to an interagency agreement. However, the OPDIV must comply with the requirements specified in *317.5* Interagency Agreements under the Economy Act and *317.70,* Multi-agency and Intra-agency Contracts.

(b) In urgent or other justifiable cases, such as an emergency acquisition—*see FAR Part 18,* the HCA may waive, in writing, the requirement for completion of an AP. An HCA shall not approve a waiver request based on the lack of advance planning.

(1) The Project Officer, the Project Officer's immediate supervisor, the head of the sponsoring program office, the Contracting Officer, and other signatories shall sign the waiver request in accordance with OPDIV policies. In OPDIVs where a CCO(s) is designated, as defined in *302.101,* the cognizant CCO also shall sign the waiver request.

(2) HHS has established a standard format for preparing an AP waiver request. The template for the waiver request is available on the ASFR/OGAPA/DA Internet Web site. Contracting activities shall use this format when requesting a waiver.

(3) The OPDIV shall provide ASFR/OGAPA/DA a copy of any approved waiver request within 5 business days after HCA approval.

(c) For those acquisitions not requiring an AP, other than assisted acquisitions processed pursuant to an interagency agreement—*see 317.5* and *317.70,* the Project Officer shall provide an acquisition request document (*e.g.,* memorandum, requisition, or other form of transmittal) to the CCO or designee, requesting completion of the required action. The request must include, as applicable: a SOW/PWS (including deliverables and reporting requirements); a certified funding document; source selection strategy and criteria; necessary clearances, approvals, and justifications (*e.g.,* a JOFOC); a milestone schedule; and an independent Government cost estimate.) In addition, OPDIVs shall use the content requirements of the AP as a reference in determining what other information and documentation is necessary to support the intended acquisition. Alternatively, OPDIVs may prescribe use of an AP for acquisitions excepted under *307.7101(a)(i) through (a)(viii).*

307.7102 Content.

In accordance with *307.105,* the *FAR,* HHSAR, and other Federal requirements that OPDIVs must consider in developing an AP, as well as its format, are stipulated in *307.7103.* An AP shall address each applicable element. As indicated in the instructions, elements that are not applicable to an individual acquisition shall be marked ''N/A.'' The scope and depth of an AP may vary depending on the nature, complexity, and estimated cost of the proposed acquisition. As a result of new or revised FAR requirements or other Federal directives, the—

(a) HCA or designee may make any needed interim changes to the AP;

(b) HCA or designee shall notify ASFR/OGAPA/DA of the need for revision(s) to the acquisition; and

(c) ASFR/OGAPA/DA shall update the AP, which would supersede any interim HCA (or designee) changes made to the acquisition plan for future acquisitions.

307.7103 Format.

(a) HHS has established a standard format for preparing an AP. The template for the AP is available on the ASFR/OGAPA/DA Internet Web site.

(b) OPDIVs may use the prescribed format without modification or use it as a guideline, as long as the format used by the OPDIV complies with the requirements specified in subparagraphs (c) and (d) below.

(c) An AP must consist of seven (7) parts with standard headings, as follows:

Part I Transmittal and Approval Form.
Part II Summary Sheet.
Part III Project Considerations and Information.
Part IV Clearance/Approval Checklist.
Part V Acquisition Milestone Schedule.
Part VI Independent Government Cost Estimate.
Part VII Attachments.

(d) Within each of the seven parts, there are required components that an OPDIV cannot modify and specific areas where OPDIVs can make changes. The table in the *Requirements and Responsibilities* section of the AP cites the titles, paragraph/subparagraph headings, narrative, and other requirements that must appear in each part of an AP in the specified format, as well as permissible modifications.

307.7104 Review and certification.

Before the Project Officer transmits the AP to the CCO or designee—*see 307.7105,* the head of the sponsoring program office (typically a Division Director or equivalent), Project Officer, Funds Certification Official, Contracting Officer, and other signatories in accordance with OPDIV policies, shall review the AP and certify that it provides all required information in the prescribed format and the following:

(a) Vague and ambiguous language has been eliminated.

(b) A thorough technical review of the SOW/PWS has been completed.

(c) The project is structured by phases or tasks, as appropriate.

(d) Methods are available to assess the contractor's performance.

(e) The acquisition mechanism is appropriate—*i.e.,* the principal purpose of the project is to acquire supplies or services for the direct benefit or use of the Government.

(f) The planned obligation of appropriated funds for the project satisfies a *bona fide* need of the requiring office arising in the fiscal year for which the appropriation was made.

307.7105 Transmittal.

The Project Officer shall convey the signed AP to the CCO or designee by providing a completed Part I—Transmittal and Approval Form, with other parts of the AP attached, no later than the date agreed to in the acquisition milestone schedule, unless the officials establish a different date by mutual agreement.

307.7106 Acquisition milestones.

The Contracting Officer shall retain the acquisition milestone schedule in the contract file and update/revise it to track progress of the acquisition. The milestone schedule signatories (*see* the *Requirements and Responsibilities* section of the AP—Part V of the table) shall mutually agree to any revisions to the milestone dates that will impact meeting the scheduled award date. Milestone schedule signatories shall

report a failure to meet established milestones to a higher level official in accordance with OPDIV procedures.

307.7107 Responsibilities.

The following table summarizes the responsibilities of the various organizations and officials for acquisition planning:

Acquisition planning	Responsible organization/official	HHSAR reference
Make necessary interim changes to the AP and notify ASFR/OGAPA/DA of changes needed.	OPDIV HCA or designee	307.7102.
Update the AP to reflect new or revised FAR and other Federal directives.	ASFR/OGAPA/DA	307.7102.
Prepare the AAP and update it quarterly, as appropriate.	OPDIV–HCA/CCO	307.104, subparagraph (a).
Establish standard acquisition lead-times and deadlines for receipt of requirements for award in an applicable fiscal year.	OPDIV–HCA/CCO	307.104, subparagraph (d).
Identify and plan requirements, particularly complex, long lead-time acquisitions, well in advance of the fiscal year in which they are to be awarded.	OPDIV–Project Officer	307.104, subparagraph (d).
(i) Participate in acquisition planning; (ii) prepare the AP; and (iii) provide the AP to the Contracting Officer.	OPDIV–Project Officer	(i) 307.104, subparagraph (c); (ii) 307.104, subparagraph (e); and (iii) 307.7105.
(i) Participate in acquisition planning; and (ii) assist the Project Officer in AP preparation.	OPDIV–Contracting Officer	(i) 307.104, subparagraph (c); (ii) 307.104, subparagraph (e).
Waive requirement for development of an AP when justified.	OPDIV–HCA	307.7101, subparagraph (b).
Review and certify that an AP is complete, accurate, and in the proper format.	OPDIV–Head of the Sponsoring Program Office, Project Officer, Funds Certification Official, Contracting Officer, and other signatories in accordance with OPDIV policies.	307.7104
Meet established acquisition milestone dates	OPDIV–Project Officer and Contracting Officer	307.7106.

307.7108 Statement of work.

(a) *General.* An SOW describes the work or services a contractor is to perform in reaching an end result without describing the method that the contractor shall use, unless the method of performance is critical or required in order to obtain successful performance. An SOW shall be clear and concise; completely define the responsibilities of both the contractor and the Government; and be worded to make misinterpretation virtually impossible.

(b) *Term (level of effort)form and completion form SOWs.* Term-form (level of effort) SOWs essentially require the furnishing of technical effort, which may include a report thereof, while completion-form SOWs require development of tangible items designed to meet specific performance and/or design characteristics—*see FAR 16.306(d)* for this distinction.

(1) Term (or level of effort). A term or level of effort-form SOW is appropriate for research where the objective is to discover the feasibility of later development or to gather general information. A term or level of effort-form SOW specifies that some number of labor hours be expended on a particular course of research or that a certain number of tests be run, without reference to any intended conclusion.

(2) Completion. A completion-form SOW is appropriate for development work where the feasibility of producing an end item is already known. A completion-form SOW may describe what is to be achieved through the contracted effort, such as development of new methods, new end items, or other tangible results.

(c) *Phasing.* Individual research, development, or demonstration projects frequently lie well beyond the present state of the art and entail procedures and techniques of great complexity and difficulty. Under these circumstances, a contractor, no matter how carefully selected, may be unable to deliver the desired result. Moreover, the job of evaluating the contractor's progress is often difficult. Such a contract is frequently phased and often divided into stages of accomplishment, each of which the contractor must complete and the Contracting Officer approve before the contractor may proceed to the next phase or stage. Phasing makes it necessary to develop methods and controls, including reporting requirements for each phase of the contract and criteria for evaluation of the report submitted, that will provide, at the earliest possible time, appropriate data for making decisions relative to future phases. A phased contract, such as one for an R & D or demonstration project, may include stages of accomplishment. Within each phase, there may be a number of tasks that the SOW should include. When phases of work can be identified, the SOW shall provide for phasing and the solicitation shall require offerors to submit proposed costs by phases. The resultant contract shall reflect costs by phases, require the contractor to identify incurred costs by phases, establish delivery schedules by phase, and require the written acceptance of each phase. The Contracting Officer shall not allow contractors to incur costs for phases that are dependent upon successful completion of earlier phases until the Contracting Officer provides written acceptance of the prior work.

(d) *Elements of the SOW.* The elements of the SOW may vary with the objective, complexity, size, and nature of the acquisition. In general, the SOW shall include the following:

(1) *Purpose of the project.* This includes a general description of the objectives of the project and the desired results.

(2) *Background information.* This includes a brief history of the project and the importance of the project to the overall program objectives.

(3) *A detailed description of the technical requirements.* The SOW shall provide sufficient detail to accurately reflect the Government's requirement. It shall state what is to be accomplished without prescribing the method the contractor is to use and shall include performance standards, if applicable. *See 307.104(b)(2)* and *FAR 37.602* for guidance on preparation of a PWS. An SOW may include tasks and subtasks. The degree of breakout depends on the size and complexity of the project. An

SOW shall indicate whether the tasks are sequential or concurrent.

(4) *Reference material.* This includes an explanation of all reference material a contractor needs to carry out the project; the applicability of the reference material; and a statement as to where potential offerors can obtain the material.

(5) *Level of effort.* When a level of effort is necessary, the SOW shall specify the number and type of personnel required, if known, and the type and degree of expertise.

(6) *Special requirements (as applicable).* This includes providing, in a separate section, any unusual or special contractual requirements that may affect performance. For example, the SOW shall specify separately the work requirements to implement information security management requirements—*see 339.71* for additional information.

(7) *Deliverables and reporting requirements.* This includes clearly and completely describing all deliverables and reports, including the time frame for completion, the format, and the required number of copies.

PART 308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 308.4—Federal Supply Schedules

Sec.

308.404 Use of Federal Supply Schedules.
308.405–6 Limited source justification and approval.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 308.4—Federal Supply Schedules

308.404 Use of Federal Supply Schedule.

(f) Technical Evaluation. When conducting a technical evaluation of quotations or proposals received under *FAR Part 8,* the provisions of *315.305(a)(3)* apply.

308.405–6 Limited source justification and approval.

(g) (1) As required by *FAR 8.405–1* or *8.405–2,* the responsible program office must provide a written justification whenever it requests an acquisition under the FSS program that restricts consideration of the number of schedule contractors or to an item peculiar to one manufacturer. The justification must be submitted with the AP or other acquisition request document—*see 307.71.* The Project Officer has responsibility for preparing the justification with assistance, as necessary, from the Contracting Officer.

(i) Justifications for orders at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or other acquisition request document. Justifications for orders in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with *FAR 8.405–6(g)* and *308.405–6(g),* and titled ''Limited Source Justification'' (LSJ). HHS requires use of a standard format for an LSJ. The template for the justification is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the LSJ template in accordance with OPDIV procedures.

(ii) Regardless of dollar amount of the acquisition, justifications shall—

(A) Fully describe what is to be acquired;

(B) Cite specific reasons that explain why it is necessary to restrict consideration of sources;

(C) Be supported by verifiable facts rather than untested or unsubstantiated opinions or conclusions; and

(D) Be written in a manner to permit an individual without technical knowledge of the requirement to understand the supporting rationale.

(iii) Preliminary arrangements with, or verbal or written commitments to, a proposed contractor shall be avoided given the requirement to obtain competition for FSS orders using the procedures in *FAR Subpart 8.4—see* also *FAR 6.102(d)(3).*

(iv) Justifications for non-FSS orders to be awarded without full and open competition shall comply with *FAR 6.303* and *306.303.*

(h) Justification approvals.

Certification, concurrence, and approval requirements. The Project Officer, the Project Officer's immediate supervisor, the head of the sponsoring program office, and the Contracting Officer shall certify that the justification is accurate and complete by signing the LSJ. For acquisitions in the dollar amount cited in *FAR 8.405–6(h)(2) through (h)(4),* the CCO, if applicable, and the HCA shall indicate their review of, and concurrence with, the justification by signing the LSJ. The approving officials for LSJs are as follows:

(1) The Contracting Officer shall exercise this approval authority unless a higher approval level is required by OPDIV procedures.

(2) The CAs are listed in *306.501.* This approval authority is not delegable.

(3) The CA shall exercise this approval authority, except where the individual designated as the competition advocate does not meet the requirements of *FAR 8.405–6(h)(3)(ii).* This approval authority is not delegable.

(4) The HHS SPE is the Associate DAS for Acquisition.

PART 309—CONTRACTOR QUALIFICATIONS

Subpart 309.4—Debarment, Suspension, and Ineligibility

Sec.

309.403 Definitions.
309.404 List of parties excluded from Federal procurement and non-procurement programs.
309.405 Effect of listing.
309.406 Debarment.
309.406–3 Procedures.
309.407 Suspension.
309.407–3 Procedures.
309.470 Reporting of suspected causes for debarment or suspension or the taking of evasive actions.
309.470–1 Situations where reports are required.
309.470–2 Contents of reports.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 309.4—Debarment, Suspension, and Ineligibility

309.403 Definitions.

Acquiring agency's head or designee, as used in the *FAR,* means, unless otherwise stated in this subpart, the HCA. The HCA may make the required justifications or determinations and take the necessary actions specified in *FAR 9.405, 9.406 and 9.407,* only after obtaining the written approval of the debarring or suspending official, as appropriate.

Debarring official means the Deputy Assistant Secretary for Grants and Acquisition Policy and Accountability (DAS/GAPA).

Initiating official means the Contracting Officer, the HCA, the Associate DAS for Acquisition, or the Inspector General (IG).

Suspending official means the DAS/GAPA.

309.404 List of parties excluded from Federal procurement and non-procurement programs.

(c) The ASFR/OGAPA/DA shall perform the actions required by *FAR 9.404(c).*

(4) The ASFR/OGAPA/DA shall maintain all documentation the initiating official submits to recommend the debarment or suspension action and all correspondence and other pertinent documentation generated during the review.

309.405 Effect of listing.

(a) The HCA (non-delegable) may, with the written concurrence of the debarring or suspending official, make the determinations referenced in *FAR 9.405(a)* regarding contracts.

(1) If a Contracting Officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the Contracting Officer shall prepare a determination, including all pertinent documentation, and submit it through appropriate acquisition channels to the HCA. The documentation shall include the date by which approval is required and a compelling reason for the proposed action. Compelling reasons for award of a contract or consent to a subcontract with a debarred or suspended contractor include the following:

(i) Only the cited contractor can provide the property or services.

(ii) The urgency of the requirement dictates that HHS conduct business with the cited contractor.

(2) If the HCA decides to approve the requested action, the HCA shall request the concurrence of the debarring or suspending official and, if given, shall inform the Contracting Officer in writing of the decision within the required time period.

309.406 Debarment.

309.406–3 Procedures.

(a) *Investigation and referral.* When an apparent cause for debarment becomes known, the initiating official shall prepare a report containing the information required by *309.470–2,* along with a written recommendation, and forward it through appropriate acquisition channels, including the HCA, to the Associate DAS for Acquisition in accordance with *309.470–1.* The debarring official shall initiate an investigation.

(b) *Decision making process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures shall commence. The ASFR/OGAPA/DA shall promptly send a copy of the determination through appropriate acquisition channels to the initiating official and the Contracting Officer. If the debarring official determines that debarment procedures shall commence, the debarring official shall consult with OGC–GLD and then notify the contractor in accordance with *FAR 9.406–3(c).* If the proposed action is not based on a conviction or judgment and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary action specified in *FAR 9.406–3(b)(2).* The debarring official shall also ensure that written findings of facts are prepared and shall base the debarment decisions on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The OGC–GLD shall represent HHS at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

309.407 Suspension.

309.407–3 Procedures.

(a) *Investigation and referral.* When an apparent cause for suspension becomes known, the initiating official shall prepare a report containing the information required by *309.470–2* along with a written recommendation and forward it through appropriate acquisition channels, including the HCA, to the suspending official in accordance with *309.470–1.* The suspending official shall initiate an investigation.

(b) *Decision making process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension shall occur. ASFR/OGAPA/DA shall send a copy of the determination through appropriate acquisition channels to the initiating official and the Contracting Officer. If the suspending official determines that suspension is necessary, the suspending official shall consult with OGC–GLD and then notify the contractor in accordance with *FAR 9.407–3(c).* If the action is not based on an indictment, and, subject to the provisions of *FAR 9.407–3(b) (2),* the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after imposing the suspension, arrange for fact-finding hearings and take the necessary actions specified in *FAR 9.407–3(b)(2).*

309.470 Reporting of suspected causes for debarment or suspension or the taking of evasive actions.

309.470–1 Situations where reports are required.

The Contracting Officer shall forward a report, incorporating the information required by *309.470–2,* through appropriate acquisition channels, including the HCA, to the Associate DAS for Acquisition whenever a contractor—

(a) Has committed, or is suspected of having committed, any of the acts described in *FAR 9.406–2* or *FAR 9.407–2;* or

(b) Is suspected of attempting to evade the prohibitions of debarment or suspension imposed under this subject, or any other comparable regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

309.470–2 Contents of reports.

The Contracting Officer shall coordinate each report prepared under *309.470–1* with OGC–GLD and include the following information, when available:

(a) Contractor name and address.

(b) Name of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols; the amount of each contract; the amount paid to the contractor and the amount still due; and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether contract funds have been assigned pursuant to the Assignment of Claims Act, as amended, (31 U.S.C. 3727, 41 U.S.C. 15), and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of the contracts, whether these funds have been assigned pursuant to the Assignment of Claims Act, as amended, (31 U.S.C. 3727, 41 U.S.C. 15), and the amounts paid or due on the contracts.

(h) A complete summary of all available pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the Contracting Officer and statements indicating whether the contractor should be suspended or debarred, whether any limitations are necessary, and the period of any proposed debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation or a written summary of any information for which documentation is not available.

PART 310—MARKET RESEARCH

Sec.
310.001 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

310.001 Policy.

(a) OPDIVs are encouraged to conduct market research, to the maximum extent practicable, consistent with the urgency, complexity, and dollar value of a proposed acquisition, as well as their past experience with the same or similar requirements.

(3) (i) An OPDIV may issue an advance notice, entitled ''Sources Sought'' in FedBizOpps in accordance with the requirements of *FAR Part 5,* whenever a sufficient number of sources has not been identified to obtain adequate competition for a non-R & D project. The primary purpose of a Sources Sought notice is to identify all potential sources, regardless of organizational type and size classification, and determine their capabilities to fulfill a potential Government requirement. The notice is not intended to solicit technical, scientific, or business information for project planning purposes regarding existing or potential solutions. In the latter instance, an RFI may be used—*see FAR 15.201(e)* and *315.201(e).*

(ii) When using a Sources Sought notice, an OPDIV shall not request that potential sources provide more than the minimum information necessary—*see FAR 10.001(b),* to determine whether they have the apparent capability to perform a requirement and, therefore, whether they should be included in any future competition. The notice and the information received shall not be used to determine how well respondents can perform a requirement, which can only be evaluated in response to a solicitation. Accordingly, the notice shall not be used to—

(A) Obtain capability statements that are evaluated and determined acceptable or unacceptable;

(B) Require cost/price proposals or detailed technical solutions;

(C) Identify a prospective sole source; or

(D) Exclude small business concerns.

(iii) While not the primary intent of a Sources Sought notice, in addition to seeking information regarding all potential qualified sources, the notice may request that respondents provide information regarding their organizational size classification. For example, the notice may ask respondents to identify whether they are small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; woman-owned small businesses; or small disadvantaged businesses in order to determine the appropriate acquisition method, including whether a set-aside is possible. However, such a notice shall not be used solely to determine the size classification of respondents for a proposed non-R & D acquisition. In such instances, a ''Small Business Sources Sought'' notice may be used—*see 319.202–2,* in lieu of the procedures in this section.

(iv) OPDIVs shall follow the standard HHS instructions for completing a Sources Sought notice. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Sources Sought notice. The template for the notice is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the notice in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

(v) In instances where a sufficient number of sources has not been identified to compete for an R & D project, OPDIVs may use the procedures specified in *305.205,* including the issuance of an ''R & D Sources Sought'' notice, as appropriate, in lieu of the procedures in this section.

PART 311—DESCRIBING AGENCY NEEDS

Subpart 311.70—Section 508 Accessibility Standards

Sec.
311.7000 Defining electronic information technology requirements.
311.7001 Section 508 accessibility standards for HHS Web site content and communication materials.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 311.70—Section 508 Accessibility Standards

311.7000 Defining electronic information technology requirements.

HHS staff that define agency needs for EIT products and services, including EIT deliverables such as electronic documents and reports, and perform market research to meet those needs, shall document EIT requirements, identify the applicable Section 508 accessibility standards, and document the market research. OPDIVs may develop procedures for these activities, based on the level of agency investment and risk, and shall ensure any procedures developed are in conformance with *FAR Part 10.* Procedures for defining EIT requirements may, but are not required to, include the use of the Buy Accessible Wizard (*http://www.buyaccessible.gov*), managed by GSA, or other Federal agency tools.

311.7001 Section 508 accessibility standards for HHS Web site content and communications materials.

(a) Section 508 of the Rehabilitation Act of 1973 [29 U.S.C. 794(d)], as amended by the Workforce Investment Act of 1998, (Section 508) specifies the accessibility standards that apply to all new solicitations and new or existing contracts or orders, regardless of dollar amount, for communications products and services that require a contractor or consultant to produce content in any format that is specifically intended for publication on, or delivery via, an HHS-owned or -funded Web site.

(b) Accordingly, before forwarding a request to the contracting/ordering office for the acquisition of communications products and services, including content in any format, such as reports, documents, charts, posters, presentations (such as Microsoft PowerPoint), or video material that is specifically intended for publication on, or delivery via, an HHS-owned or -funded Web site, the Project Officer shall consult with the OPDIV/STAFF Division (DIV) Section 508 Official or Coordinator, as necessary, to determine the applicability of Section 508, identify applicable Section 508 accessibility standards, and resolve any related issues.

(c) Based on those discussions, the Project Officer shall provide a statement in the AP (or other acquisition request document)—*see 307.7101,* as to the applicability of Section 508. If Section 508 applies to an acquisition, the Project Officer shall include the following ''HHS Section 508 Accessibility Standards Notice'' language in a separate, clearly designated section of the SOW/PWS, and any additional information applicable to the acquisition's Section 508 accessibility standards [*e.g.,* the list of applicable accessibility standards of the Architectural and Transportation Barriers Compliance Board (Access Board) Final Rule (36 CFR Part 1194)]. If an AP does not address these issues, and it appears an acquisition involves

Section 508, or if the discussion of Section 508 applicability to the acquisition is inadequate or incomplete, the Contracting Officer shall request that the Project Officer modify the AP accordingly.

HHS Section 508 Accessibility Standards Notice (September 2009)

This contract is subject to Section 508 of the Rehabilitation Act (the Act) of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, and the Architectural and Transportation Barriers Compliance Board (Access Board) Electronic and Information Accessibility Provisions (36 CFR Part 1194). Section 508 of the Act requires that, unless an exception applies, all communications products and services that require a contractor or consultant to produce content in any format that is specifically intended for publication on, or delivery via, a Federally owned or Federally funded Web site permit the following:

(1) Federal employees with disabilities to have access to and use information and data that is comparable to the access and use of information and data by Federal employees who are not individuals with disabilities.

(2) Members of the public with disabilities seeking information or services from a Federal agency to have access to and use of information and data that is comparable to the access and use of information and data by members of the public who are not individuals with disabilities.

Note: Information about Section 508 of the Act is available at *http://www.section508.gov/*. The complete text of Section 508 can be accessed at *http://www.access-board.gov/sec508/provisions.htm*.

Accordingly, regardless of format, all Web content or communications materials specifically produced for publication on, or delivery via, HHS Web sites, including text, audio, or video, under this contract shall conform to applicable Section 508 accessibility standards. Remediation of any materials that do not comply with the applicable accessibility standards of 36 CFR Part 1194 as set forth herein shall be the responsibility of the Contractor.

The following Section 508 accessibility standards apply to the content or communications material identified in this SOW or PWS:

Note: The Project Officer shall list the applicable accessibility standards of the Access Board Final Rule (36 CFR Part 1194) (*e.g.,* ''36 CFR 1194.21(a)–(j).'' Most Web-based text and communication must meet the accessibility standards in 36 CFR 1194.22, ''Web-based intranet and Internet information and applications.'' Additionally, 36 CFR 1194.41, ''Information, documentation and support,'' and 36 CFR 1194.24 ''Video and multimedia products'' apply to all written, graphical, or broadcast video materials or products produced for HHS, including training. 36 CFR 1194.41(c) specifies that support services for products shall accommodate the communication needs of end-users with disabilities.

PART 312—ACQUISITION OF COMMERCIAL ITEMS

Subpart 312.1—Acquisition of Commercial Items—General

Sec.
312.101 Policy

Subpart 312.2—Special Requirements for the Acquisition of Commercial Items.

312.202(d) Market research and description of agency need.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 312.1—Acquisition of Commercial Items—General

312.101 Policy.

(a) It is HHS policy to leverage its buying power, reduce acquisition administrative costs, and develop long-term, mutually beneficial partnerships with best-in-class providers of products and services. Accordingly, HHS has implemented a Strategic Sourcing Program through which it awards BPAs or other contract vehicles to achieve savings for commercial items and services across HHS and make the acquisition process more efficient. OPDIVs shall use HHS' strategic sourcing vehicles to the maximum extent possible—*see* the HHS strategic sourcing portion of the ASFR/OGAPA/DA intranet site for further information.

Subpart 312.2—Special Requirements for the Acquisition of Commercial Items

312.202(d) Market research and description of agency need.

Whenever an OPDIV/STAFFDIV requires EIT products and services subject to Section 508 of the Rehabilitation Act of 1973, as amended, commercially available products and services shall be acquired to the maximum extent possible while ensuring Section 508 compliance. Consistent with paragraph 4.3.1 of the HHS Section 508 policy—*see* Section 508 policy on the HHS Office on Disability Web site, if products and services are commercially available that meet some but not all of the applicable Section 508 accessibility standards, and no commercially available products or services meet all of the applicable Section 508 accessibility standards, an OPDIV/STAFFDIV shall acquire the products and services that best meet the applicable Section 508 accessibility standards. Commercial nonavailability exception determinations for EIT products and services that do not meet some or all of the applicable Section 508 accessibility standards shall be processed in accordance with *339.203.*

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 313—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
313.003 Policy.

Subpart 313.1—Procedures.

313.106–2 Evaluation of quotations or offers.

Subpart 313.3—Simplified Acquisition Methods

313.301 Government-wide commercial purchase card.
313.303 Blanket purchase agreements.
313.303–5 Purchases under blanket purchase agreements.

Subpart 313.5—Test Program for Certain Commercial Items

313.501 Special documentation requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

313.003 Policy.

EIT products and services, including EIT deliverables such as electronic documents and reports, acquired pursuant to *FAR Part 13* shall comply with Section 508 of the Rehabilitation Act of 1973, as amended. Consistent with paragraph 4.3.1 of the HHS Section 508 policy—*see* Section 508 policy on HHS Office on Disability Web site, if products and services, including commercially available items, meet some but not all of the applicable Section 508 accessibility standards, and no commercially available products or services meet all of the applicable Section 508 accessibility standards, an OPDIV/STAFFDIV shall acquire the products and services that best meet the applicable Section 508 accessibility standards. Commercial nonavailability exception determinations for EIT products and services that do not meet some or all of the applicable Section 508 accessibility standards shall be processed in accordance with *339.203.*

Subpart 313.1—Procedures

313.106–2 Evaluation of quotations or offers.

(b)(5) Technical Evaluation. When conducting a technical evaluation of quotations or proposals received under *FAR Part 13,* the provisions of *315.305(a)(3)* apply.

Subpart 313.3—Simplified Acquisition Methods

313.301 Government-wide commercial purchase card.

(b) HHS' procedures for the use and control of the Government-wide commercial purchase card may be found in the HHS Purchase Card Program Guide, available on the ASFR/OGAPA/DA Web site.

(1) ASFR/OGAPA/DA has overall responsibility for monitoring the OPDIVs' implementation of the HHS purchase card program to foster compliance with FAR *13.301;* OMB Circular A–123, Appendix B, ''Improving the Management of Government Charge Card Programs;'' GSA's SmartPay Program guidance; and HHS Purchase Card program standards.

(2) The OPDIVs, through their designated Agency/Organization Program Coordinators, are responsible for establishing the necessary local procedures and appropriate training requirements to ensure effective implementation of the HHS purchase card program.

(3) OPDIVs shall refer to *313.003* and the HHS Purchase Card Program Guide for information regarding acquiring EIT products and services subject to Section 508 of the Rehabilitation Act of 1973, as amended.

313.303 Blanket purchase agreements.

313.303–5 Purchases under blanket purchase agreements.

(e)(5) HHS personnel that sign delivery documents, invoices, *etc.,* verifying the receipt of an item or service shall forward such documents to the fiscal office or other paying office that the OPDIV designates. The fiscal or other paying officer shall use the signed document, invoice, *etc.,* as the basis for payment. Alternatively, OPDIVs may use electronic methods to document, and transmit to the paying office, the receipt, inspection, and acceptance of items or services for payment purposes, provided such methods are authorized in local fiscal procedures. Contracting offices shall establish procedures to ensure that funds are available prior to placement of orders.

Subpart 313.5—Test Program for Certain Commercial Items

313.501 Special documentation requirements.

(a) (1)

(i) The justification requirements of *306.303–1(b)* and *306.303–1(b)(1) through (b)(4)* apply to proposed noncompetitive acquisitions placed under *FAR Subpart 13.5.*

(ii) The HHS standard format for JOFOCs cited in *306.303–1(b)(1)* shall be used to support noncompetitive acquisitions in excess of the simplified acquisition threshold placed under *FAR Subpart 13.5.*

(iii) The certification, concurrence, and approval requirements cited in *306.304* for JOFOCs apply to applicable noncompetitive acquisitions placed under *FAR Subpart 13.5.*

(2)

(i) The Contracting Officer shall exercise this approval authority unless a higher approval level is required by OPDIV procedures.

(ii) The CAs are listed in *306.501.* This approval authority is not delegable.

(iii) The CA shall exercise this approval authority, except where the individual designated as the competition advocate does not meet the requirements of *FAR 6.304(a)(3)(ii).* This approval authority is not delegable.

(iv) The HHS SPE is the Associate DAS for Acquisition.

PART 314—SEALED BIDDING

Subpart 314.1—Use of Sealed Bidding

Sec.
314.103 Policy.

Subpart 314.2—Solicitation of Bids

314.202 General rules for solicitation of bids.
314.202–7 Facsimile bids.

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.
314.404–1 Cancellation of invitations after opening.
314.407 Mistakes in bids.
314.407–3 Other mistakes disclosed before award.
314.407–4 Mistakes after award.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 314.1—Use of Sealed Bidding

314.103 Policy.

EIT products and services, including EIT deliverables such as electronic documents and reports, acquired using sealed-bid procedures shall comply with Section 508 of the Rehabilitation Act of 1973, as amended. Consistent with paragraph 4.3.1 of the HHS Section 508 policy—*see* Section 508 policy on HHS Office of Disability Web site, if products and services, including commercially available items, meet some but not all of the applicable Section 508 accessibility standards, and no commercially available products or services meet all of the applicable Section 508 accessibility standards, an OPDIV/STAFFDIV shall acquire the products and services that best meet the applicable Section 508 accessibility standards. Commercial nonavailability exception determinations for EIT products and services that do not meet some or all of the applicable Section 508 accessibility standards shall be processed in accordance with *339.203.*

Subpart 314.2—Solicitation of Bids

314.202 General rules for solicitation of bids.

314.202–7 Facsimile bids.

(c) If the HCA (non-delegable) determines that the contracting activity will allow use of facsimile bids and proposals, the HCA shall prescribe internal procedures, in accordance with the *FAR 14.202–7,* to ensure uniform processing and control.

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.

314.404–1 Cancellation of invitations after opening.

(c) The HCA or CCO (non-delegable) shall make the agency head determinations specified in *FAR 14.404–1.*

314.407 Mistakes in bids.

314.407–3 Other mistakes disclosed before award.

(e) The CCO (non-delegable) has the authority to make determinations under paragraphs (a), (b), (c), and (d) of *FAR 14.407–3.*

(f) OGC–GLD shall concur in each proposed determination.

(i) The CCO shall submit directly to OGC–GLD cases in which the evidence is not clear and convincing or is otherwise doubtful.

314.407–4 Mistakes after award.

(c) The HCA or the CCO (non-delegable), in consultation with OGC–GLD, has the authority to make administrative determinations in connection with mistakes in bid alleged after award.

(d) OGC–GLD shall concur in each proposed determination.

PART 315—CONTRACTING BY NEGOTIATION

Subpart 315.2—Solicitation and Receipt of Proposals and Information

Sec.
315.201 Exchanges with industry before receipt of proposals.
315.204–5 Part IV—Representations and instructions.
315.208 Submission, modification, revision, and withdrawal of proposals.
315.209 Solicitation provisions and contract clauses.

Subpart 315.3—Source Selection.

315.303–70 Policy.
315.304 Evaluation factors and significant subfactors.
315.305 Proposal evaluation.
315.306 Exchanges with offerors after receipt of proposals.
315.307 Proposal revisions.
315.370 Finalization of details with the selected source.
315.371 Contract preparation and award.
315.372 Preparation of negotiation memorandum.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.
315.404–2 Information to support proposal analysis.
315.404–4 Profit.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.
315.606 Agency procedures.
315.606–1 Receipt and initial review.
315.609 Limited use of data.

Subpart 315.70—Acquisition of Electronic Information Technology

315.7000 Section 508 accessibility standards.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 315.2—Solicitation and Receipt of Proposals and Information

315.201 Exchanges with industry before receipt of proposals.

(e)(1) An OPDIV may issue an advance notice, entitled ''Request for Information,'' in accordance with the requirements of *FAR 15.201(e),* whenever it requires technical, scientific, and/or business information and input from the marketplace for project planning purposes regarding the availability of existing or potential solutions. An RFI may be used for any type of requirement, but is particularly appropriate for complex projects involving R & D, IT, construction, and other highly technical requirements. An RFI may also be issued to identify issues about the Government's requirements and the planned acquisition strategy. Use of an RFI generally is appropriate under the following conditions:

(i) It is not clear whether the purpose and performance requirements of a potential or planned project are feasible, achievable, and complete.

(ii) It is not certain that a solution, technical approach, or product needed to accomplish a potential or planned project exists or can be developed, particularly in the case of a new, highly specialized/unique Government program mandate.

(iii) It is necessary to test the marketplace to determine if there are questions or concerns regarding the use of a new or innovative acquisition strategy or instrument previously untried to accomplish a potential or planned project.

(iv) It is necessary to determine the general effort or time (estimate or rough order of magnitude) that may be required to accomplish a potential or planned project.

Note: This type of information may be requested, only if it is necessary, broad in scope, and required for planning purposes. Detailed estimates must not be requested.

(v) It is necessary to ensure that unduly restrictive technical or business/acquisition requirements are not made part of any resultant solicitation so that maximum competition is generated.

(2) When using an RFI, an OPDIV shall not request that potential sources provide more than the minimum information necessary—*see FAR 10.001(b),* to obtain the input required. The notice and the information received shall not be used to determine how well respondents can perform a requirement, which can only be evaluated in response to a solicitation. Accordingly, the notice shall not be used to—

(i) Obtain capability statements that are evaluated and determined acceptable or unacceptable;

(ii) Require cost/price proposals or detailed technical solutions;

(iii) Identify a prospective sole source; or

(iv) Exclude small business concerns.

(3) While not the primary intent of an RFI, an OPDIV may additionally request that respondents provide information regarding their organizational size classification and capabilities when the OPDIV is uncertain whether any organization, acting individually or in partnership with others, can satisfy the requirement. For example, the notice may ask respondents to identify whether they are small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; woman-owned small businesses; or a small disadvantaged businesses. However, an RFI shall not be used solely to determine the availability of qualified sources for a proposed project or to determine their size classification. In such instances, as applicable, an R & D Sources Sought notice, Sources Sought notice, or Small Business Sources Sought notice may be used—*see* HHSAR *305.205, 310.001,* and *319.202–2.*

(4) OPDIVs shall follow the standard HHS instructions for completing an RFI. The template for an RFI is available on the ASFR/OGAPA/DA Internet Web site. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Special Notice, accessible on the FedBizOpps ''Notices'' page at: *http://www.fedbizopps.gov.* RFIs must be published, at a minimum, in FedBizOpps—*see FAR 10.002(b)(2)(iii)* and *15.201(d).* Additional information may be included in an RFI in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

315.204–5 Part IV—Representations and instructions.

(c) *Section M, Evaluation factors for award.*

(1) General.

(i) The Project Officer shall develop technical evaluation factors and submit them to the Contracting Officer as part of the acquisition plan or other acquisition request documentation for inclusion in a solicitation. The Project Officer shall indicate the relative importance or weight of the evaluation factors based on the requirements of an individual acquisition. Since the evaluation factors will serve as the standard for proposal evaluation, they require careful selection.

(ii) Only a formal amendment to a solicitation can change the evaluation factors. Evaluation of proposals shall include only those factors set forth in a solicitation.

(2) Review of evaluation factors.

(i) The Contracting Officer shall review evaluation factors to ensure they are consistent with the SOW/PWS. This review is not intended to dictate technical requirements to the program office or Project Officer, but rather to ensure that the evaluation factors are clear, concise, and fair, so that all potential offerors are fully aware of the bases for proposal evaluation and are given an equal opportunity to compete.

(ii) The Project Officer and the Contracting Officer shall review the evaluation factors to ascertain the following:

(A) The factors address the key programmatic concerns which the offerors must be aware of in preparing proposals.

(B) The factors are specifically applicable to the current acquisition and are not restatements of factors from previous acquisitions which are not relevant.

(C) The factors represent only the significant areas of importance, rather than a multitude of factors. (*Note:* All factors tend to lose importance, if too many are included; and using too many factors may prove as detrimental as using too few.)

(3) Examples of topics that form a basis for evaluation factors. Typical examples of topics that form a basis for the development of evaluation factors are listed in the following paragraphs. These examples may assist in the development of actual evaluation factors for a specific acquisition, as appropriate.

(i) Understanding of the SOW/PWS.

(ii) Method of accomplishing the objectives and intent of the SOW/PWS.

(iii) Soundness of the scientific or technical approach for executing the requirements of the SOW/PWS, including, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach.

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved.

(v) Feasibility or practicality of successfully accomplishing the requirements (including a statement and discussion of anticipated major difficulties and problem areas, and recommended approaches for their resolution).

(vi) Availability of required special research, test, and other equipment or facilities.

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previous experience).

(viii) Availability, qualifications, experience, education, and competence of professional, technical, and other personnel, including proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts).

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel.

(x) Quality of offeror's past performance on recent projects of similar size and scope.

(xi) Extent of proposed participation of small disadvantaged business concerns in performance of the contract.

315.208 Submission, modification, revision, and withdrawal of proposals.

(b) In addition to the provision in *FAR 52.215–1,* Instructions to Offerors—Competitive Acquisition, if an HCA determines that certain classes of biomedical or behavioral R & D acquisitions are subject to conditions other than those specified in *FAR 52.215–1(c)(3),* the HCA may authorize for use in competitive solicitations for R & D, valued at more than the simplified acquisition threshold, the use of the provision in *352.215–70,* Late Proposals and Revisions. This is an authorized FAR deviation.

(2) When the provision at *352.215–70* is included in the solicitation and a proposal is received after the exact time specified for receipt, the Contracting Officer, with the assistance of cost and technical personnel, shall make a written determination as to whether the proposal meets the requirements of the provision at *352.215–70* and, therefore, can be considered.

315.209 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert paragraph (e) in *352.215–1* in place of paragraph (e) in the provision in *FAR 52.215–1,* Instructions to Offerors—Competitive Acquisition, in solicitations for competitive, negotiated acquisitions valued at more than the simplified acquisition threshold. This is an authorized FAR deviation.

Subpart 315.3—Source Selection

315.303–70 Policy.

(a) If an OPDIV is required by statute to use peer review for technical review of specified contracts, the requirements of those statutes, any implementing regulatory requirements, the Federal Advisory Committee Act, and as applicable, any approved HHSAR deviation(s) from this subpart take precedence over the otherwise applicable requirements of this subpart.

(1) The statutes that require such review and implementing regulations are as follows: NIH—42 U.S.C. 289a and 42 CFR Part 52h; SAMHSA—42 U.S.C. 290aa–3, and AHRQ—42 U.S.C. 299c–1.

315.304 Evaluation factors and significant subfactors.

(a) A solicitation for EIT products and services, including EIT deliverables such as electronic documents and reports, shall include a separate technical evaluation factor (which may be in the form of a technical evaluation criterion or a mandatory qualification criterion, as appropriate) developed by the Contracting Officer, Project Officer, and the OPDIV Section 508 Coordinator to determine vendor compliance with applicable Section 508 accessibility standards. The technical evaluation panel's assessment of Section 508 accessibility standards conformance shall be based on the Section 508 Product Assessment Template—*see* Section 508 policy on Office of Disability Web site for the template, and on any other pertinent information that offerors provide in response to a solicitation. The HHS Office on Disability is responsible for providing technical assistance in Section 508 evaluation factor development.

(b) Before conducting negotiations or making an award, the Contracting Officer shall provide a summary of the technical evaluation panel's assessment of vendor responses to the solicitation's Section 508 evaluation factor for review by the Section 508 Official or designee. The Section 508 Official or designee shall indicate approval/disapproval of the evaluation panel's assessment. The Contracting Officer shall coordinate the resolution of any issues raised by the Section 508 Official or designee with the chair of the technical evaluation panel or Project Officer, as appropriate. The acquisition process shall not proceed unless and until the Section 508 Official or designee has approved the technical evaluation panel's assessment. The Contracting Officer shall include the assessment in the official contract file. *See 339.203* regarding processing exception determination requests.

315.305 Proposal evaluation.

(a)(1) *Cost or price evaluation.*

(i) The Contracting Officer shall evaluate proposals in accordance with the *FAR 15.404.* The extent of cost or price analysis in each case depends on the availability of competition, contract type, the proposed amount, and technical complexity.

(A) For competitive firm-fixed-price and fixed price with economic price adjustment contracts, price analysis should be sufficient to determine price fairness and reasonableness.

(B) When competition is not adequate for the above contract types, and for cost-reimbursement and time and materials contracts, cost analysis may be required. In such cases, the Contracting Officer shall request the Project Officer's assistance in analyzing the following cost elements, if applicable, to

determine if the proposed amounts are necessary and reasonable for efficient contract performance:

(1) The number and mix of proposed labor hours relative to the technical requirements.

(2) Types, numbers and hours/days of proposed consultants.

(3) The kinds and quantities of material, equipment, supplies, and services.

(4) Kinds and quantities of IT.

(5) Logic of proposed subcontracting.

(6) Travel proposed, including number of trips, locations, purpose, and travelers.

(7) Other direct costs not specified above.

(ii) The Project Officer shall provide written comments, including the rationale for any exceptions to the cost elements. The Contracting Officer shall consider the Project Officer's comments for negotiations or to support award without discussions. The Contracting Officer shall also request assistance of a cost/price analyst, when necessary.

(2) *Past performance evaluation.* When evaluating past performance, the Contracting Officer shall check references to obtain information concerning the performance history of offerors in compliance with *FAR 42.1502.* The Contracting Officer may require the assistance of the Project Officer as well as other Government technical personnel in performing this function.

(3) *Technical evaluation.*

(i) Technical evaluation plan.

(A) The Contracting Officer shall require a technical evaluation plan if the proposed acquisition either requires preparation of an AP—*see 307.71* or is otherwise sufficiently complex.

(B) The technical evaluation plan shall include, at a minimum, the following elements:

(1) A list of recommended technical evaluation panel members, their organizations, a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if applicable).

(2) A statement that the technical evaluation panel will include non-Federal technical proposal evaluators, if applicable, and a determination that sufficient Federal technical proposal evaluators are unavailable—*see FAR 37.204.* A determination to use non-Federal proposal evaluators shall be signed at a level no lower than the HCA. A determination is not required, however, if non-Federal evaluators will be used in accordance with *315.303–70(a).*

(3) A statement that there is no apparent or actual conflict of interest regarding any recommended panel member.

(4) A copy of each rating sheet, approved by the Contracting Officer, to ensure consistency with the evaluation criteria.

(5) A brief description of the general evaluation approach.

(6) A description of the methodology for evaluating key elements in the technical evaluation plan, including any solicitation evaluation factor involving the acquisition of EIT products and services subject to Section 508.

(C) Except as provided in OPDIV procedures, a program office official at least one level above the Project Officer shall approve the technical evaluation plan.

(D) The Project Officer shall provide the technical evaluation plan to the Contracting Officer for review and approval before the solicitation is issued. The Contracting Officer shall ensure that the evaluation criteria reflect the significant factors and subfactors relating to the evaluation when conducting the review of the plan.

(ii) Technical evaluation panel.

(A) General.

(1) A technical evaluation panel is required for all acquisitions subject to this subpart that require preparation of an AP. The Contracting Officer may require a technical evaluation panel for acquisitions that do not require preparation of an AP, based on the complexity of the acquisition and the role that the technical evaluation will have in the award decision.

(2) The technical evaluation process requires careful consideration regarding the size, composition, expertise, and function of the technical evaluation panel. The panel's efforts will influence the success or failure of the acquisition.

(3) At least 50 percent of the HHS personnel on a technical evaluation panel shall have successfully completed HHS University's ''Basic Contracting Officer's Technical Representative'' course or an equivalent course before assuming their designated role. This training requirement applies to evaluators performing the initial technical evaluation and any subsequent technical evaluations. However, this training requirement does not apply to peer review panel members.

(B) Role of the Project Officer.

(1) The Project Officer provides guidance, information, and assistance to the Contracting Officer on all technical aspects of a proposed acquisition—*see 302.101.* The Project Officer may be a voting member of the technical evaluation panel and may serve as the chairperson of the panel unless prohibited by law or contracting activity procedures.

(2) The Project Officer shall recommend panel members who have sufficient expertise in the technical aspects of the acquisition to be able to evaluate strengths and weaknesses in proposals.

(3) The Project Officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and disability are included as panel members for acquisitions to which such issues apply.

(4) The Project Officer shall submit a list of recommended panel members to a program office official at least one level higher than him/herself. This official shall review the list and select the chairperson.

(5) The Project Officer shall arrange for adequate and secure working space for the panel.

(C) Role of the Contracting Officer.

(1) The term ''Contracting Officer,'' as used in this subpart, may be the Contracting Officer or a Contract Specialist possessing an appropriate FAC–C certification.

(2) The Contracting Officer shall not serve as a member of the technical evaluation panel, but shall—

(i) Address the initial meeting of the technical evaluation panel;

(ii) Provide assistance to the evaluators as required; and

(iii) Ensure that the scores adequately reflect the written technical report comments.

(D) Conflict of interest.

(1) If a panel member has an actual or apparent conflict of interest related to a proposal under evaluation, the individual cannot serve on the panel. If a suitable replacement is not available, the panel shall perform the review without a replacement.

(2) For the purposes of this subpart, conflicts of interest are defined in the *Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), Supplemental Standards of Ethical Conduct for Employees of the Department of Health and Human Services (5 CFR part 5501),* and the *Procurement Integrity Act.* For outside evaluators serving on the technical evaluation panel, *see* paragraph (a)(3)(ii)(F) of this section.

(E) Continuity of evaluation process.

(1) The technical evaluation panel shall evaluate all original proposals; make recommendations to the chairperson regarding strengths and weaknesses of proposals; if required by the Contracting Officer, assist the Contracting Officer during communications and discussions; and

review supplemental, revised or final proposal revisions. To the extent possible, the same evaluators shall be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it would not be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

(i) The answers to questions do not have a substantial impact on the proposal.

(ii) Final proposal revisions are not materially different from the original proposals.

(iii) Revisions to the proposals are relatively minor and do not affect the rankings of the offerors.

(2) The Contracting Officer, with the written concurrence of the technical evaluation panel chairperson, may decide not to have the panel evaluate the revised proposals. The Contracting Officer shall fully document such a decision in the contract file.

(3) When the Contracting Officer considers technical evaluation panel meetings necessary, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson shall remove or replace the individual after discussing the situation with the Contracting Officer and obtaining the Contracting Officer's concurrence and the approval of the official responsible for appointing the panel members.

(4) When continuity of the evaluation process is not possible, and new evaluators are selected or the size of the evaluation panel is reduced, each panel member shall review all proposals at the current stage of the acquisition—*i.e.,* initial proposal, final proposal revisions, *etc.* Also, the Contracting Officer shall provide guidance concerning what steps to take if an unusually large number of proposals is received, including how to determine what constitutes an unusually large number of proposals.

(F) Use of outside evaluators.

(1) Except when peer review is required by statute as provided in 315.303–70*(a),* decisions to disclose proposals to evaluators outside of the Government shall be made by the official responsible for appointing panel members in accordance with OPDIV procedures. The avoidance of organization conflict of interest and competitive relationships must be taken into consideration when making the decision to use outside evaluators.

(2) When a solicited proposal will be disclosed outside the Government for evaluation purposes, the following or similar conditions shall be part of the written agreement with the evaluator(s) prior to disclosure:

Conditions for Evaluating Proposals

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal for evaluation purposes only. The foregoing requirement does not apply to data obtained from another source without restriction. Any notice or legend placed on the proposal by either HHS or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return to the Government the furnished copy of the proposal or abstract, and all copies thereof, to the HHS office which initially furnished the proposal for evaluation. Unless authorized by the HHS initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents. The evaluator's employees and subcontractors shall abide by these conditions.

(iii) Receipt of proposals.

(A) After the closing date for the receipt of proposals set in the solicitation, the Contracting Officer shall forward the technical proposals, by memorandum, to the Project Officer or chairperson for evaluation. The Contracting Officer shall retain the business proposals for evaluation.

(B) The transmittal memorandum shall include at least the following elements:

(1) A list of the names of the organizations submitting proposals.

(2) A reference to the need to preserve the integrity of the source selection process.

(3) A statement that only the Contracting Officer is authorized to conduct discussions.

(4) A requirement for a technical evaluation report in accordance with paragraph (a)(3)(vi) of this section.

(5) The establishment of a date for receipt of the technical evaluation report.

(iv) Convening the technical evaluation panel.

(A) Normally, the technical evaluation panel convenes to evaluate proposals. However, there may be situations when the panel chairperson determines that it is not feasible for the panel to convene. Whenever the panel does not convene, the panel chairperson shall closely monitor the technical review to produce acceptable results.

(B) When a panel convenes, the chairperson shall control the technical proposals provided by the Contracting Officer for use during the evaluation process. The chairperson normally distributes the technical proposals prior to the initial panel meeting and establishes procedures for securing the proposals whenever they are not being evaluated to ensure their confidentiality. After an evaluation is completed, the chairperson shall return all proposals to the Contracting Officer.

(C) The Contracting Officer shall address the initial meeting of the panel and state the basic rules for conducting the evaluation. The Contracting Officer shall provide written guidance to the panel, if the Contracting Officer cannot attend the initial panel meeting. The guidance shall include the following elements:

(1) An explanation of the evaluation process and the role of evaluators throughout the process.

(2) The need for evaluators to read and understand the solicitation, especially the SOW/PWS and evaluation criteria, prior to reading the proposals.

(3) The need for evaluators to restrict the review to only the SOW/PWS, the evaluation criteria, and the contents of the technical proposals.

(4) The need for each evaluator to review all of the proposals.

(5) The need for evaluators to identify ambiguities, inconsistencies, errors, and deficiencies.

(6) The need for the evaluators to provide complete written documentation of the individual strengths and weaknesses for each proposal.

(7) An instruction specifying that, until an award is made, they may not disclose information concerning the acquisition to any person not directly involved in the evaluation process.

(8) An explanation of conflicts of interest.

(v) Rating and ranking of proposals. The evaluators shall individually read each proposal, describe tentative strengths and weaknesses, and independently assign preliminary scores in relation to each evaluation factor set forth in the solicitation. The evaluators may then discuss in detail the individual strengths and weakness described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). Each evaluator shall assign a final score to each proposal, and the technical evaluation panel shall collectively rank the proposals. Normally, ranking is the result of adding the numerical scores assigned to the evaluation factors and determining the average for each offeror. The evaluators shall then identify

whether each proposal is acceptable or unacceptable. The technical evaluation panel shall not employ predetermined cutoff scores.

(vi) Technical evaluation report. The chairperson shall prepare a technical evaluation report and provide it to the Contracting Officer, who shall maintain it as a permanent record in the contract file. The report shall reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. The report shall include concrete technical reasons supporting any determination of unacceptability of a proposal and, for acceptable proposals, include specific points and questions for discussions or negotiations. The technical evaluation report shall also include a copy of each signed rating sheet, unless the Contracting Officer determines, in accordance with FAR *15.305(a)(3)(ii),* and *315.305(a)(3)(vi),* that the technical evaluation report includes appropriate and sufficiently detailed supporting narrative (with specific references to particular portions of offerors' proposals) to (1) fully and reasonably explain the basis for the technical evaluation panel's assessments of each proposal, including an evaluation rating of ''acceptable'' or ''unacceptable; and (2) support any recommendation to include or not include a proposal in the competitive range. However, when peer review of proposals is required as provided in *315.303–70(a),* OPDIVs shall follow applicable peer review guidelines and practices regarding the submission, maintenance, and disposal of reviewer rating sheets.

315.306 Exchanges with offerors after receipt of proposals.

(d) *Exchanges with offerors after establishment of the competitive range.* The Project Officer or technical evaluation panel shall develop technical questions as part of the technical evaluation report. The questions shall disclose the ambiguities, weaknesses, and deficiencies of offeror(s)' proposals. The Contracting Officer, with the assistance of the Project Officer or panel as required, shall prepare the management, past performance, and cost or price questions. The method of requesting offerors in the competitive range to submit additional information may vary depending on the complexity of the questions, the extent of additional information necessary, the time needed to analyze the responses, and the time frame for making the award. However, to the extent practicable, all questions and answers shall be in writing. The Contracting Officer shall give each offeror in the competitive range an equitable period of time for preparation of responses to questions to the extent practicable.

315.307 Proposal revisions.

(b) Final proposal revisions are subject to—

(1) A final evaluation of price or cost and other salient factors by the Contracting Officer and Project Officer, with assistance from a cost/price analyst, as appropriate; and

(2) An evaluation of technical factors by the technical evaluation panel, as necessary.

The technical evaluation panel may rescore and re-rank technical proposals in the competitive range and prepare a technical evaluation report. To the extent practicable, the same evaluators who reviewed the original proposals shall perform the evaluation. The Contracting Officer and Project Officer shall conduct a final evaluation of past performance. The technical evaluation panel may be involved in the final evaluation of past performance, if the panel is comprised solely of Government personnel.

315.370 Finalization of details with the selected source.

(a) After selection of the successful proposal, the Contracting Officer may finalize details with the selected offeror, if necessary. However, the Contracting Officer shall not introduce any factor that could have an effect on the selection process after the common cutoff date for receipt of final proposal revisions, nor shall the finalization process in any way prejudice the competitive interest or rights of the unsuccessful offerors. The Contracting Officer shall restrict finalization of details with the selected offeror to definitizing the final agreement on terms and conditions, assuming none of these factors were involved in the selection process.

(b) Whenever a change occurs in the requirements, the Contracting Officer shall reopen the competition, and provide all offerors submitting final proposal revisions an opportunity to resubmit proposals based on the revised requirements. If there is a question as to whether a change is material and would require the initiation of a new competition, the Contracting Officer shall obtain the advice of technical personnel and OGC–GLD before proceeding. Significant changes in the offeror's cost proposal may also necessitate a reopening of a competition, if the changes alter the factors involved in the original selection process.

(c) Upon finalization of details, the Contracting Officer shall obtain a confirmation letter from the successful offeror which includes any revisions to its technical proposal, the agreed upon price or cost, and, as applicable, a certificate of current cost or pricing data.

315.371 Contract preparation and award.

(a) After completing any activities that may be necessary to finalize details with the selected offeror, the Contracting Officer shall—

(1) Prepare the negotiation memorandum in accordance with *315.372;*

(2) Prepare the contract containing all agreed to terms and conditions and clauses required by law or regulation;

(3) Include in the contract file the pertinent documents referenced in *FAR 4.803;* and

(4) Obtain the appropriate approval of the proposed contract award(s) in accordance with subpart *304.71* and contracting activity procedures.

(b) After receiving the required approvals, the Contracting Officer shall—

(1) Transmit the contract to the prospective contractor for signature; and

(2) Inform the prospective contractor that the contract is not effective until the Contracting Officer transmits the fully executed contract to the contractor.

(c) The Contracting Officer shall not sign or issue the contract until the finance office certifies that the funds are available for obligation.

315.372 Preparation of negotiation memorandum.

The Contracting Officer shall prepare a negotiation memorandum, or summary of negotiations, to document all actions leading to award of a contract and support the source selection decision discussed in *FAR 15.308.* The memorandum also satisfies the requirement for preparation of a ''cost/price negotiation memorandum'' required by *FAR 15.406–3.* The memorandum shall be in sufficient detail to explain and support the rationale, judgments, and authorities upon which all actions were predicated. The memorandum shall document the negotiation process and reflect the negotiator's actions and judgments in concluding a satisfactory agreement for the Government. The memorandum shall address each item listed below. If an item is not applicable, the

memorandum shall so state. The Contracting Officer may reference information already contained in the contract file rather than reiterate it.

(a) *Description of articles and services and period of performance.* Provide a description of the articles or services, quantity, unit price, total contract amount, and period of contract performance.

(b) *Acquisition planning.* Summarize or reference any acquisition planning activities that have taken place.

(c) *Synopsis of acquisition.* Provide a statement as to whether the acquisition has or has not been publicized in accordance with *FAR Subpart 5.2.* Include a brief statement referencing the specific basis for exemption under the FAR, if applicable.

(d) *Contract type.* Provide sufficient detail to support the type of contractual instrument recommended for the acquisition. If the contract is a cost-sharing type, explain the essential cost-sharing features.

(e) *Extent of competition.* Discuss the extent to which full and open competition was solicited and obtained. Include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision.

(f) *Technical evaluation.* Summarize or reference the results presented in the technical evaluation report.

(g) *Business evaluation.* Summarize or reference results presented in the business report.

(h) *Past performance.* Summarize or reference results of both the past performance evaluation and reference checks.

(i) *Competitive range* (if applicable). Describe how the competitive range was determined, and indicate the offerors that were included in and excluded from the competitive range.

(j) *Cost breakdown and analysis.* Include a complete cost breakdown together with the Contracting Officer's analysis of the estimated cost by individual cost elements. The analysis shall discuss the items specified in *FAR 15.406–3* and other cost factors, such as—

(1) A comparison of cost factors proposed for the current requirement with actual factors used in earlier contracts, using the same cost centers of the same supplier or cost centers of other sources having recent contracts for the same or similar item;

(2) Any pertinent Government-conducted audit of the proposed contractor's record or any pertinent cost advisory report;

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, material and other direct expenses;

(4) Any other pertinent information to fully support the basis for the cost analysis;

(5) If the contract is an incentive type, a discussion of all elements of profit and fee structure; and

(6) A justification of the reasonableness of the contractor's proposed profit or fixed fee considering the requirements of *FAR 15.404–4* and *315.404–4.*

(k) *Cost realism.* Describe the cost realism analysis performed on proposals.

(l) *Government-furnished property and facilities.* With respect to Government-furnished facilities, equipment, tooling, or other property, include the following:

(1) If the Government will not provide property, a statement to that effect.

(2) If the Government will provide property, a full description of it, its estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) If a decision to furnish property has not been made, a detailed explanation.

(m) *Negotiations.* Include a statement as to the date and place of negotiations, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the SOW/PWS, terms and conditions, and special provisions. The results of cost or price negotiations shall include the information required by *FAR 31.109* and *15.406–3.* In addition, if the potential contractor provided cost or pricing data, specify the extent to which the Contracting Officer relied upon the factual cost or pricing data submitted and used it in negotiating the cost or price.

(n) *Other considerations.* Include coverage of areas such as the following:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payments, advance payments, *etc.,* is necessary and cite any required D & F's.

(4) Information with respect to obtaining a certificate of current cost or pricing data.

(5) Other required special approvals.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s). Also, the Project Officer shall provide sufficient information for the Contracting Officer to determine that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor.

(7) A statement that the Contracting Officer has explained the equal opportunity provisions of the proposed contract to the contractor, and the contractor is aware of its responsibilities. Also, state whether or not an Equal Employment Opportunity (EEO) clearance is required.

(8) If the contract is for services, a statement, in accordance with *FAR 37.103,* that the services are nonpersonal in nature.

(o) *Terms and conditions.* Identify the general and special clauses and conditions that are contained in the contract, such as option arrangements, multi-year contracting, anticipatory costs, deviations from standard clauses, *etc.* The Contracting Officer shall state the rationale for inclusion of any special terms and conditions and, where applicable, identify the document which granted approval for their use.

(p) *Recommendation.* Briefly state the basis (or bases) for recommending award.

(q) *Signature.* The Contracting Officer and the individual who prepared the negotiation memorandum must sign the document.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.

315.404–2 Information to support proposal analysis.

(a)(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, the Contracting Officer may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and field pricing support by documenting the file to indicate what information will be used instead of the audit report and the field pricing report.

(3) When initiating audit and field pricing support, the Contracting Officer shall do so by sending a request to the cognizant Administrative Contracting Officer, with an information copy to the cognizant audit office. When field pricing support is not available, the Contracting Officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office of Audit Services, Regional Inspector General. In

both cases, the Contracting Officer shall, in the request—

(i) Prescribe the extent of the support needed;

(ii) State the specific areas for which input is required;

(iii) Include the information necessary to perform the review, such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules;

(iv) Provide the complete address of the location of the offeror's financial records that support the proposal;

(v) Identify the office having audit responsibility, if other than the HHS Regional Audit Office; and

(vi) Specify a due date for receipt of a verbal report and the written audit report. If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the Contracting Officer and indicate the additional time needed. The Contracting Officer shall submit one copy of the audit request letter provided to the Office of Audit Services, Regional Inspector General and a complete copy of the contract price proposal to OIG Office of Audit Services. Whenever the Office of Audit Services has conducted an audit review, the Contracting Officer shall forward two (2) copies of the memorandum of negotiation to OIG Office of Audit Services.

315.404–4 Profit.

(b) *Policy.*

(1) The structured approach for determining profit provides a technique for establishing a profit objective for negotiation. A profit objective is that part of the estimated contract price objective or value which, in the judgment of the Contracting Officer, constitutes an appropriate amount of profit for the acquisition being considered. This technique allows for consideration of the profit factors described in paragraph (d) of this section. The Contracting Officer's analysis of these factors shall be based on available information, such as proposals, audit data, assessment reports, and pre-award surveys. The structured approach provides a basis for documenting the profit objective. The Contracting Officer shall explain any significant departure from this objective. The amount of documentation depends on the dollar value and complexity of the proposed acquisition. The profit objective is a part of the overall negotiation objective and is directly related to the cost objective and any proposed sharing arrangement. The profit objective shall exclude factors considered inapplicable to the acquisition.

(ii) The Contracting Officer shall negotiate the profit objective at the same time as the other cost items and as a whole rather than as individual profit factors. The profit factor breakdown shall be part of the documentation. The Contracting Officer shall use the profit analysis factors in *FAR 15.404–4(d)* in lieu of the structured approach in the following circumstances:

(A) Contracts not expected to exceed $100,000.

(B) A & E contracts.

(C) Management contracts for operations or maintenance of Government facilities.

(D) Construction contracts.

(E) Contracts primarily requiring delivery of material supplies by subcontractors

(F) Termination settlements.

(G) Cost-plus-award-fee contracts.

However, the Contracting Officer may perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement. The Contracting Officer may make other exceptions in the negotiation of contracts having unusual pricing situations, but shall justify in writing those situations where the structured approach is determined to be unsuitable.

(c) *Contracting Officer responsibilities.* The Contracting Officer shall develop the profit objective, which shall realistically reflect the total overall effort of the contractor. The Contracting Officer shall not begin to develop the profit objective until he or she has completed a thorough review of the proposed contract work; conducted a review of all available knowledge regarding the contractor pursuant to *FAR subpart 9.1,* including audit data, pre-award survey reports and financial statements, as appropriate; and completed an analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

(d) *Profit-analysis factors.*

(1) *Common factors.* The Contracting Officer shall consider the following factors in all cases in which profit is negotiated and shall use the weight ranges listed after each factor in all instances where the structured approach is used.

Profit factors	Weight ranges (%)
Contractor Effort:	
Material acquisition	1 to 5.
Direct labor	4 to 15.
Overhead	4 to 9.
General & Administrative (G & A).	4 to 8.
Other costs	1 to 5.
Other Factors:	
Cost risk	0 to 7.
Investment	−2 to +2.
Performance	−1 to +1.
Socioeconomic programs	−.5 to +.5.
Special situations	

(i) The Contracting Officer shall measure ''Contractor Effort'' by assigning a profit percentage within the designated weight range to each element of contract cost. The categories listed are for reference purposes only, but are broad and basic enough to provide guidance for other elements of cost. The Contracting Officer shall not include facilities capital cost of money. ''Contractor Effort'' shall include a computed total dollar profit.

(ii) The Contracting Officer shall use the total dollar profit for the ''Contractor Effort'' to calculate specific profit dollars for ''Other Factors''—cost risk, investment, performance, socioeconomic programs, and special situations. The Contracting Officer shall multiply the total dollar profit for the ''Contractor Effort'' by the weight assigned to each of the elements in the ''Other Factors'' category. Facilities capital cost of money is not included. Form HHS 674, Structured Approach Profit/Fee Objective, shall be used.

(iii) In making a judgment of the value of each factor, the Contracting Officer shall consider the definition, description, and purpose of the factors together with considerations for evaluating them.

(iv) The structured approach was designed for arriving at profit objectives for other than nonprofit organizations. However, the Contracting Officer shall use the modified structured approach in paragraph (d)(1)(iv)(B) of this section to establish fee objectives for nonprofit organizations.

(A) For purposes of this section, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(B) For contracts with nonprofit organizations where fee is involved, the Contracting Officer shall subtract up to three percentage points from the total ''profit'' objective percentage. In determining the amount of this adjustment, the Contracting Officer shall consider the following factors:

(1) Tax position benefits.

(2) Granting of financing through advance payments.

(3) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

(2) *Contractor effort.* Contractor effort is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirement in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what steps the contractor must take to accomplish a conversion of ideas and material into the final service or product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective shall reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental or R & D work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing technology or equipment or only refinements to these items. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Material acquisition* (subcontracted items, purchased parts, and other material). Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required subcontracted items, purchased parts, material or services. The Contracting Officer shall determine whether the contractor will obtain the items or services by routine order from readily available sources or by detailed subcontracts for which the prime contractor must develop complex specifications. The Contracting Officer shall also consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and to perform subcontract administration functions, which may be substantial. Normally, the lowest unadjusted weight for direct material is two percent. A weighting of less than two percent may be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(ii) *Direct labor* (professional, service, manufacturing and other labor). Analysis of the various labor categories of the cost content of the contract shall include evaluation of the comparative quality and quantity of professional and semiprofessional talents, manufacturing and service skills, and experience to be employed. In evaluating professional and semiprofessional labor for the purpose of assigning profit dollars, the Contracting Officer shall consider the amount of notable scientific talent or unusual or scarce talent needed in contrast to nonprofessional effort, including the contribution this talent will provide toward the achievement of contract objectives. Since nonprofessional labor is relatively plentiful and the contractor may easily obtain it, it is less critical to the successful performance of contract objectives. Therefore, the Contracting Officer cannot weight it nearly as high as professional or semiprofessional labor. The Contracting Officer shall evaluate service contract labor in a like manner by assigning higher weights to engineering or professional type skills required for contract performance and considering the variety of manufacturing and other categories of labor skills required and the contractor's personnel resources for meeting those requirements. For purposes of evaluation, the Contracting Officer may separately categorize, as appropriate, certain types of labor (*e.g.,* quality control, receiving and inspection), that do not fall within the definition of professional, service or manufacturing labor; but shall apply the same evaluation considerations as outlined in this paragraph.

(iii) *Overhead and G & A expense.*

(A) Analysis of these overhead items of cost shall include the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, analysis shall include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered direct labor under the contract. The Contracting Officer shall give the allocable labor elements the same profit considerations that they would receive if they were treated as direct labor. The other elements of these overhead pools require analysis to determine whether they are routine expenses, such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools shall be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(B) It is not necessary that the contractor's accounting system break down overhead expenses within the classifications of research overhead, other overhead pools, and general administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system, if CAS exempt, to correspond with these classifications. The Contracting Officer, in an evaluation of such a contractor's overhead rate, may break out the applicable sections of the composite rate which could be classified as research overhead, other overhead pools, and general and administrative expenses, and follow the appropriate evaluation technique.

(C) The Contracting Officer shall consider management problems that may surface in varying degrees and the management expertise exercised to solve them as an element of profit. For example, a contract for a new R & D program or an item which is on the cutting edge may cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, the Contracting Officer shall adjust follow-ons downward because many of the problems should have been solved. In any event, the evaluation shall consider the underlying managerial effort involved on a case-by-case basis.

(D) It may not be necessary for the Contracting Officer to make a separate profit evaluation of overhead expenses, in connection with each acquisition action for substantially the same project with the same contractor. Where the Contracting Officer has made an analysis of the profit weight to be assigned to the overhead pool, the weight assigned may apply to future acquisitions with the same contractor unless there is a change in the cost composition of the overhead pool or contract circumstances, or unless the factors discussed in paragraph (d)(2)(iii)(C) of this section are involved.

(iv) *Other costs.* Analysis of this factor shall include all other direct costs associated with contractor performance (*e.g.,* travel and relocation, direct support, and consultants). Analysis of these items of cost shall include the

significance of the cost of contract performance, nature of the cost, and how much they contribute to contract performance. Normally, travel costs require minimal administrative effort by the contractor and, therefore, usually receive a weight no greater than one percent. Also, the contractor may designate individuals as ''consultants,'' but in reality the contractor may obtain these individuals to supplement its workforce in the performance of routine duties required by contract. These costs would normally receive a minimum weight. However, there may be instances when contract performance may require the contractor to obtain the services of consultants having expertise in fields such as medicine or human services. In these instances, the contractor may expend greater managerial and technical effort to obtain these services and, consequently, the costs shall receive a much greater weight.

(3) *Other factors:*

(i) *Contract cost risk.* The contract type employed basically determines the degree of cost risk assumed by the contractor. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit shall be less than where the contractor assumes all the risk.

(A) In developing the prenegotiation profit objective, the Contracting Officer shall consider the type of contract anticipated and the contractor risk associated therewith, when selecting the position in the weight range for profit that is appropriate for the risk the contractor will bear. This factor is one of the most important in arriving at the prenegotiation profit objective. Evaluation of this risk requires a determination of: The degree of cost responsibility assumed by the contractor; the reliability of the cost estimates in relation to the tasks assumed by the contractor; and the complexity of the tasks assumed by the contractor. This factor is specifically limited to the risk of contract costs. Risks associated with a contractor's reputation, a contractor's potential loss of a commercial market, or a contractor's loss of potential profits in other fields, are not within the scope of this factor.

(B) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a service or a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility. The determination of risk by contract type usually falls into the following percentage ranges:

	Percent
Cost-reimbursement type contracts	0–3
Fixed-price type contracts	2–7

(C) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new acquisitions for similar efforts. An excessive cost estimate reduces the likelihood that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(D) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(E) Contractors are likely to assume greater cost risk only if Contracting Officers objectively analyze the risk associated with proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm fixed-price contract justify a reward of less than the minimum in the structured approach. The reward for risk, by contract type, will usually fall into the following percentage ranges:

(*1*) Type of contract and percentage ranges for profit objectives based on structured approach for R & D and manufacturing contracts:

	Percent
Cost-plus-fixed-fee	0 to 0.5.
Cost-plus-incentive-fee: With cost incentive only.	1 to 2.
With multiple incentives	1.5 to 3.
Fixed-price-incentive: With cost incentive only.	2 to 4.
With multiple incentives	3 to 5.
Prospective price redetermination.	3 to 5.
Firm-fixed-price	5 to 7.

(*2*) Type of contract and percentage ranges for profit objectives based on the structured approach for service contracts:

	Percent
Cost-plus-fixed-fee	0 to 0.5.
Cost-plus-incentive-fee	1 to 2.
Fixed-price incentive	2 to 3.
Firm-fixed-price	3 to 4.

(F) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price incentive contract with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the Contracting Officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the Contracting Officer may determine that the Government is retaining much of the contract cost responsibility and that the risk the contractor assumes is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the Contracting Officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(G) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk. It could cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the Contracting Officer's overall evaluation in selecting a factor to apply to cost risk. The Contracting Officer may determine, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. However, without any substantial transfer of cost risk from the prime contractor to a subcontractor, the Contracting Officer shall not lower the contract cost risk evaluation merely because a substantial portion of the contract costs represents subcontracts.

(H) In making a contract cost risk evaluation for an acquisition that involves definitization of a letter contract, unpriced change orders, and unpriced orders under basic ordering agreements, the Contracting Officer shall consider the effect on total contract cost risk of partial performance before definitization. Under some

circumstances, the total amount of cost risk may have been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remains substantially unchanged. To be equitable, the Contracting Officer shall make the determination of profit weight for all recognized costs, both incurred and yet to be expended, considering all attendant circumstances—not merely the portion of costs incurred or percentage of work completed prior to definitization.

(I) The Contracting Officer shall consider time-and-materials and labor-hour contracts to be cost-plus-fixed-fee contracts for the purpose of establishing profit weights in the evaluation of the contractor's assumption of contract cost risk, unless otherwise exempt from use of the structured approach under paragraph (b)(1)(ii) of this section.

(ii) *Investment.* HHS encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor shall include an analysis of the following:

(A) *Facilities* (including equipment). Evaluating how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost-effectiveness of the facilities offered. The Contracting Officer shall provide contractors with additional profit, if they furnish their own facilities and such contractor-furnished facilities contribute significantly to lower total contract costs. On the other hand, contractors that rely on the Government to provide or finance needed facilities shall receive a corresponding reduction in profit. Between these extremes, the Contracting Officer shall evaluate cases on their merits and make positive or negative adjustments in profit, as appropriate. When applicable, the contractor's computation of facilities capital cost of money under CAS 414 can help the Contracting Officer identify the level of facilities investment the contractor will employ in contract performance.

(B) *Payments.* In analyzing this factor, the Contracting Officer shall consider the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration applies to advance payments and payments more frequent than monthly, with the Contracting Officer making a maximum reduction as the contractor's working capital approaches zero. The Contracting Officer shall generally give positive consideration for payments less frequent than monthly and for a capital turn-over rate on the contract less than the contractor's or the industry's normal capital turn-over rate.

(iii) *Performance* (cost control and other past accomplishments). The Contracting Officer shall evaluate the contractor's past performance in areas such as: quality of services or products, meeting performance schedules, efficiency in cost control (including need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation (both business and technical), compliance with previous contract requirements, and management of subcontract programs. Where a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, this performance merits a proportionately greater opportunity for profit. Conversely, a poor record in this regard warrants less profit.

(iv) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in Government sponsored programs involving: Small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; women-owned small businesses; small disadvantaged businesses; sheltered workshops for the disabled; mentor-protégé; energy conservation, *etc.* The Contracting Officer shall give positive consideration for the contractor's policies and practices that support Federal socioeconomic programs and contribute to successful results. Conversely, the Contracting Officer shall view failure or unwillingness on the part of the contractor to support Federal socioeconomic programs as evidence of poor performance for the purpose of establishing a profit objective.

(v) *Special situations.*

(A) *Inventive and developmental contributions.* The Contracting Officer shall consider the extent and nature of contractor-initiated and contractor-financed independent development in formulating the profit objective, provided that the Contracting Officer has made a determination that the effort will benefit the contract. Examples of profit weighting factors include contribution of the independent development to health and human service-related missions; the initiative demonstrated by the contractor in pursuing the independent development; the extent of the contractor's cost risk; and whether the independent development cost was recovered directly or indirectly from Government sources.

(B) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings (*e.g.,* a ceiling on overhead rates for conditions other than those discussed at *FAR 42.707).* In these circumstances, the Contracting Officer shall give the contractor favorable consideration in developing a profit objective.

(C) *Negative factors.* Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off-benefits as a direct result of the contract (*e.g.,* products or services with commercial application).

(4) *Facilities capital cost of money.* When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, the Contracting Officer shall reduce the profit objective in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of-Money cost principle. If the contractor does not propose this cost, the Contracting Officer shall insert a provision in the contract that makes facilities capital cost of money an unallowable cost.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.

(d) *Certification by offeror.* To ensure against contacts between HHS personnel and prospective offerors that would exceed the limits of advance guidance set forth in *FAR 15.604* and potentially result in an unfair advantage to an offeror, the Contracting Officer shall: Furnish the following certification template to any prospective offeror of an unsolicited proposal; and require that the executed certification be included in any resultant unsolicited proposal:

Unsolicited Proposal

Certification by Offeror

This is to certify, to the best of my knowledge and belief, that—

(a) This proposal has not been prepared under Government supervision;

(b) The methods and approaches stated in the proposal were developed by this offeror;

(c) Any contact with Department of Health and Human Services (HHS) personnel has been within the limits of appropriate advance guidance set forth in *FAR 15.604;* and

(d) No prior commitments were received from HHS personnel regarding acceptance of this proposal.

Date: _____

Organization _____

Name _____

Title _____

(This certification shall be signed by a responsible management official of the proposing organization or by a person authorized to contractually obligate the organization.)

315.606 Agency procedures.

(a) The HCA is responsible for establishing procedures to comply with *FAR 15.606(a).*

(b) The HCA or designee shall be the point of contact for coordinating the receipt and processing of unsolicited proposals.

315.606–1 Receipt and initial review.

(d) OPDIVs shall not refuse consideration of an unsolicited proposal because an organization initially submitted it as a grant application. However, OPDIVs shall not award contracts based on unsolicited proposals that have been rejected for grant awards due to lack of scientific merit.

315.609 Limited use of data.

An offeror shall use the legend, Use and Disclosure of Data, prescribed in *FAR 15.609(a),* to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may need to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the Contracting Officer shall provide the following notice to all prospective offerors of unsolicited proposals:

''The Government will attempt to comply with the ''Use and Disclosure of Data'' legend. However, the Government may not be able to withhold a record (data, document, *etc.*) or deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government determination to withhold or disclose a record will be based upon the particular circumstances surrounding the record and on whether the record is exempt from disclosure under the Freedom of Information Act. Per *FAR 15.609(e),* the offeror should identify any records that it considers to be trade secrets, commercial or financial information, and privileged or confidential information.''

Subpart 315.70—Acquisition of Electronic Information Technology

315.7000 Section 508 accessibility standards.

EIT products and services, including EIT deliverables such as electronic documents and reports, acquired using negotiated procedures shall comply with Section 508 of the Rehabilitation Act of 1973, as amended. Consistent with paragraph 4.3.1 of the HHS Section 508 policy—*see* Section 508 policy on HHS Office on Disability Web site, if products and services, including commercially available items, meet some but not all of the applicable Section 508 accessibility standards, and no commercially available products or services meet all of the applicable Section 508 accessibility standards, an OPDIV/STAFFDIV shall acquire the products and services that best meet the applicable Section 508 accessibility standards. Commercial nonavailability exception determinations for EIT products and services that do not meet some or all of the applicable Section 508 accessibility standards shall be processed in accordance with *339.203.*

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-reimbursement Contracts

Sec.

316.307 Contract clauses.

Subpart 316.5—Indefinite-Delivery Contracts

316.505 Ordering.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603–3 Limitations.

316.603–70 Procedure for requesting authority to issue a letter contract.

316.603–71 Approval for modifications to letter contracts.

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770–2 Memoranda of understanding.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 316.3—Cost-reimbursement Contracts

316.307 Contract clauses.

(a) If a contract for R & D is with a hospital (profit or nonprofit), the Contracting Officer shall modify the ''Allowable Cost and Payment'' clause at *FAR 52.216–7* by deleting from paragraph (a) the words ''Subpart 31.2 of the Federal Acquisition Regulation (FAR)'' and substituting ''45 CFR Part 74 Appendix E.''

(j) The Contracting Officer shall insert the clause in *352.216–70,* Additional Cost Principles, in solicitations and contracts when a cost-reimbursement contract is contemplated.

Subpart 316.5—Indefinite-Delivery Contracts

316.505 Ordering.

(b)(5) The HHS task-order and delivery-order ombudsman is the Director, Strategic Acquisition Service, PSC. The task-order and delivery-order ombudsmen for each of the HHS contracting activities are as follows:

AHRQ: Director, Office of Performance Accountability, Resources and Technology

BARDA: Chief of Mission Support and Acquisition Policy

CDC: Chief Information Officer

CMS: Chief Operating Officer

FDA: Director, Office of Acquisitions and Grants Services

HRSA: Associate Administrator, Office of Operations

IHS: Director, Office of Management Services

NIH: Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R & D) and Senior Advisor to the Director (Other than R & D)

PSC: Director, Strategic Acquisition Service

SAMHSA: Executive Officer

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603–3 Limitations.

An official one level above the Contracting Officer shall make the written determination that no other contract type is suitable.

316.603–70 Procedure for requesting authority to issue a letter contract.

The Contracting Officer shall include the following information in a memorandum requesting approval to award a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Proposed performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, *etc.*).

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents (in rare instances where the obligation represents 50

percent or more of the proposed estimated cost of the acquisition, the Contracting Officer shall include a justification for that obligation (*e.g.,* the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement)). In every case, documentation shall demonstrate that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of a proposed letter contract. (If more than 180 days, the Contracting Officer shall provide a detailed justification).

(l) A statement of any substantive matters that need to be resolved.

316.603–71 Approval for modifications to letter contracts.

An official one level above the Contracting Officer shall approve all letter contract modifications. Contracting activities shall process requests for authority to issue letter contract modifications in the same manner as requests for authority to issue letter contracts. A request shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and name/title of approving official.

(d) Letter contract number and date issued.

(e) Detailed justification as to why the letter contract cannot currently be definitized.

(f) Detailed justification as to why the level of funding must be increased.

(g) Detailed justification as to why the period of effectiveness must be increased beyond 180 days, if applicable.

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the Contracting Officer shall include the information required by *316.603–70(j).*

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770–2 Memorandum of understanding.

Use of a ''memorandum of understanding,'' which purports to modify mandatory *FAR* and HHSAR provisions to make them acceptable to a prospective contractor, is not authorized because it may address matters contrary to the language of the solicitation or prospective contract. A memorandum of understanding does not bind the Government under the contract. The Contracting Officer shall make a change in a solicitation or contract only by amendment or modification, respectively. When a change to a prescribed contract clause is considered necessary, the Contracting Officer shall request a deviation.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.1—Multi-year Contracting

Sec.
317.104 General.
317.105 Policy.
317.105–1 Uses.
317.107 Options.
317.108 Congressional notification.

Subpart 317.2—Options

317.204 Contracts.
317.207 Exercise of options.

Subpart 317.5—Interagency Acquisitions Under the Economy Act

317.503 Determination and findings requirements.

Subpart 317.70—Multi-agency and Intra-agency contracts

317.7000 Scope of subpart.
317.7001 Definitions.
317.7002 Potential multi-agency and intra-agency sources.
317.7003 Documentation for multi-agency contracts.
317.7004 Documentation for intra-agency contracts.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 317.1—Multi-year Contracting

317.104 General.

(b) The Senior Procurement Executive is the agency head for the purpose of *FAR 17.104(b).*

317.105 Policy.

317.105–1 Uses.

(a) Each HCA determination to use multi-year contracting, as defined in *FAR 17.103,* is limited to individual acquisitions where the cancellation ceiling obligated in the first year does not exceed 20 percent of the contract value over the full multi-year term or $11.5 million, whichever is less. Cancellation ceiling provisions shall conform to the requirements of *FAR 17.106–1(c).* The determination is not delegable and shall address the issues in *FAR 17.105–1(a)* and the following:

(1) The amount of, and basis for, the proposed cancellation ceiling.

(2) Identification and assignment of a Contracting Officer holding a FAC–C Level III certification or, alternatively, one familiar with the application of this contracting method.

(3) Availability of appropriations to fund the obligation of total contract costs for the first year of performance plus the estimated amount of the full cancellation ceiling.

(4) Reasonable expectation that, throughout the contemplated contract performance period, the OPDIV, through its annual budget request, will seek funding for the contract at the level necessary to avoid contract cancellation; and

(5) Program requirements are reasonably stable and the associated technical risks are not excessive—*i.e.*, not of the nature or level to jeopardize contract completion or result in its cancellation.

Upon SPE request, the HCA shall provide a copy of each determination (other than those specified in *317.105–1(b)* below).

(b) SPE approval is required for—

(1) Any individual determination to use multi-year contracting with a cancellation ceiling in excess of the limits in 317.105–1(a); and

(2) Any class determination (*see* FAR Subpart 1.7).

HCA determinations involving a cancellation ceiling in excess of the limits in *317.105–1(a)* shall also include a compelling rationale why this approach is in the best interests of the Government and a draft congressional notification letter pursuant to *FAR 17.108* and *317.108.*

317.107 Options.

When used as part of a multi-year contract, options shall not be used to extend the performance of non-severable services beyond 5 years. Options may serve as a means to acquire related severable services and, upon being exercised, shall be funded from the then-current fiscal year's appropriation.

317.108 Congressional notification.

(a) The SPE is the agency head for the purposes of *FAR 17.108(a).* Upon SPE approval of the determination required by *317.105–1(b)(1),* the SPE will finalize and sign the congressional notification letter and provide it to the appropriate House and Senate committees.

Subpart 317.2—Options

317.204 Contracts.

(e) The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to IT and R & D contracts. However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

317.207 Exercise of options.

(h) Before exercising an option for a subsequent performance period/ additional quantity under a multiple-year contract/order—*see 339.201–70(c),* which involves the acquisition of EIT products and services, including EIT deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of 1973, as amended, the Contracting Officer shall ensure that the contractor has provided to the Contracting Officer and Project Officer a properly completed HHS Section 508 Annual Report—*see* Section 508 policy on HHS Office on Disability Web site. The Contracting Officer shall request that the contractor provide the report in sufficient time for its review and approval by the Contracting Officer, Project Officer, and the Section 508 Official or designee, prior to exercise of an option. The Contracting Officer shall ensure that the report and all related approvals are made a part of the official contract/order file.

Subpart 317.5—Interagency Acquisitions Under the Economy Act

317.503 Determination and findings requirements.

(a) In addition to the D & F contents specified in *FAR 17.503(a)(1) and (2),* each Assisted Contracting D & F shall address—

(3) The servicing organization(s) contemplated (the assigned HHS contracting office shall be one of the servicing organizations contemplated);

(4) For each organization and alternative approach contemplated, the anticipated benefits to the OPDIV; the anticipated costs, including associated fees or other compensation; and the contract/order placement timeframe;

(5) The tradeoffs (cost, schedule, performance) among the approaches considered;

(6) The recommended multi-agency or intra-agency contracting approach; and

(7) The conclusion that the contract to be awarded by the selected servicing organization is the most advantageous alternative to the Government, notwithstanding fees and the increased risk associated with assisted contracting.

Subpart 317.70—Multi-agency and Intra-agency Contracts

317.7000 Scope of subpart.

(a) This subpart prescribes policies for HHS' use of multi-agency and intra-agency contracting under all authorities. It does not apply when HHS transfers funds to another agency under an interagency agreement whose primary purpose is other than contracting on HHS' behalf.

(b) For multi-agency contracts under the authority of the Economy Act, *see FAR Subpart 17.5* and *317.503.*

(c) Multi-agency contracting authorities other than the Economy Act include but are not limited to the Clinger-Cohen Act [40 U.S.C. 11302(e)]; the Government Management Reform Act (Pub. L. 103–356); Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, *et seq.*); and 40 U.S.C. 501, Services for Executive Agencies.

317.7001 Definitions.

As used in this subpart:

Multi-agency contracting describes a procedure in which a Federal agency needing supplies or services obtains them using another Federal agency's contract (direct ordering), the contracting assistance of another Federal agency (assisted contracting), or both. In some cases, more than one servicing organization may be involved in assisted contracting.

Intra-agency contracting describes a procedure in which an HHS OPDIV/ STAFFDIV needing supplies or services obtains them by issuing an order under another HHS OPDIV/STAFFDIV's contract or agreement (*e.g.,* a BPA—direct ordering); or using the contracting assistance of another OPDIV/STAFFDIV (assisted contracting); or both.

Assisted contracting is a subset of multi-agency/intra-agency contracting in which a servicing contracting office other than the requesting organization's assigned contracting office contracts on behalf of the requesting organization.

Direct ordering is a subset of multi-/ intra-agency contracting in which a contracting or ordering officer issues an order under another OPDIV's or Federal agency's indefinite delivery vehicle (*e.g.,* a GSA FSS schedule or a GWAC).

Requesting organization refers to the organization with the requirement for a multi- or intra-agency contract.

Servicing organization refers to an organization that assists a requesting organization by awarding a contract or order on its behalf. In the context of multi-agency contracting, the servicing organization and requesting organization must be in different Federal agencies. For intra-agency contracting, the servicing and requesting organizations must both be HHS organizations.

317.7002 Potential multi-agency and intra-agency sources.

(a) Prior to deciding to use multi-agency or intra-agency contracting, the requesting organization must perform sufficient market research to consider the relative merits and costs of available contracts and contracting offices for meeting the requesting organization's need.

(b) Direct ordering conducted by HHS contracting officers using GSA vehicles, GWACs, and vehicles established under the Federal Strategic Sourcing Initiative does not require justification. HHS contracting officers should be cautious about using unfamiliar contract vehicles. When using vehicles other than those listed above, the Contracting Officer shall include in the contract file a D & F, which is prepared in consultation with the SBS, and which concludes that the chosen vehicle is the best way to obtain the required product or service.

(c) With the exception of assisted contracts and direct order acquisitions to be placed pursuant to the authority of the Economy Act, which always require preparation of a supporting D & F—*see FAR 17.503,* proposed assisted contracts approved as part of an annual or updated acquisition plan require no additional documentation or approvals.

(d) For proposed assisted contracts *not* approved as part of an annual or update acquisition plan, the requiring organization shall identify the potential servicing organization(s); summarize the services each source provides; and describe the compensation arrangement(s). The assigned contracting office shall be one of the alternatives considered. For multi-agency contract actions, this information shall be included in the Assisted Contracting D & F required in *317.7003(b).*

317.7003 Documentation for multi-agency contracts.

(a) In the case of proposed direct ordering using vehicles other than those listed in *317.7002(b),* the HHS contracting officer shall comply with the D & F requirement in *317.7003(b).*

(b) If a proposed assisted contract, using a servicing organization outside HHS, was not approved during preparation and review of the annual acquisition plan, including updates, then the program/project office or other requiring activity shall prepare an Assisted Contracting D & F, similar to the D & F specified in *FAR 17.503,* but augmented with the information specified in *317.503.* The Project Officer or other requiring official shall be responsible for preparing and staffing this Assisted Contracting D & F.

(1) For assisted contracts greater than or equal to $500,000 (including the value of the base contract and all

options and, for indefinite delivery vehicles, the value of the vehicle and all potential orders), the assigned HHS Contracting Officer shall review and approve or reject the Assisted Contracting D & F, annotated with the SBS' recommendation. The Contracting Officer's signature on the Assisted Contracting D&F signifies his/her concurrence that assisted contracting through the proposed servicing contracting office is in the best interest of the government. The Project Officer must retain a copy of the approved Assisted Contracting D & F.

(2) For assisted contracts less than $500,000, the HCA may delegate authority to the Project Officer or other requiring official to approve the required Assisted Contracting D & F. The $500,000 threshold includes the value of the base contract and all options and, for indefinite delivery vehicles, the value of the vehicle and all potential orders.

(3) During a declared (Presidential or HHS Secretarial) emergency, funding and requirements documentation may be transferred to a servicing organization without an Assisted Contracting D & F. The Project Officer shall document his/her file, explaining the exigent circumstances.

(c) Assisted contracts require supporting interagency agreements, as described in OFPP's memorandum, ''Interagency Acquisitions,'' dated June 2008. Note that Part A of an interagency agreement can support multiple assisted contracts. Each interagency agreement shall address all the elements identified in OFPP's model interagency agreement (Appendix 2 of OFPP's ''Interagency Acquisitions''). The level of detail in HHS interagency agreements should be commensurate with the dollar value and complexity of the assisted contract. HHS requesting organizations shall not forward funding or requirements documentation outside HHS without a properly executed interagency agreement; and servicing activities within HHS (*e.g.,* PSC and the NIH Information Technology Acquisition and Assessment Center), shall not contract on behalf of non-HHS requesting organizations without properly executed interagency agreements.

317.7004 Documentation for intra-agency contracts.

(a) In the case of proposed direct ordering, using vehicles other than those listed in *317.7002(b),* the HHS contracting officer shall comply with the D & F requirement in *317.7003(b).*

(b) With the exception of assisted contracts and direct order acquisitions to be placed pursuant to the authority of the Economy Act, which always require preparation of a supporting D & F—*see FAR 17.503,* proposed assisted contracts approved as part of an annual or updated acquisition plan require no additional documentation or approvals.

(c) For proposed assisted contracts *not* approved as part of an annual or updated acquisition plan, the requiring organization shall identify the potential servicing organization(s); summarize the services the source(s) provide(s); and describe the compensation arrangement(s). The assigned contracting office shall be one of the alternatives considered.

(d) Assisted intra-agency contracts may require supporting intra-agency agreements or other documentation as prescribed by OPDIV procedures.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS PROGRAMS

Subpart 319.2—Policies

Sec.
319.201 General policy.
319.202–2 Locating small business sources.
319.270–1 Solicitation provision and contract clause.

Subpart 319.5—Set-Asides for Small Business

319.501 General.
319.506 Withdrawing or modifying set-asides.

Subpart 319.7—Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

319.705 Responsibilities of the Contracting Officer under the subcontracting assistance program.
319.705–5 Awards involving subcontracting plans.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 319.2—Policies

319.201 General policy.

(d) The functional management responsibilities for HHS' small business program (*i.e.,* small businesses; veteran-owned small businesses; service-disabled, veteran-owned small businesses; HUBZone small businesses; small disadvantaged businesses; and women-owned small businesses) are delegated to the OSDBU Director. *See* the HHS Small Business Program manual for information on the HHS small business program, including SBS and Small Business Administration (SBA) Procurement Center Representative (PCR) acquisition review timeframes.

(e) (1) One or more qualified SBSs will implement the HHS small business program and shall be co-located within the following OPDIVs: AHRQ; BARDA; CDC; CMS; FDA; HRSA; IHS; NIH; PSC; and SAMHSA. The OSDBU Director shall exercise full management authority over SBSs.

(2) Within IHS, the primary SBS will be responsible for IHS' overall implementation of the HHS small business program; however, each IHS contracting office will have a small business technical advisor (SBTA) to carry out those functions and responsibilities to implement the small business program. The primary IHS SBS shall assist and provide guidance to respective SBTAs.

319.202–2 Locating small business sources.

(a) OPDIVs shall foster, to the extent practicable, maximum participation by small businesses in HHS acquisitions. Prior to issuing a solicitation, the Contracting Officer shall make every reasonable effort to find small business concerns that can compete for the proposed requirement—*see FAR 19.202, 10.001(2)(v),* and *10.002(b)(1)(vii).*

(1) If it cannot be determined in advance (through market research under *FAR Part 10,* discussions between the Contracting Officer and the SBS, or other means—*see FAR 15.201,* whether a solicitation in excess of the simplified acquisition threshold can be set aside exclusively for small business participation [whether for small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; or 8(a) small business(es)], the Contracting Officer may publish a notice entitled ''Small Business Sources Sought'' in FedBizOpps. The purpose of a Small Business Sources Sought notice is to identify the availability and capability of qualified small business sources; and their size classification relative to the appropriate North American Industry Classification System (NAICs) code. This will assist the Government in determining the appropriate acquisition method, including whether a set-aside is possible. However, to solicit technical, scientific, or business information for project planning purposes, an RFI may be used—*see 315.201(e).*

(2) When using a Small Business Sought notice, an OPDIV shall not request that potential sources provide more than the minimum information necessary—*see FAR 10.001(b),* to determine whether they have the apparent capability to perform a requirement and, therefore, whether they should be included in any future

competition. The notice and the information received shall not be used to determine how well respondents can perform a requirement, which can only be evaluated in response to a solicitation. Accordingly, the notice shall not be used to—

(i) Obtain capability statements that are evaluated and determined acceptable or unacceptable;

(ii) Require cost/price proposals or detailed technical solutions;

(iii) Identify a prospective sole source; or

(iv) Exclude small business concerns.

(3) OPDIVs shall follow the standard HHS instructions for completing a ''Small Business Sources Sought'' notice.'' The template for the notice is available on the ASFR/OGAPA/DA Internet Web site. The Contracting Officer shall post the notice in FedBizOpps by selecting and completing a Sources Sought notice, accessible on the FedBizOpps ''Notices'' page at: *http://www.fedbizopps.gov*. Additional information may be included in the notice in accordance with OPDIV procedures. The Contracting Officer shall document, in the form of a memorandum to the file, the results of the review by technical personnel of information submitted in response to the notice, including whether each respondent appears to be capable of performing the requirement. The Contracting Officer shall attach a copy of the analysis provided by the technical personnel to the memorandum.

319.270–1 Solicitation provision and contract clause.

(a) The Contacting Officer shall insert the provision in *352.219–70,* Mentor-Protégé Program, in solicitations that include the clause in *FAR 52.219–9,* Small Business Subcontracting Plan. The provision requires that offerors provide the Contracting Officer a copy of their HHS Office of Small and Disadvantaged Business Utilization (OSDBU)-approved mentor-protégé agreement in response to a solicitation.

(b) The Contacting Officer shall insert the clause in *352.219–71,* Mentor-Protégé Program Reporting Requirements, in contracts that include the clause in *FAR 52.219–9,* Small Business Subcontracting Plan, and which are awarded to a contractor with an HHS OSDBU-approved mentor-protégé agreement.

Subpart 319.5—Set-Asides for Small Business

319.501 General.

(e) Subsequent to the Contracting Officer's recommendation on *Form HHS 653,* HHS Small Business Review Form, the SBS shall review each proposed acquisition strategy and either concur or not concur with the Contracting Officer's recommendation. The PCR shall also review the acquisition strategy and either concur or not concur with the Contracting Officer's recommendation. If the Contracting Officer disapproves the SBS's or the PCR's set-aside recommendation, the Contracting Officer shall document the reasons on *Form HHS 653* and place the form in the contract file. The Contracting Officer shall make the final determination as to whether the proposed acquisition will be set-aside or not.

319.506 Withdrawing or modifying set-asides.

(d) Immediately upon notice from the Contracting Officer, the SBS shall provide notification of all set-aside withdrawals to the OSDBU Director by both telephone and e-mail.

Subpart 319.7—Subcontracting With Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

319.705 Responsibilities of the Contracting Officer under the subcontracting assistance program.

319.705–5 Awards involving subcontracting plans.

(a) (3) The Contracting Officer shall provide the PCR a period of 1 to 5 working days to review the contract award package, depending upon the circumstances and complexity of the individual acquisition.

PART 322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 322.8—Equal Employment Opportunity

Sec.
322.810 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 322.8—Equal Employment Opportunity

322.810 Solicitation provisions and contract clauses.

(h) The Contracting Officer shall insert the clause in *352.222–70,* Contractor Cooperation in Equal Employment Opportunity Investigations, in solicitations, contracts, and orders that include the clause in FAR *52.222–26,* Equal Opportunity.

PART 323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 323.70—Safety and Health

Sec.
323.7000 Scope of subpart.
323.7001 Policy.
323.7002 Actions required.

Subpart 323.71—Green Purchasing Requirements

323.7100 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 323.70—Safety and Health

323.7000 Scope of subpart.

This subpart prescribes the use of a safety and health clause in contracts involving hazardous materials or operations, and provides procedures for administering safety and health provisions.

323.7001 Policy.

Various statutes and regulations (*e.g.,* the Walsh-Healy Act and *Service Contract Act),* require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. *FAR subpart 23.3* serves as the primary reference regarding hazardous materials. The Contracting Officer shall follow the guidance in this subpart when the guidance in the FAR is not sufficient or does not meet the safety and health situation for an acquisition.

323.7002 Actions required.

(a) *Contracting activities.* The Contracting Officer shall insert the clause in *352.223–70,* Safety and Health, or a clause substantially the same, in solicitations and contracts that involve hazardous materials or operations for the following types of requirements:

(1) Services or products.

(2) Research, development, or test projects.

(3) Transportation of hazardous materials.

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and Contracting Officers in—

(1) Determining whether safety and health provisions shall be part of a prospective contract;

(2) Evaluating a prospective contractor's safety and health programs; and

(3) Conducting post-award reviews and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall—

(1) During the preparation of an acquisition plan or other acquisition request documentation, and in the solicitation, ensure that hazardous materials and operations to be used in the performance of the contract are clearly identified; and

(2) During the period of performance—

(i) Apprise the Contracting Officer of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

Subpart 323.71—Green Purchasing Requirements

323.7100 Policy.

(a) The HHS guidelines and procedures for ''green purchasing'' may be found in the HHS Affirmative Procurement Plan (APP), ''Purchasing Environmentally Preferable Products and Services at the U.S. Department of Health and Human Services.'' The APP encompasses the acquisition and use of designated recycled content, and Energy Star®, Electronic Product Environmental Assessment Tool (EPEAT)-registered, energy-efficient, bio-based, and environmentally preferable products.

(1) ASFR/OGAPA/DA has overall responsibility for monitoring the OPDIVs' implementation of HHS' APP to ensure compliance with Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management;'' the White House Council on Environmental Quality's Implementing Instructions for Executive Order 13423; Section 6002 of the Resource Conservation and Recovery Act of 1976; Section 104 of the Energy Policy Act of 2005; Section 9002 of the Farm Security and Rural Investment Act of 2002; Section 612 of the Clean Air Act of 1990; and FAR *Part 23.*

(2) The OPDIVs, through their designated APP Program Managers, are responsible for establishing the necessary local procedures and appropriate training requirements to ensure effective implementation of the HHS APP.

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.
324.000 Scope of subpart.
324.102 General.
324.103 Procedures.

Subpart 324.2—Freedom of Information Act

324.203 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 324.1—Protection of Individual Privacy

324.000 Scope of subpart.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and *OMB Circular A–130, Revised, November 30, 2000,* to HHS contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended).

324.102 General.

(a) It is HHS policy to protect the privacy of individuals to the maximum possible extent, while permitting the exchange of records required to fulfill HHS administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the HHS implementation under 45 CFR Part 5b apply ''when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function * * *.'' The key factor is whether an HHS function is involved. Therefore, the Privacy Act requirements apply to an HHS contract when, under the contract, the contractor must maintain or operate a system of records to accomplish an HHS function.

(e) The Project Officer, and, as necessary, the official designated as the OPDIV's Privacy Act Coordinator and OGC–GLD, shall determine the applicability of the Privacy Act to each proposed acquisition. The Project Officer is required to include a statement in the AP or other acquisition request document indicating whether the Privacy Act is or is not applicable to a proposed acquisition.

(f) Whenever a Contracting Officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the Contracting Officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records—*see 324.70.*

324.103 Procedures.

(a) The Contracting Officer shall review all acquisition request documentation to determine whether the Privacy Act requirements are applicable. The Privacy Act requirements apply when a contract or order will require the contractor to design, develop, or operate any Privacy Act system of records on individuals to accomplish an agency function. When applicable, the Contracting Officer shall include the two Privacy Act clauses required by *FAR 24.104* in the solicitation and contract or order. In addition, the Contracting Officer shall include the two FAR Privacy Act clauses, and other pertinent information specified in this subpart, in any modification which results in the Privacy Act requirements becoming applicable to a contract or order.

(b)(1) The Contracting Officer shall identify in the SOW/PWS the system(s) of records to which the Privacy Act and the implementing regulations are applicable.

(2) The Contracting Officer shall include the clause specified in *352.224–70,* Privacy Act, in solicitations, contracts, and orders that involve Privacy Act requirements to notify the contractor that it and its employees are subject to criminal penalties for violations of the Privacy Act (5 U.S.C. 552a(i)) to the same extent as HHS employees. The clause also requires the contractor to ensure that each of its employees knows the prescribed rules of conduct and each contractor employee is aware that he/she is subject to criminal penalties for violations of the Privacy Act. These requirements also apply to all subcontracts awarded under the contract or order that require the design, development, or operation of a system of records. The Contracting Officer shall send the contractor a copy of 45 CFR Part 5b, which includes the rules of conduct and other Privacy Act requirements.

(c) The Contracting Officer shall specify in the contract SOW/PWS the disposition to be made of the system(s) of records upon completion of contract performance. The contract SOW/PWS may require the contractor to destroy the records, remove personal identifiers, or turn the records over to the Contracting Officer. If there is a legitimate need for a contractor to keep copies of the records after completion of a contract, the contractor must take measures, as approved by the Contracting Officer, to keep the records confidential and protect the individuals' privacy.

(d) For any acquisition subject to Privacy Act requirements, the Project

Officer, prior to award, or the COTR, after award, shall prepare and have published in the **Federal Register** a ''system notice,'' describing HHS' intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system. The Project Officer shall attach a copy of the system notice to the acquisition plan or other acquisition request documentation. If a system notice is not attached, the Contracting Officer shall inquire about its status and shall obtain a copy from the Project Officer for inclusion in the contract file. If a system notice has not been published in the **Federal Register**, the Contracting Officer may proceed with the acquisition but shall not award the contract until the system notice is published and the Contracting Officer verifies its publication.

Subpart 324.2—Freedom of Information Act

324.203 Policy.

(a) The HHS regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5.

(b) The Contracting Officer, upon receiving a FOIA request, shall follow HHS and OPDIV procedures. As necessary, the Contracting Officer shall coordinate all actions with the cognizant Freedom of Information (FOI) Officer and the OGC–GLD. Only the FOI Officer is authorized to release or deny release of records. The Contracting Officer shall be familiar with the entire FOIA regulation in 45 CFR Part 5.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 327—PATENTS, DATA, AND COPYRIGHTS

Subpart 327.4—Rights in Data and Copyrights

Sec.
327.404–70 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 327.4—Rights in Data and Copyrights

327.404–70 Solicitation provision and contract clause.

The Contracting Officer shall insert the clause in *352.227–70,* Publications and Publicity, in solicitations, contracts, and orders that involve requirements which could lead to the contractor's publishing the results of the award.

PART 328—BONDS AND INSURANCE

Subpart 328.3—Insurance

Sec.
328.301 Policy.
328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
328.311–2 Agency solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 328.3—Insurance

328.301 Policy.

It is HHS policy to limit the Government's reimbursement, of its contractors' liability to third persons for claims not covered by insurance in cost-reimbursement contracts, to the Limitation of Funds or Limitation of Cost clause of the contract. In addition, the amount of the Government's reimbursement cannot exceed the final judgments or settlements approved in writing by the Government.

328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

328.311–2 Agency solicitation provisions and contract clauses.

The Contracting Officer shall insert the clause in *352.228–7,* Insurance—Liability to Third Persons, in lieu of the clause in *FAR 52.228–7,* Insurance—Liability to Third Persons, in solicitations and contracts when a cost-reimbursement contract is contemplated. The Contracting Officer shall insert Alternate I or II based on the conditions specified therein. This is an authorized FAR deviation.

PART 330—COST ACCOUNTING STANDARDS

Subpart 330.2—CAS Program Requirements

Sec.
330.201 Contract requirements.
330.201–5 Waiver.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 330.2—CAS Program Requirements

330.201 Contract requirements.

330.201–5 Waiver.

(a) OPDIVs shall forward waiver requests through appropriate acquisition channels, including the HCA, to the Associate DAS for Acquisition (non-delegable) for review. Associate DAS for Acquisition shall exercise the waiver authority under *FAR 30.201–5(a)(2).*

PART 331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 331.1—Applicability

Sec.
331.101–70 Salary rate limitation.
331.102–70 Pricing of adjustments.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 331.1—Applicability

331.101–70 Salary rate limitation.

(a) Beginning in fiscal year 1990, Congress has stipulated in HHS appropriations acts and continuing resolutions that, under applicable NIH, SAMHSA, and AHRQ contracts, appropriated funds cannot be used to pay the direct salary of an individual at a rate in excess of the Federal Executive Schedule Level I.

(b) The Contracting Officer shall insert the clause in *352.231–70,* Salary Rate Limitation, in NIH, SAMHSA, and AHRQ solicitations and contracts that exceed the simplified acquisition threshold when a cost-reimbursement, fixed-price level-of-effort, time-and-materials, or labor-hour contract is contemplated, including modifications of contracts of those types for projects that support extramural program activities. For purposes of this clause, for NIH: Projects that support extramural program activities are basic and applied research projects; and for SAMHSA and AHRQ: Projects that support extramural program activities are mission-related projects, exclusive of contracts for general support services.

331.102–70 Pricing of adjustments.

The Contracting Officer shall insert the clause in *352.231–71,* Pricing of Adjustments, in solicitations and contracts when a fixed-price contract is contemplated.

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments for Non-Commercial Items

Sec.
332.402 General.
332.403 Applicability.
332.407 Interest.
332.409 Contracting Officer action.
332.409–1 Recommendation for approval.

Subpart 332.5—Progress Payments Based on Cost

332.501 General.
332.501–2 Unusual progress payments.

Subpart 332.7—Contract Funding

332.703–70 Funding contracts during a continuing resolution.
332.704 Limitation of cost or funds.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 332.4—Advance Payments for Non-Commercial Items

332.402 General.

(e) The HCA (non-delegable) shall determine whether an advance payment is in the public interest in accordance with *FAR 32.402(c)(1)(iii)(A)*.

332.403 Applicability.

All R&D contracts with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

332.407 Interest.

(d) The HCA (non-delegable) shall make the determinations in *FAR 32.407(d)*. The HCA may also approve interest-free advance payments for educational institutions and other nonprofit organizations, whether public or private, performing work under nonprofit contracts (without fee) involving health services, educational programs, or social service programs, such as the following:

(1) Community health representative services for an Indian Tribe.

(2) Narcotic addict rehabilitative services.

(3) Comprehensive health care services for Model Neighborhood programs.

(4) Planning and development of health maintenance organizations.

(5) Dissemination of information derived from educational research.

(6) Surveys or demonstrations in the field of education.

(7) Producing or distributing educational media for disabled persons including captioned films for the hearing impaired.

(8) Operation of language or area centers.

(9) Biomedical research and support services.

(10) Research surveys or demonstrations involving the training and placement of health personnel and health professionals, and dissemination of related information.

(11) Surveys or demonstrations in the field of social service.

332.409 Contracting Officer action.

332.409–1 Recommendation for approval.

The Contracting Officer shall transmit the information in *FAR 32.409–1* (or *FAR 32.409–2*) to the HCA by memorandum.

Subpart 332.5—Progress Payments Based on Cost

332.501 General.

332.501–2 Unusual progress payments.

(a)(3) The HCA (non-delegable) shall approve an unusual progress payment.

Subpart 332.7—Contract Funding

332.703–70 Funding contracts during a continuing resolution.

(a) *Continuing resolutions.* A continuing resolution (CR) is a legislative measure enacted to keep existing Federal programs functioning, generally at minimal levels, after the expiration of prior fiscal year budget authority and until passage of regular appropriation acts by Congress.

(b) *Operating guidance.* Because the terms of CRs may vary, for each CR, specific operating guidance will be issued by the Office of the Assistant Secretary for Resources and Technology (ASRT). This guidance will—

(1) Establish the availability of funds for existing and new projects or activities (consistent with the language of the CR);

(2) Identify any specific limits or constraints imposed; and

(3) Establish the authorized level and timing of obligations permitted.

(c) Contracting activities, in concert with program, budget and finance personnel, must carefully assess contract funding decisions to—

(1) Ensure compliance with HHS guidance regarding the specific terms of a CR;

(2) Maintain essential operations and activities; and

(3) Guard against violations of the Anti-Deficiency Act—*see FAR 32.702*.

332.704 Limitation of cost or funds.

See subpart *342.71*, ''Administrative Actions for Cost Overruns,'' for procedures for handling anticipated cost overruns.

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

Sec.
333.102 General.
333.103 Protests to the agency.
333.104 Protests to GAO.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.
333.209 Suspected fraudulent claims.
333.211 Contracting Officer's decision.
333.212 Contracting Officer's duties upon appeal.
333.212–70 Formats.
333.213 Obligation to continue performance.
333.215–70 Contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 333.1—Protests

333.102 General.

(g)(1) The OGC–GLD serves as the liaison for protests lodged with the Government Accountability Office (GAO); is designated as the office responsible for all protests within HHS; and serves as the notification point with GAO for all protests.

(2) Each contracting activity shall designate a protest control officer to serve as an advisor to the Contracting Officer and to monitor protests from the time of initial notification until the protest has been resolved. Contracting activities shall forward a copy of each appointment and termination of appointment of protest control officers through appropriate acquisition channels, including the HCA, to ASFR/OGAPA/DA and the Deputy Associate General Counsel, OGC–GLD.

333.103 Protests to the agency.

(f)(1) The Contracting Officer is authorized to make the determination, using the criteria in *FAR 33.104(b)*, to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and the OGC–GLD. If a protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, the Contracting Officer shall also obtain approval from Associate DAS for Acquisition and OGC–GLD before making the award.

(2) The Contracting Officer shall require written confirmation of any oral protest. To be considered timely, the protester must file a written confirmation in accordance with the applicable provisions in *FAR 33.102(d)(2) and (e)*. In the following cases, the Contracting Officer shall forward written protests received before award through appropriate acquisition channels, including the HCA, to OGC–GLD for processing:

(i) The protester requests referral to the Secretary of HHS.

(ii) The protest is known to have been lodged with GAO or the Secretary or is addressed to either.

(iii) The Contracting Officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the Secretary or GAO consider the protest. Otherwise, the Contracting Officer may answer protests addressed to the Contracting Officer with the concurrence of the contracting activity's protest control officer and OGC–GLD.

The Contracting Officer shall submit files concerning these protests in

duplicate, or as otherwise specified by OGC–GLD, within 5 calendar days after protest receipt; mark the files ''IMMEDIATE ACTION—PROTEST BEFORE AWARD;'' and include any documents relevant to issues raised in the protest.

(3) The Contracting Officer shall treat protests received after award as indicated in *FAR 33.103(f)(3).*

333.104 Protests to GAO.

(a) *General procedures.*

(3)(ii) OGC–GLD shall process protests filed with GAO, whether pre- or post- award. The Contracting Officer shall prepare protest files as follows: assemble them in a secure binder, fastened at the left side with a fastener that will permit the full page to be read; include a numerical document index, with the first two positions reserved for the Contracting Officer's Statement of Facts and Circumstances and the second for OGC–GLD's Memorandum of Law, that is paginated and, as necessary for sizable files, divided into two or more volumes; and the cover of the report shall identify it as the protest file and include the solicitation number and the GAO Bid Protest file number—*i.e.*, ''B-number.'' In addition, the Contracting Officer shall fold drawings and place them in an envelope in the binder and the solicitation/contract shall constitute a separate exhibit, if it is voluminous in size. The Contracting Officer shall distribute protest files as follows: four copies to OGC–GLD and one copy to the contracting activity's protest control officer. In addition to the items listed in *FAR 33.104(a)(3)(ii)(A) through (G)*, the protest file shall include the following documents:

(H) The current status of award. (*Note*: When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.)

(I) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate—*see FAR 33.104(c)(4).*

(J) Copies of the notice of protest given offerors and other parties when the notice is appropriate—*see FAR 33.104(a)(2).*

(K) A copy of the negotiation memorandum, when applicable.

(L) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest.

(M) A copy of the competitive range determination.

(N) The acquisition plan, source selection plan, and the source selection decision document.

(O) The Contracting Officer's statement of facts and circumstances, including numbered findings of fact prepared with complete documentation, and all the facts and rationale, both favorable and unfavorable, to the Contracting Officer's position.

(4) OGC–GLD shall make the necessary distributions referenced in *FAR 33.104(a)(4).*

(5) Unless an alternative arrangement is reached with OGC–GLD, the Contracting Officer shall furnish one copy of the protest file containing the documentation specified in paragraph (a)(3)(ii) of this section (with the exception of the Contracting Officer statement of facts and circumstances) and *FAR 33.104(a)(3)(ii)(A) through (G)* to OGC–GLD within 5 calendar days from receipt of the protest. In addition, the Contracting Officer shall also accommodate any other OGC–GLD requests for documents which may be needed prior to the aforementioned 5-day time period. The Contracting Officer shall submit the Contracting Officer's statement of facts and circumstances and the additional copies of documentation within 14 calendar days from receipt of the protest. Since the statute allows only a short time period in which to respond to protests lodged with GAO, the Contracting Officer shall handle each protest on a priority basis. OGC–GLD shall submit copies of the protest file to GAO, the protestor, and any intervenors in accordance with *FAR 33.104(a)(4)(i).*

(6) Since OGC–GLD will furnish the protest file to GAO, the protestor, and any intervenors, comments on the file from the protestor and any intervenors will be sent to OGC–GLD.

(7) OGC–GLD shall serve as the GAO point of contact for protests lodged with GAO.

(b) *Protests before award.*

(1) To make an award notwithstanding a protest, the Contracting Officer shall prepare a finding using the criteria in *FAR 33.104(b)(1),* have it executed by the HCA (non-delegable), and forward it, along with a written request for approval to make the award (addressed to the Associate DAS for Acquisition through OGC–GLD). Should OGC–GLD concur, it shall forward the request to the Associate DAS for Acquisition for final approval. The written request for approval shall contain all relevant documentation as attachments to the request, so that the information may be considered by Associate DAS for Acquisition.

(2) If the request to make an award notwithstanding the protest is approved by the Associate DAS for Acquisition, OGC–GLD shall notify GAO. Whether the request is approved or not, OGC–GLD shall telephonically notify the contracting activity's protest control officer of the Associate DAS for Acquisition decision, and the contracting activity's protest control officer shall immediately notify the Contracting Officer. Should the Associate DAS for Acquisition approve the request, ASFR/OGAPA/DA shall send a copy of that written approval to the contracting activity's protest control officer.

(c) *Protests after award.*

(2) If the Contracting Officer believes performance should be allowed to continue notwithstanding a protest, the Contracting Officer shall prepare a written finding using the criteria in *FAR 33.104(c)(2).* The HCA (non-delegable) shall execute the written finding, which the contracting office shall forward pursuant to the procedures described in paragraph (b)(1) of this section. The notification procedures stated in paragraph (b)(2) of this section shall apply to protests after award.

(d) *Findings and notice.* The Contracting Officer shall prepare the written notice required by *FAR 33.104(d)* and provide a copy to OGC–GLD. OGC–GLD shall provide copies to GAO, the protester, and any intervenors.

(g) *Notice to GAO. FAR 33.104(g)* requires the agency to notify GAO, if the agency has not followed any of GAO's recommendations (other than costs) within 60 days after its decision. By the end of the 60-day period, the Contracting Officer shall notify OGC–GLD of the status of implementing the recommendations and reasons for any non-compliance. OGC–GLD shall serve as the designated official to comply with the requirements of *FAR 33.104(g).*

(i) *Express option.* When GAO invokes the express option, the Contracting Officer shall prepare the complete protest file as described in paragraph (a)(3) of this section, to include the item in paragraph (a)(3)(i), and deliver it (hand-carry, if necessary) to OGC–GLD in time to meet the submittal date GAO established. OGC–GLD shall notify the Contracting Officer of the submittal date after GAO has finalized its requirements. If the Contracting Officer is not notified about a changed schedule, the timelines for a regular bid protest outlined in *FAR 33.104(a)(3)(i)* shall apply.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.

(c) The Secretary has designated the Civilian Board of Contract Appeals (CBCA) as the authorized ''Board'' to

hear and determine disputes for the Department.

333.209 Suspected fraudulent claims.

The Contracting Officer shall submit any instance of a contractor's suspected fraudulent claim to the OIG for investigation.

333.211 Contracting Officer's decision.

(a)(2) The Contracting Officer shall refer a proposed final decision to OGC–GLD, for advice as to the legal sufficiency and format before sending the final decision to the contractor. The Contracting Officer shall provide OGC–GLD with the pertinent documents with the submission of each proposed final decision.

(4)(v) When using the paragraph in *FAR 33.211 (a)(4)(v),* the Contracting Officer shall insert the words ''Civilian'' before each mention of the term ''Board of Contract Appeals.''

(h) At any time within the period of appeal, the Contracting Officer may modify or withdraw the final decision. If a contractor has appealed the final decision to the CBCA, the Contracting Officer shall forward the recommended action to OGC–GLD with a supplement to the contract file that supports the recommended correction or amendment.

333.212 Contracting Officer's duties upon appeal.

(a) The rules set forth in the ''Rules of the Civilian Board of Contract Appeals,'' or the rules established by the U.S. Court of Federal Claims, as appropriate, shall govern appeals.

(b) The OGC–GLD is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the CBCA. OGC–GLD shall provide the decision by CBCA to the appropriate Contracting Officer for compliance in accordance with the CBCA's decision.

(c) If an appeal is filed with the CBCA, the Contracting Officer shall assemble a file, within 30 days of receipt of an appeal or notification that an appeal has been filed, that consists of all documents pertinent to the appeal, including the following:

(1) The decision and findings of fact from which the appeal is taken.

(2) The contract, including specifications and pertinent modifications, plans and drawings.

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued.

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witness on the matter in dispute made prior to the filing of the notice of appeal with the CBCA.

(5) Any additional information considered pertinent. The Contracting Officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the Contracting Officer shall prepare four copies of the file—*i.e.,* one for the CBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the Contracting Officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the Contracting Officer shall provide Government witnesses and specified physical and documentary evidence to the Trial Attorney. The Trial Attorney shall ensure the presence of all witnesses and documentary evidence at both the prehearing conference and hearing.

(e) If a contractor, which has filed an appeal with the CBCA, elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned Contracting Officer, the Government Trial Attorney shall notify the CBCA of the disposition of the dispute in accordance with Rule 27 of the CBCA.

(f) If the contractor has elected to appeal to the U.S. Court of Federal Claims, the U.S. Department of Justice will represent HHS. However, the Contracting Officer shall coordinate all actions through OGC–GLD.

333.212–70 Formats.

(a) Contracting activities shall use the following format in transmitting appeal files to CBCA:

Your reference:

(*Docket No.*)

(*insert name*)

Clerk of the Board, Civilian Board of Contract Appeals

1800 F. Street, Washington, DC 20405 *(for regular mail delivery)*

1800 M Street, 6th floor, Washington, DC 20036 *[for overnight and physical (hand-carry) delivery]*

Dear (*insert name*):

Transmitted herewith are documents relative to the appeal under Contract No. ____ with the _____ (*insert name of contractor*) in accordance with the procedures under Rule 4. The Government Trial Attorney for this case is _____ (*insert General Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201*).

The request for payment of charges resulting from the processing of this appeal shall be addressed to: _____ (*insert name and address of cognizant finance office.*)

Sincerely yours,

Contracting Officer

Enclosures

(b) Contracting activities shall use the following format in notifying the appellant that the appeal file was submitted to CBCA:

_____

_____

_____

(insert contractor name and address)

Dear _____: *(insert name)*

An appeal file has been compiled relative to the appeal under Contract No. _____ *(insert number),* and has been submitted to the Civilian Board of Contract Appeals (CBCA). The enclosed duplicate of the appeal file is identical to that submitted to CBCA, except for contract documents which you already have been provided. You may furnish or suggest any additional information deemed pertinent to the appeal to CBCA according to their rules.

The CBCA will provide you with further information concerning this appeal.

Sincerely yours,

Contracting Officer

Enclosure

333.213 Obligation to continue performance.

(a) The Contracting Officer shall use the Disputes clause at *FAR 52.233–1* without the use of Alternate I. However, if the Contracting Officer determines that the Government's interest would be better served by use of paragraph (i) in Alternate I, the HCA or CCO shall approve its use.

333.215–70 Contract clauses.

(a) The Contracting Officer shall insert the clause in *352.233–70,* Choice of Law (Overseas), in solicitations and contracts when performance will be outside the United States, its possessions, and Puerto Rico, except as otherwise provided in a government-to-government agreement.

(b) The Contracting Officer shall insert the clause in *352.233–71,* Litigation and Claims, in solicitations and contracts when a cost-reimbursement, time-and-materials, or labor-hour contract is contemplated

(other than a contract for a commercial item.)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION

Subpart 334.2—Earned Value Management System

Sec.
334.200 Definitions.
334.201 Policy.
334.202 Integrated Baseline Reviews (IBRs).
334.203 Solicitation provisions and contract clauses.
334.203–70 HHS solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 334.2—Earned Value Management System

334.200 Definitions.

As used in this subpart, the following definitions shall apply:

Full EVMS means tracking and reporting of both the cost and schedule aspects of a contract using the principles and guidelines described in ANSI/EIA Standard-748, Earned Value Management Systems (using the version of the Standard that is in effect at the time of the solicitation).

Partial EVMS means tracking and reporting of only the schedule aspects of a contract using the principles and guidelines described in ANSI/EIA Standard-748, Earned Value Management Systems (using the version of the Standard that is in effect at the time of the solicitation).

334.201 Policy.

(a) For acquisitions for development designated as major in accordance with both OMB Circular A–11 and HHS policy on major acquisitions; for acquisitions that involve substantial development, modification or enhancement; or for acquisitions that involve significant upgrade of operational or steady state systems or programs, use of an Earned Value Management System (EVMS) is required as follows:

(1) For individual cost-reimbursement or fixed-price-incentive contracts (with incentive based on cost) valued at $10 million to $25 million, including options, full EVMS (as defined in *334.200*) is required and the contractor's EVMS shall comply with the guidelines in ANSI/EIA Standard-748.

(2) For individual firm-fixed-price, term form (level-of-effort) of any type, time-and-materials, or labor-hour contracts valued at $10 million to $25 million, including options, partial EVMS (as defined in *334.200*) is required and the contractor's EVMS shall comply with the guidelines in ANSI/EIA Standard-748.

(3) For individual cost-reimbursement or fixed-price-incentive contracts (with incentive based on cost) valued at more than $25 million, including options, full EVMS (as defined in *334.200*) is required and the contractor's EVMS must be formally validated and accepted by the Government—*i.e.,* the contractor's Cognizant Federal Agency (CFA), as defined in *FAR 2.101* and described in *FAR 42.003*).

(4) For individual firm-fixed-price, term form (level-of-effort) of any type, time-and-materials, or labor-hour contracts valued at more than $25 million, including options, partial EVMS (as defined in *334.200*) is required and the contractor's EVMS must be formally validated and accepted by the Government—*i.e.,* the contractor's CFA.

(5) For individual contracts of any type valued at less than $10 million, including options, full or partial EVM application, as appropriate to the contract type involved, is optional. The recommendation to use EVM should be based upon a risk analysis by the Program Manager/Project Officer. A decision to use EVM at this level requires the prior approval of the cognizant HCA.

(b) EVM is not required, but may be applied with prior written approval of the HCA, on contracts of any dollar amount meeting either of the following criteria:

(1) The acquisition is for non-developmental support services (*e.g.,* program office support, Independent Verification & Validation services), steady state operations, basic and applied research, and routine services (*e.g.,* building maintenance, help-desk services, landscaping services).

(2) The contract is for a commercial item(s) under FAR *Part 12.*

(c) When full EVM is required on a prime contract, it applies to subcontracts issued there under if those subcontracts have a value and are of a type and subject matter that would have required the use of full EVM had they been prime contracts. However, if the prime contract requires the use of only partial EVM, any subcontracts to which EVM is made applicable, because of dollar value, contract type or subject matter, shall require only partial EVM.

(d) When offerors are required to provide an EVMS plan as part of their proposals, the Contracting Officer shall request the assistance of the Project Officer (and/or an appropriate HHS-designated third party) in determining the adequacy of such proposed EVMS plans.

(e) The selection or use of a particular contract type, if done only or primarily to avoid the application of full EVM to the acquisition is prohibited.

334.202 Integrated Baseline Reviews (IBRs).

(a) An IBR normally should be conducted as a post-award activity. A pre-award IBR may be conducted only if—

(1) The AP contains documentation that demonstrates the need and rationale for a pre-award IBR, including an assessment of the impact on the source selection schedule and the expected benefits;

(2) The use of a pre-award IBR is approved in writing by the HCA prior to the issuance of the solicitation;

(3) The source selection plan specifically addresses how the results of a pre-award IBR will be used during source selection, including any weight to be given to it in source evaluation, and that same or similar rationale is clearly set forth in the solicitation; and,

(4) Specific arrangements are made, and budget authority is provided, to compensate all offerors who prepare for or participate in a pre-award IBR; and the solicitation informs prospective offerors of the means for and conditions of such compensation.

334.203 Solicitation provisions and contract clauses.

The FAR EVMS solicitation provisions and contract clause shall not be used in HHS contracts. *See 334.203–70* for the HHS solicitation provisions and contract clauses.

334.203–70 HHS solicitation provisions and contract clauses.

As provided in *334.201(a)* and *334.202,* the Contracting Officer shall insert the following:

(a) The provision in *352.234–1,* Notice of Earned Value Management System—Pre-Award IBR, in solicitations that will require the contractor to use an EVMS, whether full or partial, when the Government requires an IBR prior to award.

(b) The provision in *352.234–2,* Notice of Earned Value Management System—Post-Award IBR, in solicitations that will require the contractor to use an EVMS, whether full or partial, when the Government requires an IBR after contract award.

(c) The clause in *352.234–3,* Full Earned Value Management System, in solicitations and contracts, valued at, or greater than, $25 million, when a cost-reimbursement or fixed-price-incentive contract (where the incentive is based

on cost) is contemplated, and which require a contractor to use full EVMS. The Contracting Officer shall use the clause with its Alternate I when the contract value is equal to or greater than $10 million, but less than $25 million.

(d) The clause in *352.234–4,* Partial Earned Value Management System, in solicitations and contracts, valued at, or greater than, $25 million, when a firm-fixed-price, time-and-materials, labor-hour, or term-form cost-plus-fixed-fee contract is contemplated, and which require a contractor to use partial EVMS. The Contracting Officer shall use the clause with its Alternate I when the contract value, is equal to or greater than $10 million, but less than $25 million.

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
335.070 Cost sharing.
335.070–1 Policy.
335.070–2 Amount of cost sharing.
335.070–3 Method of cost sharing.
335.070–4 Contract award.
335.071 Special determinations and findings affecting research and development contracting.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

335.070 Cost-sharing.

335.070–1 Policy.

(a) Contracting activities shall encourage performing organizations to contribute to the cost of performing R & D, through the use of cost-sharing contracts, where there is a probability that the contractor will receive present or future benefits from participation, such as increased technical know-how, training for employees, acquisition of equipment, and use of background knowledge in future contracts. Cost-sharing is intended to serve the mutual interests of the Government and the performing organization by helping to ensure efficient utilization of the resources available for the conduct of R & D projects and by promoting sound planning and prudent fiscal policies of the performing organization. The Contracting Officer shall use a cost-sharing contract, unless the Contracting Officer determines that a request for cost-sharing would not be appropriate because of the following circumstances:

(1) The particular R & D objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government solicitation for a specific project.

(2) The R & D effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the R & D primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Organizations which are predominantly engaged in R & D and have little or no production or other service activities may not be in a favorable position to make a cost contribution. Accordingly, the Contracting Officer shall normally not request cost-sharing, if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share.

(b) The Contracting Officer has the responsibility for negotiating cost-sharing. Each R & D contract file shall indicate whether the Contracting Officer considered cost-sharing appropriate for that particular contract and in what amount. If cost sharing was not appropriate, the file must include a statement and factual basis for that decision (*e.g.,* ''Because the contractor will derive no benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate.'') The Contracting Officer shall coordinate with the Project Officer before documenting this decision.

(c) If the Contracting Officer considers cost-sharing appropriate for an R & D contract and the contractor refuses to accept this type of contract, the Contracting Officer may make an award without cost-sharing, if the Contracting Officer concludes that payment of the full cost of the R & D effort is necessary to obtain the services of that particular contractor.

335.070–2 Amount of cost sharing.

When cost-sharing is appropriate, the Contracting Officer shall use the following guidelines to determine the amount of cost participation by the contractor:

(a) The amount of cost participation depends on the extent to which the R & D effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of this enhancement to the performing organization. Therefore, contractor cost participation could reasonably range from as little as one percent or less of the total project cost to more than 50 percent of the total project cost. Ultimately, cost-sharing is a negotiable item. As such, the amount of cost-sharing shall be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title to, or the right to use, inventions, patents, or technical information resulting from the R & D project, it is normally appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit is not normally paid to the performing organization, if the organization is to contribute to the cost of the R & D effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the R & D is expected to be of only minor value to the performing organization, and if a statute does not require cost-sharing, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

(d) The organization's participation may be considered over the total term of the project, so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate, if an area of R & D requires special stimulus in the national interest.

335.070–3 Method of cost sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed or by a fixed amount or stated percentage of the total allowable costs of the project. Contractors shall not charge costs contributed to the Government under any other instrument (*e.g.,* grant or contract), including allocations to other instruments as part of any independent R & D program.

335.070–4 Contract award.

Consistent with HHS' objectives of competition and support of the small business program, Contracting Officers shall not award contracts solely on the basis of an organization's ability or willingness to cost-share. Contracting Officers shall make awards primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations, whenever possible. An offeror's willingness to share costs is not a technical evaluation consideration, but a business consideration, which is secondary to selecting the best qualified source.

335.071 Special determinations and findings affecting research and development contracting.

OPDIV heads shall sign individual and class D & Fs for—

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in an R & D contract pursuant to 42 U.S.C. 241(a)(7).

PART 337—SERVICE CONTRACTING—GENERAL

Subpart 337.1—Service Contracts—General

Sec.
337.103–70 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 337.1—Service Contracts—General

337.103–70 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause in *352.237–70,* Pro-Children Act, in solicitations, contracts, and orders that involve (a) kindergarten, elementary, or secondary education or library services or (b) health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Pro-Children Act of 1994.

(b) The Contracting Officer shall insert the clause in *352.237–71,* Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal land or in a Federally operated (or contracted) facility and involve the professions/activities performed by persons specified in the Crime Control Act of 1990, including, but not limited to, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(c) The Contracting Officer shall insert the clause in *352.237–72,* Crime Control Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (Act).

PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 339.1—General

Sec.
339.101 Policy.

Subpart 339.2—Electronic and Information Technology

339.201 Clarification.
339.201–70 Required provision and contract clause.
339.203 Approval of exceptions.

Subpart 339.70—Use of General Services Administration Blanket Purchase Agreements for Independent Risk Analysis Services

339.7000 Policy.
339.7001 Request for approval to make an award to other than a GSA BPA holder.
339.7002 Notice of intended award.

Subpart 339.71—Information Security Management

339.7100 Definitions.
339.7101 Policy.
339.7102 Applicability.
339.7103 Solicitation and contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 339.1—General

339.101 Policy.

(d)(1) The Contracting Officer shall insert the clause in *352.239–70,* Standard for Security Configurations, in solicitations, contracts, and orders that involve the operation or acquisition of an information technology system (for definition of the latter term, *see http://www.hhs.gov/ocio/policy.*)

An HHS information security policy waiver, the template for which is available at: *http://intranet.hhs.gov/infosec/policies_memos.html*, must be approved in order to deviate from HHS OCIO Standard 2009–0001.001S, HHS Standard for Security Configurations Language in HHS Contracts, dated January 30, 2009. A copy of the approved waiver shall be forwarded to the Contracting Officer who, in turn, shall request a comparable deviation for the clause in *352.239–70.*

(2) The Contracting Officer shall insert the clause in *352.239–71,* Standard for Encryption Language, in solicitations, contracts, and orders that involve the acquisition or lease of, or the requirement to use, desktop or laptop computers, mobile devices, or portable media to store or process HHS sensitive information that the Project Officer categorizes as moderate or high under Federal Information Processing Standard (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, dated February 2004. An HHS information security policy waiver, the template for which is available at: *http://intranet.hhs.gov/infosec/policies_memos.html*, must be approved in order to deviate from HHS OCIO Standard 2009–0002.001S, HHS Standard for Encryption Language in HHS Contracts, dated January 30, 2009. A copy of the approved waiver shall be forwarded to the Contracting Officer who, in turn, shall request a comparable deviation for the clause in *352.239–71.*

Subpart 339.2—Electronic and Information Technology

339.201 Clarification.

FAR Subpart 39.2, Electronic and Information Technology, requires Federal agencies to ensure that, when acquiring EIT, Federal employees with disabilities and members of the public with disabilities have access to and use of information and data that is comparable to individuals without disabilities. This EIT access requirement does not apply to a contractor's internal workplaces. EIT that is neither used nor accessed by Federal employees or members of the public is not subject to the Access Board accessibility standards. Contractors in their professional capacity are not members of the public for purposes of Section 508.

339.201–70 Required provision and contract clause.

(a) The Contracting Officer shall insert the provision in *352.239–73(a),* Electronic and Information Technology Accessibility, in solicitations valued at more than the micro-purchase threshold that involve the development, acquisition, maintenance, or use of EIT products and services subject to Section 508 of the Rehabilitation Act of 1973, as amended, including EIT deliverables such as electronic documents and reports. (**Note:** Exceptions to this requirement can be found in *FAR 39.204.*) After approval of the Section 508 Official or designee, the Contracting Officer may waive the requirement for offerors to provide an HHS Section 508 Product Assessment Template, if Section 508 EIT conformance can be determined conclusively through other less formal methods. The Contracting Officer shall document in the award file any waiver for submission of the Product Assessment Template. The approval of a waiver by the Section 508 Official does not, however, eliminate the requirement for product assessment against Section 508 accessibility standards.

(b) The Contracting Officer shall insert the clause in *352.239–73(b),* Electronic and Information Technology Accessibility, in contracts and orders that involve the development, acquisition, maintenance, or use of EIT products and services, including EIT deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of

1973, as amended, unless the EIT products and services are incidental to the project. (**Note:** Other exceptions to this requirement can be found at *FAR 39.204*.)

(c) When acquiring EIT products and services subject to Section 508 of the Rehabilitation Act of 1973, as amended, in the following circumstances, the Contracting Officer shall insert the paragraph in *352.239–73(c),* Schedule for Contractor Submission of Section 508 Annual Report, which requires a contractor to provide an HHS Section 508 Annual Report, at the end of the clause in *352.239–73(b)* and cite the schedule for report submission, where indicated:

(1) New multiple-year contracts.

(2) Existing multiple-year contracts, with a performance period of 1 year or more remaining as of January 16, 2008 (the effective date of HHS' interim acquisition guidance).

(3) New multiple-year task and delivery orders exceeding $100,000 awarded under IDIQ or FSS contracts.

(4) Existing multiple-year task and delivery orders exceeding $100,000 awarded under IDIQ or FSS contracts, with a task/delivery order performance period of 1 year or more remaining as of January 16, 2008.

(5) New multiple-year BPA orders that exceed $100,000.

(6) Existing multiple-year BPA orders with a performance period of 1 year or more remaining as of January 16, 2008.

(7) New multiple-year contracts with option periods/quantities.

(8) Existing multiple-year contracts with option periods/quantities remaining as of January 16, 2008.

(d) Before adding funds to a multiple-year contract or order—*see 339.201–70(c),* that involves the acquisition of EIT products and services, including EIT deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of 1973, as amended, the Contracting Officer shall ensure that the contractor has provided to the Contracting Officer and COTR a properly completed HHS Section 508 Annual Report—*see* Section 508 policy on HHS Office on Disability Web site. The Contracting Officer shall request that the contractor provide the report in sufficient time for its review and approval by the Contracting Officer, COTR, and the Section 508 Official or designee, prior to funding performance beyond the currently funded contract performance period. The Contracting Officer shall ensure that the report and all related approvals are made a part of the official contract/order file. The Section 508 Official or designee shall monitor the Annual Reports, direct corrective measures to improve their submission and quality, and report improvement actions taken to the HHS Office on Disability.

339.203 Approval of exceptions.

(a) Procedures to document exception and determination requests are set forth in the OPDIV/STAFFDIV Section 508 Implementation Plans required by paragraph 4.1 of the HHS Section 508 policy.

(b) In the development of an AP or other acquisition request document, the Contracting Officer shall ensure that all Section 508 commercial non-availability or undue burden exception determination requests for applicable EIT requirements are: (1) Documented and certified in accordance with the requirements of paragraph 4.3, Section 508 Compliance Exceptions, of the HHS Section 508 policy; (2) signed by the Project Officer; (3) approved by the OPDIV Section 508 Official or designee; and (4) included in the AP or other acquisition request document provided by the Project Officer to the contracting office.

(c) In instances where a technical evaluation has been performed, and no organization's proposed products or services meet some or all of Section 508 accessibility standards, in order to proceed with the acquisition, the Contracting Officer shall provide an exception determination request along with the technical evaluation panel's assessment of the Section 508 evaluation factor to the designated Section 508 Official or designee for review and approval/disapproval. *See 315.304* regarding obtaining approval of technical evaluation panel assessments by the Section 508 Official or designee. The Contracting Officer shall include the Section 508 Official's or designee's approval/disapproval of the exception determination request in the official contract file and reference it, as appropriate, in all source selection documents. For further information, *see* paragraphs 4.3, Section 508 Compliance Exceptions, and paragraph 11, Appendix A, of HHS Section 508 policy—*see* Section 508 policy on HHS Office on Disability Web site.

Subpart 339.70—Use of General Services Administration Blanket Purchase Agreements for Independent Risk Analysis Services

339.7000 Policy.

GSA has established government-wide BPAs for independent risk analysis services, including verification and validation of in-house risk assessments. For information on ordering procedures, *see* the attachment to OMB memorandum (M–08–10), Use of Commercial Independent Risk Analysis Services Blanket Purchase Agreements (BPA), dated February 4, 2008, available on the OMB Web site. HHS policy is for contracting activities to use the GSA BPA sources to the maximum practicable extent.

339.7001 Request for approval to make an award to other than a GSA BPA holder.

The Contracting Officer, in conjunction with the OPDIV/STAFFDIV Chief Information Security Officer (CISO), may determine, as part of conducting market research for independent risk analysis services expected to exceed the micro-purchase threshold, that obtaining the required services from a source other than a GSA BPA holder will result in the best value to the Government. In that event, the Contracting Officer shall prepare a request for approval at least 15 business days prior to the planned date of the contract or order award and forward it through the HCA and the OPDIV/STAFFDIV CISO for concurrence, to the SPE. The SPE shall coordinate the processing of the request with the CAO and the HHS CIO. The request for approval shall briefly describe the services required, indicate the intended source's pricing and other terms and conditions, and provide the rationale for award to the intended source rather than the GSA BPA holders. The request may include additional supporting rationale to document the best value decision, as appropriate.

339.7002 Notice of intended award.

The CAO, or designee, in conjunction with the HHS CIO, will review the Contracting Officer's request for approval to make an award to other than a GSA BPA holder for independent risk analysis services and either approve or disapprove the request in writing. If the CAO, or designee, approves the request, upon approval, the CAO, or designee, shall send a notice of intended award to the designated GSA BPA Contracting Officer, with a copy to OMB's E-Government and Information Technology Administrator, at least 10 business days prior to the date of the proposed award explaining how it provides the best value to the Government. In the event of unusual and compelling urgency, the CAO, or designee, shall provide the notice of intended award to GSA as soon as practicable.

Subpart 339.71—Information Security Management

339.7100 Definitions.

As used in this subpart, the following definitions shall apply:

Adequate security means, in accordance with OMB Circular A–130, Management of Federal Information Resources, Appendix 3 (Security of Federal Automated Information Resources), security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.

Federal information means, in accordance with OMB Circular A–130, Management of Federal Information Resources, Appendix 3 (Security of Federal Automated Information Resources), information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

Federal information system means an information system used or operated by an executive agency, by a contractor of an executive agency, or by another organization on behalf of an executive agency.

Information means, in accordance with OMB Circular A–130, Management of Federal Information Resources, Appendix 3 (Security of Federal Automated Information Resources), any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

Information infrastructure means the underlying framework that information systems and assets rely on in processing, transmitting, receiving, or storing information electronically.

Information security means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification or destruction in order to provide—

(1) *Integrity,* which means guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity;

(2) *Confidentiality,* which means preserving authorized restrictions on access and disclosure, including means of protecting personal privacy and proprietary information;

(3) *Availability,* which means ensuring timely and reliable access to and use of information; and

(4) *Privacy,* which means regulating the appropriate collection, maintenance, use, and dissemination of personal information by Federal executive branch agencies. It essentially prohibits disclosure without consent.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, transmission, and dissemination of information, in accordance with defined procedures, whether automated or manual.

Information technology includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services) and related resources.

339.7101 Policy.

HHS is responsible for implementing an information security program to ensure that its information systems and associated facilities, as well as those of its contractors, provide a level of security commensurate with the risk and magnitude of harm that could result from the loss, misuse, disclosure, or modification of the information contained in those systems. Each system's level of security shall protect the integrity, confidentiality, and availability of the information and comply with all security and privacy-related laws and regulations.

339.7102 Applicability.

Contracting Officers are responsible for ensuring that all information technology acquisitions comply with the Federal Information Security Management Act (FISMA), the HHS–OCIO Information Systems Security and Privacy Policy, and FISMA-related FAR and HHSAR requirements. This policy does not apply to national security systems as defined in FISMA.

339.7103 Solicitation and contract clause.

The Contracting Officer shall insert the clause in *352.239–72,* Security Requirements for Federal Information Technology Resources, in solicitations and contracts that involve contractor access to Federal information or Federal information systems.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 342—CONTRACT ADMINISTRATION

Subpart 342.3—Contract Administration Office Functions

Sec.
342.302 Contract administration functions.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

Subpart 342.70—Contract Monitoring

342.7000 Purpose.
342.7001 Contract monitoring responsibilities.
342.7002 Procedures to be followed when a contractor fails to perform.
342.7003 Withholding of contract payments.
342.7003–1 Solicitation provisions and contract clauses.
342.7003–2 Procedures to be followed when withholding payments.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.
342.7101 Contract administration.
342.7101–1 General.
342.7101–2 Procedures.
342.7102 Contract modifications.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 342.3—Contract Administration Office Functions

342.302 Contract administration functions.

(c)

(1) In multiple-year contracts or orders, the OPDIV's Section 508 Official or designee, as well as the Contracting Officer and COTR, shall review and approve all Section 508 Annual Reports before the Contracting Officer makes final payment or any option is exercised under any applicable contract/order. In contracts/orders of 1 year or less in duration, the aforementioned officials shall review and approve the Section 508 conformance certification before final payment is made. The Contracting Officer also shall ensure that the report and all related approvals are made a part of the official contract/order file.

(2) The Contracting Officer shall insert the clause in *352.242–70,* Key Personnel, in solicitations and contracts when the Contracting Officer will designate contractor key personnel. *See FAR 35.015* for additional information regarding key personnel when contracting for R & D.

(3) The Contracting Officer shall insert the clause in *352.242–71,* Tobacco-free Facilities, in solicitations, contracts, and orders when some or all of the contractor's performance (including construction services), will take place on HHS-owned or controlled properties. The clause shall not be included if performance requires only that contractor staff attend occasional meetings on HHS properties. In that case, contractor employees are considered ''visitors.'' Further, for any proposed or existing construction contract or order, the Contracting Officer shall coordinate any exceptions to the policy, raised by an incumbent or potential contractor based on union or collective bargaining agreements, with the designated OPDIV tobacco-free

policy contact point for final disposition.

(4) The Contracting Officer shall insert the clause in *352.242–72,* Native American Graves Protection and Repatriation Act, in solicitations, contracts, and orders that require performance on Tribal lands or are for construction on Federal or Tribal lands.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

(a) The Division of Cost Allocation, PSC, shall establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

(b) The Division of Financial Advisory Services, NIH, shall establish indirect cost rates, fringe benefit rates, and similar rates for use in contracts awarded to commercial organizations.

Subpart 342.70—Contract Monitoring

342.7000 Purpose.

Contract monitoring is an essential element of contract administration that the Contracting Officer and the COTR perform jointly. This subpart describes HHS' operating concepts.

342.7001 Contract monitoring responsibilities.

(a) The contract establishes the obligations of both the Government and the contractor. The Contracting Officer is the only person authorized to modify the contract and shall confirm all modifications in writing.

(b) The Contracting Officer shall ensure the contractor's compliance with all the terms and conditions of the contract. The Contracting Officer shall inform the contractor by letter (if not already stipulated in the contract) of the authorities and responsibilities of the Government personnel involved with the contract.

(c) The Contracting Officer shall use program, technical, and other personnel for assistance and advice in monitoring the contractor's performance and in other areas of post-award administration. The Contracting Officer shall ensure that these individuals understand and carry out their assigned responsibilities. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract is to assist and advise the Contracting Officer, and act as the COTR when so designated by the Contracting Officer. COTR activities include—

(i) Providing technical monitoring during contract performance and advising the Contracting Officer relating to delivery, acceptance, or rejection of deliverables in accordance with the terms of the contract;

(ii) Assessing contractor performance;

(iii) Recommending necessary changes to the schedule of work and period of performance to accomplish the objectives of the contract (The COTR shall provide the Contracting Officer a written request along with an appropriate justification and a funding document, if additional funds are needed.);

(iv) Reviewing invoices/vouchers and recommending approval/disapproval by the Contracting Officer, including providing comments regarding anything unusual discovered in the review (*Note:* If a contract contains the Salary Rate Limitation clause specified in *352.231–70,* the Contracting Officer, in conjunction with the COTR, shall monitor the contractor's invoices to ensure that the contractor is billing salaries, including those of subcontractors, at rates no higher than the Federal Executive Schedule salary rate limitation in effect on the date(s) the expense(s) was/were incurred.);

(v) Reviewing and recommending approval or disapproval of subcontractors, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The roles of the contract administrator, auditor, cost analyst, and property administrator are to assist or advise the Contracting Officer in post-award administration. Such activities include—

(i) Evaluating contractor systems and procedures, including accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, *etc.;*

(ii) Processing disputes under the Disputes clause and any resultant appeals;

(iii) Modifying or terminating the contract; and

(iv) Determining the allowability of: costs charged in incentive or cost-reimbursement type contracts, and progress payments under fixed-price contracts. This is important for awards to new organizations or those with financial weaknesses.

(d) The Contracting Officer shall ensure that contractor performance and contract monitoring conform with contract terms and conditions. If performance is not satisfactory or if problems are anticipated, the Contracting Officer shall take immediate action to protect the Government's rights under the contract. The Contracting Officer shall notify appropriate officials of problems that cannot be resolved within contract limitations and whenever the contractor is not meeting contract or program objectives. The notification shall include a statement of corrective actions that the Contracting Officer is taking.

342.7002 Procedures to be followed when a contractor fails to perform.

(a) The Contracting Officer shall initiate immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting terms of the contract. Compliance with the reporting terms includes those reports the contractor is required to submit directly to the payment office. The payment office shall notify the Contracting Officer promptly when the contractor does not submit such a report on time.

(b) When the contract contains a termination for default clause, the contractor's failure to submit any report, perform services, or deliver work when required by the contract is considered a default in performance. The Contracting Officer shall immediately issue a formal 10-day cure notice pursuant to *FAR 49.607.* The notice shall include a statement to the effect that payments will be withheld if the default is not cured within the time period specified in the notice or if the default is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the Contracting Officer shall consider a contractor's failure to submit any required report, perform services, or deliver work when required by the contract a failure to perform. The Contracting Officer shall immediately issue a written notice to the contractor that: specifies the failure, and provides a 10-day period (or longer period if the Contracting Officer deems it necessary) within which the contractor shall either

cure the failure or provide reasons for an excusable delay. The notice shall include a statement to the effect that payments will be withheld, if the default is not cured within the time period specified in the notice or if the default is not determined to be excusable.

(1) If the contractor cures the failure or the Contracting Officer determines it to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the Contracting Officer does not determine the failure excusable or the contractor does not provide a response within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The Contracting Officer shall consult *FAR subpart 49.4* for further guidance before taking any of the actions described in this section.

342.7003 Withholding of contract payments.

342.7003–1 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause in *352.242–73,* Withholding of Contract Payments, and the clause in *FAR 52.249–14,* Excusable Delays, in solicitations and contracts when a cost-reimbursement, time-and-materials, or labor-hour contract is contemplated.

(b) The Contracting Officer shall insert the clause in *352.242–74,* Final Decisions on Audit Findings, in solicitations and contracts when a cost-reimbursement contract is contemplated, except for those contracts with:

(1) A foreign government or agency of that government; or

(2) An international organization or a subsidiary body of that organization that the HCA determines would not be appropriate.

342.7003–2 Procedures to be followed when withholding payments.

(a) When appropriate, the Contracting Officer shall withhold any contract payment when a required report is overdue or the contractor fails to perform or deliver required work or services. When making the determination to withhold contract payments in accordance with the Withholding of Contract Payments clause, the Contracting Officer shall immediately notify the servicing finance office in writing of the determination to withhold payments. The notice of suspension shall contain all information necessary for the finance office to identify the contract—*i.e.,* contract number, task/delivery order number, and contractor name and address.

(b) The Contracting Officer shall immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the Contracting Officer shall immediately notify, in writing, all recipients of the notice of withholding that the withholding is to be lifted and contract payments are to be resumed.

(d) When taking any actions regarding the withholding of payments, the Contracting Officer shall not waive any of the Government's rights when corresponding with the contractor.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to follow when a cost overrun is anticipated. A cost overrun occurs when the allowable actual cost of performing a cost-reimbursement type contract exceeds the total estimated cost specified in the contract.

342.7101 Contract administration.

342.7101–1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the Contracting Officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the Contracting Officer receives information from a source other than the contractor that a cost overrun is anticipated, the Contracting Officer shall verify the information with the contractor and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7101–2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the Contracting Officer shall inform the contractor to submit a request for additional funds, which shall include the following:

(1) Name and address of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) creating overrun.

(4) The elements of cost which changed from the original estimate—i.e., labor, material, travel, and overhead, to be furnished in the following format:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase (*e.g.,* error in estimate, changed conditions).

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of a projected overrun, the Contracting Officer shall—

(1) Immediately advise the appropriate program office and furnish the office a copy of the notice and any other data received;

(2) Request audit or cost advisory services, and technical support, as necessary, for evaluation of information and data received; and

(3) Maintain continuous communications with the program office to obtain: a timely written decision and justification to continue the contract with additional funds (including verification of funds availability); or a timely written decision and request to terminate the contract.

(c) After receiving the decision by the program office, the Contracting Officer shall promptly notify the contractor in writing of the following:

(1) The specified amount of additional funds allotted to the contract.

(2) Work shall be discontinued when the allotted funds are exhausted, and any work performed after that date is at the contractor's risk.

(3) The Government is considering whether to allot additional funds to the contract and will notify the contractor as soon as possible, but that any work performed after the currently allotted funds are exhausted is at the contractor's risk. (Timely, formal notification of the Government's intention is essential to preclude loss of contractual rights in the event of dispute, termination, or litigation.)

(d) If the program office permits, the Contracting Officer shall refrain from issuing any contractual documents that require new work or an extension of time, pending resolution of the projected overrun.

342.7102 Contract modifications.

(a) Modifications to contracts containing the Limitation of Cost clause shall include either—

(1) A provision which: Increases the estimated or ceiling amount in the Limitation of Cost clause of the contract; and states that such clause will thereafter apply to the increased amount; or

(2) A provision stating that the estimated or ceiling amount in the

Limitation of Cost clause is not changed by the modification.

(b) The Contracting Officer shall not change a fixed-fee in a contract when funding a cost overrun. The Contracting Officer shall make changes in fixed-fee only to reflect changes in the SOW/PWS that justify an increase or decrease in fee.

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.1—Instructions for Using Provisions and Clauses

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352.101–70 Application of provisions and clauses.

Subpart 352.2—Texts of Provisions and Clauses

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352.233–71 Litigation and claims.
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352.270–1 Accessibility of meetings, conferences, and seminars to persons with disabilities.
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352.270–4 Protection of human subjects.
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352.270–6 Restriction on use of human subjects.
352.270–7 Conference sponsorship request and conference materials disclaimer.
352.270–8 Prostitution and related activities.
352.270–9 Non-discrimination for conscience.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 352.1—Instructions for Using Provisions and Clauses

352.100 Scope of subpart.

This subpart provides guidance for applying HHS provisions and clauses in solicitations, contracts, and orders.

352.101–70 Application of provisions and clauses.

(a) Unless otherwise qualified (*e.g.,* by the type of contract contemplated, the nature of the requirement, or dollar amount) in a prescription for a solicitation provision or contract clause specified in Part 352 or elsewhere in the HHSAR, the term ''contract'' means—

(1) An award, including modifications thereunder, that exceeds the simplified acquisition threshold, including a task order or delivery order, whether placed under a GSA FSS contract, an IDIQ contract, a GWAC, or a BPA, and a purchase order placed under the authority of *FAR subpart 13.5*); and

(2) A bilateral award—*i.e.,* when both the Contracting Officer and the contractor sign the award document, that exceeds the micro-purchase threshold but which does not exceed the simplified acquisition threshold.

(b) When the term ''order'' is specified in a prescription for a solicitation provision or order clause, it means an order that exceeds the micro-purchase threshold but which does not exceed the simplified acquisition threshold, except those bilateral awards specified in (a)(2) above.

(c) If a clause is included in the master instrument (*e.g.,* in an IDIQ contract or a BPA), it is not necessary to also include the clause in a task order or delivery order thereunder.

(d) When a dollar amount or dollar threshold is specified (*e.g.,* $25 million or simplified acquisition threshold), the dollar amount of the award (contract or order) includes any options thereunder.

Subpart 352.2—Texts of Provisions and Clauses

352.201–70 Paperwork Reduction Act.

As prescribed in *301.106(b),* the Contracting Officer shall insert the following clause:

Paperwork Reduction Act (January 2006)

(a) This contract involves a requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties; therefore, the *Paperwork Reduction Act of 1995* (44 U.S.C. 3501 *et seq.*) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single time) may be used without the Office of Management and Budget (OMB) first providing clearance. Contractors and the Contracting Officer's Technical Representative shall be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring OMB clearance.

(b) The Contractor shall not expend any funds or begin any data collection until OMB Clearance is received. Once OMB Clearance is received from the Contracting Officer's Technical Representative, the Contracting Officer shall provide the Contractor with written notification authorizing the expenditure of funds and the collection of data. The Contractor shall allow at least 120 days for OMB clearance. The Contracting Officer will consider excessive delays caused by the Government which arise out of causes beyond the control and without the fault or negligence of the Contractor in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

352.202–1 Definitions.

As prescribed in *FAR 2.201,* the Contracting Officer shall insert the clause in *FAR 52.202–1,* Definitions, as revised by *302.201:*

Definitions (January 2006)

(a) In accordance with *52.202–1(a)(1),* substitute the following as paragraph (a):

''(a) The term ''Secretary'' or ''Head of the Agency'' (also called ''Agency Head'') means the Secretary, Deputy Secretary, or any Assistant Secretary, Administrator or Commissioner of the Department of Health and Human Services; and the term ''his/her duly authorized representative'' means any person, persons, or board authorized to act for the Secretary.''

(b) In accordance with *52.202–1(a)(1),* add the following paragraph (h):

''(h) The term ''Contracting Officer's Technical Representative'' means the person

who monitors the technical aspects of contract performance. The Contracting Officer's Technical Representative is not authorized to issue any instructions or directions which cause any increase or decrease in the Statement of Work/Performance Work Statement/Specifications which would result in the increase or decrease in the price of this contract, or changes in the delivery schedule or period of performance of this contract. If applicable, the Contracting Officer's Technical Representative is not authorized to receive or act upon any notification or revised cost estimate provided by the Contractor in accordance with the Limitation of Cost or Limitation of Funds clauses of this contract.''

352.203–70 Anti-lobbying.

As prescribed in *303.808–70,* the Contracting Officer shall insert the following clause:

Anti-Lobbying (January 2006)

Pursuant to the current HHS annual appropriations act, except for normal and recognized executive-legislative relationships, the Contractor shall not use any HHS contract funds for (i) publicity or propaganda purposes; (ii) the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself; or (iii) payment of salary or expenses of the Contractor, or any agent acting for the Contractor, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

(End of clause)

352.215–1 Instructions to offerors—competitive acquisition.

As prescribed in *315.209,* the Contracting Officer shall insert the following paragraph (e) in the provision in *FAR 52.215–1,* Instructions to Offerors—Competitive Acquisition:

(e) *Restriction on disclosure and use of data.*

(1) The proposal submitted in response to this request may contain data (trade secrets; business data (*e.g.,* commercial information, financial information, cost and pricing data); and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; provided, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following statements, specifying the particular portions of the proposal which are to be restricted:

''Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) officials of the Department of Health and Human Services (HHS), data contained in the portions of this proposal which the offeror has specifically identified by page number, paragraph, *etc.* as containing restricted information shall not be used or disclosed except for evaluation purposes.

The offeror acknowledges that HHS may not be able to withhold a record (*e.g.,* data, document, *etc.*) nor deny access to a record requested pursuant to the Act and that the HHS' FOI officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if HHS has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act. The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, *etc.* or other identification).''

(2) In addition, the offeror must mark each page of data it wishes to restrict with the following statement:

''Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.''

(3) Offerors are cautioned that proposals submitted with restrictive statements or statements differing in substance from those cited above may not be considered for award. The Government reserves the right to reject any proposal submitted with nonconforming statement(s).

352.215–70 Late proposals and revisions.

As prescribed in *315.208,* the Contracting Officer shall insert the following provision:

Late Proposals and Revisions (January 2006)

Notwithstanding the procedures contained in *FAR 52.215–1(c)(3)* of the provision of this solicitation entitled Instructions to Offerors—Competitive Acquisition, the Government may consider a proposal received after the date specified for receipt if it appears to offer the best value to the Government and it was received before proposals were distributed for evaluation, or within 5 calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

352.216–70 Additional cost principles.

As prescribed in *316.307(j),* the Contracting Officer shall insert the following clause:

Additional Cost Principles (January 2006)

(a) Bid and proposal (B & P) costs.

(1) B & P costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) B & P costs of the current accounting period are allowable as indirect costs.

(3) B & P costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.

(4) B & P costs do not include independent research and development (IR & D) costs covered by the following paragraph, or pre-award costs covered by paragraph 36 of Attachment B to *OMB Circular A–122.*

(b) IR & D costs.

(1) IR & D is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) IR & D shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development.

(3) The cost of IR & D, including its proportionate share of indirect costs, is unallowable.

(End of clause)

352.219–70 Mentor-protégé program.

As prescribed in *319.270–1(a),* the Contracting Officer shall insert the following provision:

Mentor-Protégé Program (October 2009)

(a) Large business prime contractors serving as mentors in the HHS Mentor-Protégé program are eligible for HHS subcontracting plan credit, and shall submit a copy of their HHS Office of Small and Disadvantaged Business Utilization (OSDBU)-approved mentor protégé agreements as part of their offers. The amount of credit provided by the Contracting Officer to a mentor firm for protégé firm developmental assistance costs shall be calculated on a dollar for dollar basis and reported by the mentor firm in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at *http://www.esrs.gov.* The mentor firm and protégé firm shall submit to the Contracting Officer a signed joint statement agreeing on the dollar value of the developmental assistance the mentor firm provided. (For example, a mentor firm would report a $10,000 subcontract awarded to a protégé firm and provision of $5,000 of developmental assistance as $15,000 of developmental assistance.) The mentor firm may use this additional credit towards attaining its subcontracting plan participation goal under this contract.

(b) The program consists of—

(1) *Mentor firms*—large businesses that: (i) demonstrate the interest, commitment, and capability to provide developmental assistance to small business protégé firms; and (ii) have a Mentor-Protégé agreement approved by HHS' OSDBU;

(2) *Protégé firms*—firms that: (i) seek developmental assistance; (ii) qualify as small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses,

small disadvantaged businesses, or woman-owned businesses; and (iii) have a Mentor-Protégé agreement approved by HHS' OSDBU; and

(3) *Mentor-Protégé agreements*—joint agreements, approved by HHS' OSDBU, which detail the specific terms, conditions, and responsibilities of the mentor-protégé relationship.

(End of provision)

352.219–71 Mentor-protégé program reporting requirements.

As prescribed in *319.270–1(b),* the Contracting Officer shall insert the following clause:

Mentor-Protégé Program Reporting Requirements (October 2009)

The Contractor shall comply with all reporting requirements specified in its Mentor-Protégé agreement approved by HHS' OSDBU.

(End of clause)

352.222–70 Contractor cooperation in equal employment opportunity investigations.

As prescribed in *322.810(h),* the Contracting Officer shall insert the following clause:

Contractor Cooperation in Equal Employment Opportunity Investigations (October 2009)

(a) In addition to complying with the clause in FAR 52.222–26, Equal Opportunity, the Contractor shall, in good faith, cooperate with the Department of Health and Human Services (Agency) in investigations of Equal Employment Opportunity (EEO) complaints processed pursuant to 29 CFR Part 1614. For purposes of this clause, the following definitions apply:

(1) ''Complaint'' means a formal or informal complaint that has been lodged with Agency management, Agency EEO officials, the Equal Employment Opportunity Commission (EEOC), or a court of competent jurisdiction.

(2) ''Contractor employee'' means all current Contractor employees who work or worked under this contract. The term also includes current employees of subcontractors who work or worked under this contract. In the case of Contractor and subcontractor employees, who worked under this contract, but who are no longer employed by the Contractor or subcontractor, or who have been assigned to another entity within the Contractor's or subcontractor's organization, the Contractor shall provide the Agency with that employee's last known mailing address, e-mail address, and telephone number, if that employee has been identified as a witness in an EEO complaint or investigation.

(3) ''Good faith cooperation'' cited in paragraph (a) includes, but is not limited to, making Contractor employees available for: (i) Formal and informal interviews by EEO counselors or other Agency officials processing EEO complaints; (ii) formal or informal interviews by EEO investigators charged with investigating complaints of unlawful discrimination filed by Federal employees; (iii) reviewing and signing appropriate affidavits or declarations summarizing statements provided by such Contractor employees during the course of EEO investigations; (iv) producing documents requested by EEO counselors, EEO investigators, Agency employees, or the EEOC in connection with a pending EEO complaint; and (v) preparing for and providing testimony in hearings before the EEOC and U.S. District Court.

(b) The Contractor shall include the provisions of this clause in all subcontract solicitations and subcontracts awarded at any tier under this contract.

(c) Failure on the part of the Contractor or its subcontractors to comply with the terms of this clause may be grounds for the Contracting Officer to terminate this contract for default.

(End of clause)

352.223–70 Safety and health.

As prescribed in *323.7002,* the Contracting Officer shall insert the following clause:

Safety and Health (January 2006)

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State, and local laws and regulations applicable to the work being performed under this contract. These laws are implemented or enforced by the Environmental Protection Agency, Occupational Safety and Health Administration (OSHA) and other regulatory/enforcement agencies at the Federal, State, and local levels.

(1) In addition, the Contractor shall comply with the following regulations when developing and implementing health and safety operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

(i) 29 CFR 1910.1030, Bloodborne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories; and other applicable occupational health and safety standards issued by OSHA and included in 29 CFR Part 1910. These regulations are available at *http://www.osha.gov.*

(ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*). The Contractor may obtain copies from the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) The following Government guidelines are recommended for developing and implementing health and safety operating procedures and practices for both personnel and facilities:

(i) Biosafety in Microbiological and Biomedical Laboratories, CDC. This publication is available at *http://www.cdc.gov/OD/ohs/biosfty/bmbl4/bmbl4toc.htm.*

(ii) Prudent Practices for Safety in Laboratories (1995), National Research Council, National Academy Press, 500 Fifth Street, NW., Lockbox 285, Washington, DC 20055 (ISBN 0–309–05229–7). This publication is available at *http://www.nap.edu/catalog/4911.html.*

(b) Further, the Contractor shall take or cause to be taken additional safety measures as the Contracting Officer, in conjunction with the Contracting Officer's Technical Representative or other appropriate officials, determines to be reasonably necessary. If compliance with these additional safety measures results in an increase or decrease in the cost or time required for performance of any part of work under this contract, the Contracting Officer will make an equitable adjustment in accordance with the applicable ''Changes'' clause set forth in this contract.

(c) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; or damage to property incidental to work performed under the contract and all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency. The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(d) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any stop work order shall be subject to a claim for extension of time or costs or damages by the Contractor.

(e) The Contractor shall insert the substance of this clause in each subcontract involving toxic substances, hazardous materials, or hazardous operations. The Contractor is responsible for the compliance of its subcontractors with the provisions of this clause.

(End of clause)

352.224–70 Privacy Act.

As prescribed in *324.103(b)(2),* the Contracting Officer shall insert the following clause:

Privacy Act (January 2006)

This contract requires the Contractor to perform one or more of the following: (a) Design; (b) develop; or (c) operate a Federal agency system of records to accomplish an agency function in accordance with the Privacy Act of 1974 (Act) (5 U.S.C. 552a(m)(1)) and applicable agency regulations. The term ''system of records'' means a group of any records under the control of any agency from which information is retrieved by the name of the

individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Violations of the Act by the Contractor and/or its employees may result in the imposition of criminal penalties (5 U.S.C. 552a(i)). The Contractor shall ensure that each of its employees knows the prescribed rules of conduct and that each employee is aware that he/she is subject to criminal penalties for violation of the Act to the same extent as Department of Health and Human Services employees. These provisions also apply to all subcontracts the Contractor awards under this contract which require the design, development or operation of the designated system(s) of records [5 U.S.C. 552a(m)(1)]. The contract work statement: (a) identifies the system(s) of records and the design, development, or operation work the Contractor is to perform; and (b) specifies the disposition to be made of such records upon completion of contract performance.

(End of clause)

352.227–70 Publications and publicity.

As prescribed in *327.404–70,* the Contracting Officer shall insert the following clause:

Publications and Publicity (January 2006)

(a) Unless otherwise specified in this contract, the Government encourages the Contractor to publish the results of its work under this contract. A copy of each article the Contractor submits for publication shall be promptly sent to the Contracting Officer's Technical Representative. The Contractor shall also inform the Contracting Officer's Technical Representative when the article or other publication is published, and furnish a copy of it as finally published.

(b) Unless authorized by the Contracting Officer's Technical Representative, the Contractor shall not display the HHS logo on any publications.

(End of clause)

352.228–7 Insurance—liability to third persons.

As prescribed in *328.311–2,* the Contracting Officer shall insert the following clause and either Alternate I or II, as appropriate:

Insurance—Liability to Third Persons (Dec. 1991)

(a)(1) Except as provided in paragraph (a)(2) immediately following, or in paragraph (h) of this clause [if the clause has a paragraph (h)], the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause [if the clause has a paragraph (h)], the Contractor shall be reimbursed—

(1) For that portion of the reasonable cost of insurance allocable to this contract, and required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise within the funds available under the Limitation of Cost or the Limitation of Funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgments, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

(e) The Government shall not reimburse the Contractor for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of —

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by the bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Alternate I (APR 1984). If the successful offeror represents in its offer that it is partially immune from tort liability as a State agency, the Contracting Officer shall add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; provided, that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

Alternate II (APR 1984). If the successful offeror represents in its offer that it is totally immune from tort liability as a State agency, the Contracting Officer shall substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its

liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if Government requires, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claims or litigation.

(End of clause)

352.231–70 Salary rate limitation.

As prescribed in *331.101–70,* the Contracting Officer shall insert the following clause:

Salary Rate Limitation (October 2009)

(a) Pursuant to the current and applicable prior HHS appropriations acts, the Contractor shall not use contract funds to pay the direct salary of an individual at a rate in excess of the Federal Executive Schedule Level I in effect on the date an expense is incurred.

(b) For purposes of the salary rate limitation, the terms ''direct salary,'' ''salary,'' and ''institutional base salary'' have the same meaning and are collectively referred to as ''direct salary'' in this clause. An individual's direct salary is the annual compensation that the Contractor pays for an individual's direct effort (costs) under the contract. Direct salary excludes any income that an individual may be permitted to earn outside of duties to the Contractor. Direct salary also excludes fringe benefits, overhead, and general and administrative expenses (also referred to as indirect costs or facilities and administrative [F&A] costs).

Note: The salary rate limitation does not restrict the salary that an organization may pay an individual working under an HHS contract or order; it merely limits the portion of that salary that may be paid with Federal funds.

(c) The salary rate limitation also applies to individuals under subcontracts. If this is a multiple-year contract or order, it may be subject to unilateral modification by the Contracting Officer to ensure that an individual is not paid at a rate that exceeds the salary rate limitation provision established in the HHS appropriations act in effect when the expense is incurred regardless of the rate initially used to establish contract or order funding.

(d) *See* the salaries and wages pay tables on the U.S. Office of Personnel Management Web site for Federal Executive Schedule salary levels that apply to the current and prior periods.

(End of clause)

352.231–71 Pricing of adjustments.

As prescribed in *331.102–70,* the Contracting Officer shall insert the following clause:

Pricing of Adjustments (January 2001)

When costs are a factor in determination of a contract price adjustment pursuant to the ''Changes'' clause or any provision of this contract, the applicable cost principles and procedures set forth below shall form the basis for determining such costs:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation	Commercial.
(b) Subpart 31.3 of the Federal Acquisition Regulation	Educational.
(c) Subpart 31.6 of the Federal Acquisition Regulation	State, local, and Federally recognized Indian Tribal governments.
(d) 45 CFR Part 74 Appendix E	Hospitals (performing research and development contracts only).
(e) Subpart 31.7 of the Federal Acquisition Regulation	Other nonprofit organizations.

(End of clause)

352.233–70 Choice of law (overseas).

As prescribed in *333.215–70(a),* the Contracting Officer shall insert the following clause:

Choice of Law (Overseas) (October 2009)

This contract shall be construed in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the Civilian Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

352.233–71 Litigation and claims.

As prescribed in *333.215–70(b),* the Contracting Officer shall insert the following clause:

Litigation and Claims (January 2006)

(a) The Contractor shall provide written notification immediately to the Contracting Officer of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and any claim against the Contractor the cost and expense of which is allowable under the clause entitled ''Allowable Cost and Payment.''

(b) Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action.

(c) If the Government undertakes a settlement or defense of an action or claim, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. In any event, unless otherwise expressly provided in this contract, the Government shall not reimburse or indemnify the Contractor for any liability loss, cost, or expense, which the Contractor may incur or be subject to by reason of any loss, injury or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

352.234–1 Notice of earned value management system—pre-award Integrated Baseline Review.

As prescribed in *334.203–70(a),* the Contracting Officer shall insert the following provision:

Notice of Earned Value Management System—Pre-Award Integrated Baseline Review (October 2008)

The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of solicitation).

(a) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Provide documentation describing the process and results, including Government participation if applicable, of any third-party evaluation or self-evaluation of the system's compliance with the EVMS guidelines; and

(vi) Provide a schedule of events leading up to formal validation and Government acceptance of the offeror's EVMS, if the value of the offeror's proposal, including options, is $25 million or more.

(2) The offeror shall provide information and assistance, as required by the Contracting Officer, to support review of the plan.

(3) The Contracting Officer will review the offeror's EVMS implementation plan prior to contract award.

(4) The offeror's EVMS plan must provide milestones indicating when the offeror anticipates that the EVMS will be compliant with the ANSI/EIS Standard-748 guidelines.

(b) The offeror shall identify in its offer the subcontractors, or subcontracted effort if subcontractors have not been identified, to which the requirements of EVMS will be applied. Prior to contract award, the offeror and HHS shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(c) HHS will conduct an Integrated Baseline Review (IBR) prior to contract award. The offeror shall be compensated as set forth elsewhere in this solicitation for its preparation for and participation in the IBR.

(End of provision)

352.234–2 Notice of earned value management system—post-award Integrated Baseline Review.

As prescribed in *334.203–70(b),* the Contracting Officer shall insert the following provision:

Notice of Earned Value Management System—Post-Award Integrated Baseline Review (October 2008)

(a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version in effect at time of solicitation).

(b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for application of the EVMS requirements to subcontractors;

(v) Provide documentation describing the process and results, including Government participation if applicable, of any third-party evaluation or self-evaluation of the system's compliance with the EVMS guidelines; and

(vi) Provide a schedule of events leading up to formal validation and Government acceptance of the offeror's EVMS, if the value of the offeror's proposal, including options, is $25 million or more.

(2) The offeror shall provide information and assistance, as required by the Contracting Officer, to support review of the plan.

(3) The Contracting Officer will review the offeror's EVMS implementation plan prior to contract award.

(4) The offeror's EVMS plan must provide milestones indicating when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard-748 guidelines.

(c) The offeror shall identify in its offer the subcontractors, or subcontracted effort if subcontractors have not been identified, to which the requirements of EVMS will be applied. Prior to contract award, the offeror and HHS shall agree on the subcontractors, or subcontracted effort, subject to the EVMS requirement.

(d) HHS will conduct an Integrated Baseline Review after contract award.

(End of provision)

352.234–3 Full earned value management system.

As prescribed in *334.203–70(c),* the Contracting Officer shall insert the following clause:

Full Earned Value Management System (October 2008)

(a) The Contractor shall use an Earned Value Management System (EVMS) that has been validated and accepted by the Cognizant Federal Agency (CFA) as being compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been validated and accepted by the CFA at the time of award, *see* paragraph (b) of this clause. The Contractor shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVM system has not been validated and accepted by the CFA as complying with EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.

(c) HHS requires the Contractor to obtain validation and acceptance of its EVM system by the CFA during the base period of performance of this contract. The Contracting Officer or designee will conduct a Compliance Review to assess the Contractor's compliance with its approved plan. If the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action, which may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

(d) HHS will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post-award IBR will be conducted by HHS as early as practicable, but no later than 90 days after contract award. The Contracting Officer may also require an IBR as part of the exercise of an option or the incorporation of a major modification.

(e) Unless a waiver is granted by the CFA, Contractor-proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the requirements referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of the clause: (*Insert list of applicable subcontractors.*)

_____

_____

_____

(End of clause)

(Alternate I) (October 2008)

As prescribed in *334.203–70(c),* the Contracting Officer shall substitute the following paragraphs (a), (b), and (c) for paragraphs (a), (b), and (c) of the basic clause and delete paragraph (e) of the basic clause:

(a) The Contractor shall use an Earned Value Management System (EVMS) that is compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS is not compliant at the time of award, *see* paragraph (b) of this clause. The Contractor shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVM system is not in compliance with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.

(c) HHS will not formally validate or accept the Contractor's EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply HHS acceptance of the Contractor's EVMS for application to future contracts. The Contracting Officer or designee will conduct a Compliance Review to assess the Contractor's compliance with its approved plan. If the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action that may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

352.234–4 Partial earned value management system.

As prescribed in *334.203–70(d),* the Contracting Officer shall insert the following clause:

Partial Earned Value Management System (October 2008)

(a) The Contractor shall use an Earned Value Management System (EVMS) that has been validated and accepted by the Cognizant Federal Agency (CFA) as being compliant with the schedule-related guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been validated and accepted by the CFA at the time of award, *see* paragraph (b) of this clause. The Contractor shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVM system has not been validated and accepted by the CFA as complying with the schedule-related EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.

(c) HHS requires the Contractor to obtain validation and acceptance of the schedule-related portions of its EVM system by the CFA during the base period of performance of this contract. The Contracting Officer or designee will conduct a Compliance Review to assess the Contractor's compliance with its approved plan. If the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action, which may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

(d) HHS will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post-award IBR will be conducted by HHS as early as practicable, but no later than 90 days after contract award. The Contracting Officer may also require an IBR as part of the exercise of an option or the incorporation of a major modification.

(e) Unless a waiver is granted by the CFA, Contractor-proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the requirements referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of the clause: (*Insert list of applicable subcontractors.*)

_____

_____

_____

(End of clause)

(Alternate I) (October 2008)

As prescribed in *334.203–70(d),* the Contracting Officer shall substitute the following paragraphs (a), (b), and (c) for paragraphs (a), (b), and (c) of the basic clause and delete paragraph (e) of the basic clause:

(a) The Contractor shall use an Earned Value Management System (EVMS) that is compliant with the schedule-related guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS is not compliant at the time of award, *see* paragraph (b) of this clause. The Contractor shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's schedule-related EVM system is not in compliance with the schedule-related EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), or the Contractor does not have an existing schedule control system that is compliant with such guidelines, the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.

(c) HHS will not formally validate or accept the Contractor's schedule-related EVMS with respect to this contract. The use of the Contractor's EVMS for this contract does not imply HHS acceptance of the Contractor's EVMS for application to future contracts. The Contracting Officer or designee will conduct a Compliance Review to assess the Contractor's compliance with its approved plan. If the Contractor does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action that may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

352.237–70 Pro-Children Act.

As prescribed in *337.103–70(a),* the Contracting Officer shall insert the following clause:

Pro-Children Act (January 2006)

(a) Public Law 103–227, Title X, Part C, also known as the *Pro-Children Act of 1994* (Act), 20 U.S.C. 7183, imposes restrictions on smoking in facilities where certain Federally funded children's services are provided. The Act prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of (i) kindergarten, elementary, or secondary education or library services or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

352.237–71 Crime Control Act—reporting of child abuse.

As prescribed in *337.103–70(b),* the Contracting Officer shall insert the following clause:

Crime Control Act of 1990—Reporting of Child Abuse (January 2006)

(a) *Public Law 101–647, also known as the Crime Control Act of 1990 (Act),* imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a Federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Act designates ''covered professionals'' as those persons engaged in professions and activities in eight different categories including, but not limited to, physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths,

pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, alcohol or drug treatment personnel, psychologists, psychiatrists, mental health professionals, child care workers and administrators, and commercial film and photo processors. The Act defines the term ''child abuse'' as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(c) Accordingly, any person engaged in a covered profession or activity under an HHS contract or subcontract, regardless of the purpose of the contract or subcontract, shall immediately report a suspected child abuse incident in accordance with the provisions of the Act. If a child is suspected of being harmed, the appropriate State Child Abuse Hotline, local child protective services (CPS), or law enforcement agency shall be contacted. For more information about where and how to file a report, the Childhelp USA, National Child Abuse Hotline (1–800–4–A–CHILD) shall be called. Any covered professional failing to make a timely report of such incident shall be guilty of a Class B misdemeanor.

(d) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Act.

(End of clause)

352.237–72 Crime Control Act—requirement for background checks.

As prescribed in *337.103–70(c),* the Contracting Officer shall insert the following clause:

Crime Control Act of 1990—Requirement for Background Checks (January 2006)

(a) *Public Law 101–647, also known as the Crime Control Act of 1990 (Act),* requires that all individuals involved with the provision of child care services to children under the age of 18 undergo a criminal background check. ''Child care services'' include, but are not limited to, social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee providing any of the services listed above.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with the provisions of the Act.

(End of clause)

352.239–70 Standard for security configurations.

As prescribed in *339.101(d)(1),* the Contracting Officer shall insert the following clause:

Standard for Security Configurations (October 2009)

(a) The Contractor shall configure its computers that contain HHS data with the applicable Federal Desktop Core Configuration (FDCC) (*see http://nvd.nist.gov/fdcc/index.cfm*) and ensure that its computers have and maintain the latest operating system patch level and anti-virus software level.

Note: FDCC is applicable to all computing systems using Windows XP™ and Windows Vista™, including desktops and laptops—regardless of function—but not including servers.

(b) The Contractor shall apply approved security configurations to information technology (IT) that is used to process information on behalf of HHS. The following security configuration requirements apply:

_____

_____

_____

Note: The Contracting Officer shall specify applicable security configuration requirements in solicitations and contracts based on information provided by the Project Officer, who shall consult with the OPDIV/STAFFDIV Chief Information Security Officer.

(c) The Contractor shall ensure IT applications operated on behalf of HHS are fully functional and operate correctly on systems configured in accordance with the above configuration requirements. The Contractor shall use Security Content Automation Protocol (SCAP)-validated tools with FDCC Scanner capability to ensure its products operate correctly with FDCC configurations and do not alter FDCC settings—*see http://nvd.nist.gov/validation.cfm.* The Contractor shall test applicable product versions with all relevant and current updates and patches installed. The Contractor shall ensure currently supported versions of information technology products meet the latest FDCC major version and subsequent major versions.

(d) The Contractor shall ensure IT applications designed for end users run in the standard user context without requiring elevated administrative privileges.

(e) The Contractor shall ensure hardware and software installation, operation, maintenance, update, and patching will not alter the configuration settings or requirements specified above.

(f) The Contractor shall (1) include Federal Information Processing Standard (FIPS) 201-compliant (*see http://csrc.nist.gov/publications/fips/fips201-1/FIPS-201-1-chng1.pdf*), Homeland Security Presidential Directive 12 (HSPD–12) card readers with the purchase of servers, desktops, and laptops; and (2) comply with FAR Subpart 4.13, *Personal Identity Verification.*

(g) The Contractor shall ensure that its subcontractors (at all tiers) which perform work under this contract comply with the requirements contained in this clause.

(End of clause)

352.239–71 Standard for encryption language.

As prescribed in *339.101(d)(2),* the Contracting Officer shall insert the following clause:

Standard for Encryption Language (October 2009)

(a) The Contractor shall use Federal Information Processing Standard (FIPS) 140–2-compliant encryption (Security Requirements for Cryptographic Module, as amended) to protect all instances of HHS sensitive information during storage and transmission. (**Note:** The Government has determined that HHS information under this contract is considered ''sensitive'' in accordance with FIPS 199, Standards for Security Categorization of Federal Information and Information Systems, dated February 2004.)

(b) The Contractor shall verify that the selected encryption product has been validated under the Cryptographic Module Validation Program (*see http://csrc.nist.gov/cryptval/*) to confirm compliance with FIPS 140–2 (as amended). The Contractor shall provide a written copy of the validation documentation to the Contracting Officer and the Contracting Officer's Technical Representative.

(c) The Contractor shall use the Key Management Key (*see* FIPS 201, Chapter 4, as amended) on the HHS personal identification verification (PIV) card; or alternatively, the Contractor shall establish and use a key recovery mechanism to ensure the ability for authorized personnel to decrypt and recover all encrypted information (*see http://csrc.nist.gov/drivers/documents/ombencryption-guidance.pdf*). The Contractor shall notify the Contracting Officer and the Contracting Officer's Technical Representative of personnel authorized to decrypt and recover all encrypted information.

(d) The Contractor shall securely generate and manage encryption keys to prevent unauthorized decryption of information in accordance with FIPS 140–2 (as amended).

(e) The Contractor shall ensure that this standard is incorporated into the Contractor's property management/control system or establish a separate procedure to account for all laptop computers, desktop computers, and other mobile devices and portable media that store or process sensitive HHS information.

(f) The Contractor shall ensure that its subcontractors (at all tiers) which perform work under this contract comply with the requirements contained in this clause.

(End of clause)

352.239–72 Security requirements for Federal information technology resources.

As prescribed in *339.7103,* the Contracting Officer shall insert the following clause:

Security Requirements for Federal Information Technology Resources (October 2009)

(a) *Applicability.* This clause applies whether the entire contract or order (hereafter ''contract''), or portion thereof, includes information technology resources or services in which the Contractor has physical or logical (electronic) access to, or operates a Department of Health and Human Services (HHS) system containing, information that directly supports HHS' mission. The term ''information technology (IT)'', as used in this clause, includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services) and related resources. This clause does not apply to national security systems as defined in FISMA.

(b) *Contractor responsibilities.* The Contractor is responsible for the following:

(1) Protecting Federal information and Federal information systems in order to ensure their—

(i) *Integrity,* which means guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity;

(ii) *Confidentiality,* which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and.

(iii) *Availability,* which means ensuring timely and reliable access to and use of information.

(2) Providing security of any Contractor systems, and information contained therein, connected to an HHS network or operated by the Contractor, regardless of location, on behalf of HHS.

(3) Adopting, and implementing, at a minimum, the policies, procedures, controls, and standards of the HHS Information Security Program to ensure the integrity, confidentiality, and availability of Federal information and Federal information systems for which the Contractor is responsible under this contract or to which it may otherwise have access under this contract. The HHS Information Security Program is outlined in the HHS Information Security Program Policy, which is available on the HHS Office of the Chief Information Officer's (OCIO) Web site.

(c) *Contractor security deliverables.* In accordance with the timeframes specified, the Contractor shall prepare and submit the following security documents to the Contracting Officer for review, comment, and acceptance:

(1) *IT Security Plan (IT–SP)—due within 30 days after contract award.* The IT–SP shall be consistent with, and further detail the approach to, IT security contained in the Contractor's bid or proposal that resulted in the award of this contract. The IT–SP shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of IT resources that are developed, processed, or used under this contract. If the IT–SP only applies to a portion of the contract, the Contractor shall specify those parts of the contract to which the IT–SP applies.

(i) The Contractor's IT–SP shall comply with applicable Federal laws that include, but are not limited to, the Federal Information Security Management Act (FISMA) of 2002 (Title III of the E-Government Act of 2002, Public Law 107–347), and the following Federal and HHS policies and procedures:

(A) Office of Management and Budget (OMB) Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources.

(B) National Institute of Standards and Technology (NIST) Special Publication (SP) 800–18, Guide for Developing Security Plans for Federal Information Systems, in form and content, and with any pertinent contract Statement of Work/Performance Work Statement (SOW/PWS) requirements. The IT–SP shall identify and document appropriate IT security controls consistent with the sensitivity of the information and the requirements of Federal Information Processing Standard (FIPS) 200, Recommended Security Controls for Federal Information Systems. The Contractor shall review and update the IT–SP in accordance with NIST SP 800–26, Security Self-Assessment Guide for Information Technology Systems and FIPS 200, on an annual basis.

(C) HHS–OCIO Information Systems Security and Privacy Policy.

(ii) After resolution of any comments provided by the Government on the draft IT–SP, the Contracting Officer shall accept the IT–SP and incorporate the Contractor's final version into the contract for Contractor implementation and maintenance. On an annual basis, the Contractor shall provide to the Contracting Officer verification that the IT–SP remains valid.

(2) *IT Risk Assessment (IT–RA)—due within 30 days after contract award.* The IT–RA shall be consistent, in form and content, with NIST SP 800–30, Risk Management Guide for Information Technology Systems, and any additions or augmentations described in the HHS–OCIO Information Systems Security and Privacy Policy. After resolution of any comments provided by the Government on the draft IT–RA, the Contracting Officer shall accept the IT–RA and incorporate the Contractor's final version into the contract for Contractor implementation and maintenance. The Contractor shall update the IT–RA on an annual basis.

(3) *FIPS 199 Standards for Security Categorization of Federal Information and Information Systems Assessment (FIPS 199 Assessment)—due within 30 days after contract award.* The FIPS 199 Assessment shall be consistent with the cited NIST standard. After resolution of any comments by the Government on the draft FIPS 199 Assessment, the Contracting Officer shall accept the FIPS 199 Assessment and incorporate the Contractor's final version into the contract.

(4) *IT Security Certification and Accreditation (IT–SC&A)—due within 3 months after contract award.* The Contractor shall submit written proof to the Contracting Officer that an IT–SC&A was performed for applicable information systems—*see* paragraph (a) of this clause. The Contractor shall perform the IT–SC&A in accordance with the HHS Chief Information Security Officer's Certification and Accreditation Checklist; NIST SP 800–37, Guide for the Security Certification and Accreditation of Federal Information Systems; and NIST SP 800–53, Recommended Security Controls for Federal Information Systems. An authorized senior management official shall sign the draft IT–SC&A and provide it to the Contracting Officer for review, comment, and acceptance.

(i) After resolution of any comments provided by the Government on the draft IT–SC&A, the Contracting Officer shall accept the IT–SC&A and incorporate the Contractor's final version into the contract as a compliance requirement.

(ii) The Contractor shall also perform an annual security control assessment and provide to the Contracting Officer verification that the IT–SC&A remains valid. Evidence of a valid system accreditation includes written results of:

(A) Annual testing of the system contingency plan; and

(B) The performance of security control testing and evaluation.

(d) *Personal identity verification.* The Contractor shall identify its employees with access to systems operated by the Contractor for HHS or connected to HHS systems and networks. The Contracting Officer's Technical Representative (COTR) shall identify, for those identified employees, position sensitivity levels that are commensurate with the responsibilities and risks associated with their assigned positions. The Contractor shall comply with the HSPD–12 requirements contained in ''HHS–Controlled Facilities and Information Systems Security'' requirements specified in the SOW/PWS of this contract.

(e) *Contractor and subcontractor employee training.* The Contractor shall ensure that its employees, and those of its subcontractors, performing under this contract complete HHS-furnished initial and refresher security and privacy education and awareness training before being granted access to systems operated by the Contractor on behalf of HHS or access to HHS systems and networks. The Contractor shall provide documentation to the COTR evidencing that Contractor employees have completed the required training.

(f) *Government access for IT inspection.* The Contractor shall afford the Government access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, and personnel used in performance of this contract to the extent required to carry out a program of IT

inspection (to include vulnerability testing), investigation, and audit to safeguard against threats and hazards to the integrity, confidentiality, and availability, of HHS data or to the protection of information systems operated on behalf of HHS.

(g) *Subcontracts.* The Contractor shall incorporate the substance of this clause in all subcontracts that require protection of Federal information and Federal information systems as described in paragraph (a) of this clause, including those subcontracts that—

(1) Have physical or electronic access to HHS' computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, process, or exchange data with HHS or on behalf of HHS, regardless of whether the data resides on a HHS or the Contractor's information system.

(h) *Contractor employment notice.* The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment (or is no longer assigned to the HHS project under this contract), if that employee has, or had, access to HHS information systems or data.

(i) *Document information.* The Contractor shall contact the Contracting Officer for any documents, information, or forms necessary to comply with the requirements of this clause.

(j) *Contractor responsibilities upon physical completion of the contract.* The Contractor shall return all HHS information and IT resources provided to the Contractor during contract performance and certify that all HHS information has been purged from Contractor-owned systems used in contract performance.

(k) *Failure to comply.* Failure on the part of the Contractor or its subcontractors to comply with the terms of this clause shall be grounds for the Contracting Officer to terminate this contract.

(End of clause)

352.239–73 Electronic information and technology accessibility.

(a) As prescribed in *339.201–70(a),* the Contracting Officer shall insert the following provision:

Electronic and Information Technology Accessibility (October 2009)

(a) Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, and the Architectural and Transportation Barriers Compliance Board Electronic and Information (EIT) Accessibility Standards (36 CFR Part 1194), require that, unless an exception applies, all EIT products and services developed, acquired, maintained, or used by any Federal department or agency permit—

(1) Federal employees with disabilities to have access to and use information and data that is comparable to the access and use of information and data by Federal employees who are not individuals with disabilities; and

(2) Members of the public with disabilities seeking information or services from a Federal agency to have access to and use of information and data that is comparable to the access and use of information and data by members of the public who are not individuals with disabilities.

(b) Accordingly, any vendor submitting a proposal/quotation/bid in response to this solicitation must demonstrate compliance with the established EIT accessibility standards. Information about Section 508 is available at *http://www.section508.gov/.* The complete text of Section 508 Final Provisions can be accessed at *http://www.access-board.gov/sec508/provisions.htm.*

(c) The Section 508 accessibility standards applicable to this solicitation are identified in the Statement of Work/Specification/Performance Work Statement. In order to facilitate the Government's evaluation to determine whether EIT products and services proposed meet applicable Section 508 accessibility standards, offerors must prepare an HHS Section 508 Product Assessment Template, in accordance with its completion instructions, and provide a binding statement of conformance. The purpose of the template is to assist HHS acquisition and program officials in determining that EIT products and services proposed support applicable Section 508 accessibility standards. The template allows vendors or developers to self-evaluate their products or services and document in detail how they do or do not conform to a specific Section 508 accessibility standard. Instructions for preparing the HHS Section 508 Evaluation Template may be found under Section 508 policy on the HHS Office on Disability Web site (*http://www.hhs.gov/od*).

(d) Respondents to this solicitation must also provide any additional detailed information necessary for determining applicable Section 508 accessibility standards conformance, as well as for documenting EIT products or services that are incidental to the project, which would constitute an exception to Section 508 requirements. If a vendor claims its products or services, including EIT deliverables such as electronic documents and reports, meet applicable Section 508 accessibility standards in its completed HHS Section 508 Product Assessment Template, and it is later determined by the Government—*i.e.,* after award of a contract/order, that products or services delivered do not conform to the described accessibility standards in the Product Assessment Template, remediation of the products or services to the level of conformance specified in the vendor's Product Assessment Template will be the responsibility of the Contractor and at its expense.

(End of provision)

(b) As prescribed in *339.201–70(b),* the Contracting Officer shall insert the following clause:

Electronic and Information Technology Accessibility (October 2009)

(a) Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, all electronic and information technology (EIT) products and services developed, acquired, maintained, or used under this contract/order must comply with the ''Electronic and Information Technology Accessibility Provisions'' set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the ''Access Board'') in 36 CFR part 1194. Information about Section 508 is available at *http://www.section508.gov/.* The complete text of Section 508 Final Provisions can be accessed at *http://www.access-board.gov/sec508/provisions.htm.*

(b) The Section 508 accessibility standards applicable to this contract/order are identified in the Statement of Work/Specification/Performance Work Statement. The Contractor must provide a written Section 508 conformance certification due at the end of each contract/order exceeding $100,000 when the contract/order duration is one year or less. If it is determined by the Government that EIT products and services provided by the Contractor do not conform to the described accessibility standards in the Product Assessment Template, remediation of the products or services to the level of conformance specified in the Contractor's Product Assessment Template will be the responsibility of the Contractor at its own expense.

(c) In the event of a modification(s) to this contract/order, which adds new EIT products or services or revises the type of, or specifications for, products or services the Contractor is to provide, including EIT deliverables such as electronic documents and reports, the Contracting Officer may require that the contractor submit a completed HHS Section 508 Product Assessment Template to assist the Government in determining that the EIT products or services support Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found under Section 508 policy on the HHS Office on Disability Web site (*http://www.hhs.gov/od*).

(c) As prescribed in *339.201–70(c),* the Contracting Officer shall add the following paragraph to the end of clause *352.239–73(b):*

Prior to the Contracting Officer exercising an option for a subsequent performance period/additional quantity or adding funding for a subsequent performance period under this contract, as applicable, the Contractor must provide a Section 508 Annual Report to the Contracting Officer and Project Officer. Unless otherwise directed by the Contracting Officer in writing, the Contractor shall provide the cited report in accordance with the following schedule. Instructions for completing the report are available in the Section 508 policy on the HHS Office on Disability Web site under the heading Vendor Information and Documents. The Contractor's failure to submit a timely and properly completed report may jeopardize the Contracting Officer's exercising an option or adding funding, as applicable.

Schedule for Contractor Submission of Section 508 Annual Report

(To be completed by the Contracting Officer at time of contract/order award.)

352.242–70 Key personnel.

As prescribed in *342.302(c)(2),* the Contracting Officer shall insert the following clause:

Key Personnel (January 2006)

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Contractor), the Contractor shall notify the Contracting Officer and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the Government of the impact on performance under this contract. The Contractor shall not divert or otherwise replace any key personnel without the written consent of the Contracting Officer. The Government may modify the contract to add or delete key personnel at the request of the contractor or Government.

(End of clause)

352.242–71 Tobacco-free facilities.

As prescribed in *342.302(c)(3),* the Contracting Officer shall insert the following clause:

Tobacco-free Facilities (January 2006)

In accordance with Department of Health and Human Services (HHS) policy, the Contractor and its staff are prohibited from using tobacco products of any kind (*e.g.,* cigarettes, cigars, pipes, and smokeless tobacco) while on any HHS property, including use in personal or company vehicles operated by Contractor employees while on an HHS property. This policy also applies to all subcontracts awarded under the contract or order. The term ''HHS properties'' includes all properties owned, controlled and/or leased by HHS when totally occupied by HHS, including all indoor and outdoor areas of such properties. Where HHS only partially occupies such properties, it includes all HHS-occupied interior space. Where HHS leases space in a multi-occupant building or complex, the tobacco-free HHS policy will apply to the maximum area permitted by both law and current lease agreements. The Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understand, and comply with this policy.

(End of clause)

352.242–72 Native American Graves Protection and Repatriation Act.

As prescribed in *342.302(c)(4),* the Contracting Officer shall insert the following clause:

Native American Graves Protection and Repatriation Act (January 2006)

(a) Public Law 101–601, dated November 16, 1990, also known as the *Native American Graves Protection and Repatriation Act* (Act), imposes certain responsibilities on individuals and organizations when they discover Native American cultural items (including human remains) on Federal or Tribal lands.

(b) In the event the Contractor discovers Native American cultural items (including human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony), as defined in the Act during contract performance, the Contractor shall—

(i) Immediately cease activity in the area of the discovery;

(ii) Notify the Contracting Officer of the discovery; and

(iii) Make a reasonable effort to protect the items discovered before resuming such activity. Upon receipt of the Contractor's discovery notice, the Contracting Officer will notify the appropriate authorities as required by the Act.

(c) Unless otherwise specified by the Contracting Officer, the Contractor may resume activity in the area on the 31st calendar day following the date that the appropriate authorities certify receipt of the discovery notice. The Contracting Officer shall provide to the Contractor the date that the appropriate authorities certify receipt of the discovery notice and the date on which the Contractor may resume activities.

(End of clause)

352.242–73 Withholding of contract payments.

As prescribed in *342.7003–1(a),* the Contracting Officer shall insert the following clause:

Withholding of Contract Payments (January 2006)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, may result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled ''Excusable Delays'' or ''Default,'' as applicable. The Government will immediately notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.242–74 Final decisions on audit findings.

As prescribed in *342.7003–1(b),* the Contracting Officer shall insert the following clause:

Final Decisions on Audit Findings (April 1984)

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer is the individual authorized to make such decisions.

(End of clause)

352.270–1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in *370.102,* the Contracting Officer shall insert the following clause:

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (January 2001)

The Contractor agrees as follows:

(a) *Planning.* The Contractor shall develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth in 28 CFR 36.101–36.500 and Appendix A: ADA Accessibility Guidelines (ADAAG). The Contractor shall submit the plan to the Contracting Officer's Technical Representative for approval prior to initiating action. (The Contractor may submit a consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars in lieu of separate plans.)

(b) *Facilities.* Any facility the Contractor intends to utilize for meetings, conferences, or seminars in performance of this contract shall be in compliance with 28 CFR 36.101–36.500 and Appendix A. The Contractor shall determine, by an on-site inspection, that the facility meets these requirements. (1) *Parking.* Parking shall be in compliance with 228 CFR 36.101–36.500 and Appendix A.

(2) *Entrances.* Entrances shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(3) *Meeting Rooms.* Meeting rooms, including seating arrangements, shall be in compliance with 28 CFR 36.101–36.500 and Appendix A. In addition, stages, speaker platforms, *etc.* which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramp may not necessarily be independently negotiable if space does not permit. However, the Contracting Officer's Technical Representative must approve any slope over 1:12, and the Contractor must provide assistance to negotiate access to the stage or platform.

(4) *Restrooms.* Restrooms shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(5) *Eating Facilities.* Eating facilities in the meeting facility must also comply with 28 CFR 36.101–36.500 and Appendix A.

(6) *Overnight Facilities.* If overnight accommodations are required, the facility providing the overnight accommodations shall also comply with 28 CFR 36.101–36.500 and Appendix A.

(7) *Water Fountains.* Water fountains shall comply with 28 CFR 36.101–36.500 and Appendix A.

(8) *Telephones.* Public telephones shall comply with 28 CFR 36.101–36.500 and Appendix A.

(c) Provisions of Services for Attendees with Sensory Impairments.

(1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to persons with sensory impairments attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that persons with sensory impairments may contact a specific person(s), at a specific address and phone

number(s), to make their service requirements known. The phone number(s) shall include a telecommunication device for the deaf (TDD).

(2) The Contractor shall provide, at no additional cost to the individual, those services required by persons with sensory impairments to ensure their complete participation in the meeting, conference, or seminar.

(3) At a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For persons with hearing impairments, qualified interpreters. Also, the meeting rooms shall be adequately illuminated so signing by interpreters can be easily seen.

(ii) For persons with vision impairments, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms shall be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for persons with sensory impairments. Readers, Braille translations, large print text, and/or tape recordings are all acceptable. These materials shall be available to individuals with sensory impairments upon their arrival.

(4) The Contractor shall make a reasonable effort to ascertain the number of individuals with sensory impairments who plan to attend the meeting, conference, or seminar. However, if the Contractor can determine that there will be no person with sensory impairment in attendance, the provision of those services under paragraph (c) of this clause for the non-represented group, or groups, is not required.

(End of clause)

352.270–2 Indian preference.

As prescribed in *370.202(a),* the Contracting Officer shall insert the following clause:

Indian Preference (April 1984)

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or Tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or Tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, the Contractor may satisfy those needs by selecting persons other than Indians in accordance with the clause of this contract entitled ''Equal Opportunity.''

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; women-owned small businesses; or small disadvantaged businesses.

(e) As used in this clause,

(1) ''Indian'' means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within 30 days from the Tribe concerned that the person is a member of the Tribe.

(2) ''Indian Tribe'' means an Indian Tribe, pueblo, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) ''Indian organization'' means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(4) ''Indian-owned economic enterprise'' means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active operation and control of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f) of this clause, in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–3 Indian preference program.

As prescribed in *370.202(b),* the Contracting Officer shall insert the following clause:

Indian Preference Program (January 2006)

(a) In addition to the requirements of the clause of this contract entitled ''Indian Preference,'' the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive preference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall perform the following:

(1) Designate a liaison officer who will maintain liaison with the Government and the Tribe(s) on Indian preference matters; supervise compliance with the provisions of this clause; and administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than 20 calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including—

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms;

(ii) A statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93–638 [88 Stat. 2205; 25 U.S.C. 450e(b)];

(iii) Definitions for the terms ''Indian organization'' and ''Indian-owned economic enterprise'' as prescribed under the ''Indian Preference'' clause of this contract;

(iv) A statement to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and

(v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian organizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract. If one or more responsible bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. If the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract.

(5) Maintain written records under this contract which indicate—

(i) The numbers of Indians seeking employment for each employment position available under this contract;

(ii) The number and types of positions filled by Indians and non-Indians;

(iii) The total number of Indians employed under this contract;

(iv) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected;

(v) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;

(vi) Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and

(vii) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government for one year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms ''Indian,'' ''Indian Tribe,'' ''Indian Organization,'' and ''Indian-owned economic enterprise'' are defined in the clause of this contract entitled ''Indian Preference.''

(2) ''Indian reservation'' includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the *Alaska Native Claims Settlement Act* (85 Stat. 688; 43 U.S.C. 1601 *et seq.*)

(3) ''On or near an Indian Reservation'' means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–4 Protection of human subjects.

(a) As prescribed in *370.303(a)*, the Contracting Officer shall insert the following provision:

Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects (January 2006)

(a) Copies of the Department of Health and Human Services (HHS) regulations for the protection of human subjects, 45 CFR Part 46, are available from the Office for Human Research Protections (OHRP), Bethesda, Maryland 20892. The regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of individuals who participate as subjects in research activities supported or conducted by HHS.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

(c) Activities in which the only involvement of human subjects will be in one or more of the categories set forth in 45 CFR 46.101(b)(1–6) are exempt from coverage.

(d) Inappropriate designations of the noninvolvement of human subjects or of exempt categories of research in a project may result in delays in the review of a proposal. The Government's Project Officer will make a final determination of whether the proposed activities are covered by the regulations or are in an exempt category, based on the information provided in the proposal. In doubtful cases, the Project Officer will consult with OHRP.

(e) In accordance with 45 CFR Part 46, offerors being considered for award shall file with OHRP an acceptable Assurance of Compliance with the regulations, specifying review procedures and assigning responsibilities for the protection of human subjects. The initial and continuing review of a research project by an institutional review board shall ensure that: the rights and welfare of the human subjects involved are adequately protected; the risks to the subjects are reasonable in relation to both the potential benefits, if any, to the subjects and the importance of the knowledge to be gained; and informed consent will be obtained by methods that are adequate and appropriate. HHS regulations for the protection of human subjects (45 CFR Part 46), information regarding OHRP registration and assurance requirements/processes, and OHRP contact information can be accessed at the OHRP Web site (at *http://www.hhs.gov/ohrp/*).

(f) Offerors may consult with OHRP for advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects.

(End of provision)

(b) As prescribed in *370.304(a)*, the Contracting Officer shall insert the following clause:

Protection of Human Subjects (January 2006)

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR Part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Human Research Protections (OHRP), Department of Health and Human Services. The Contractor further agrees to provide certification at least annually that the Institutional Review Board has reviewed and approved the procedures, which involve human subjects in accordance with 45 CFR Part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract and shall ensure that work is conducted in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all

work under this contract. The Contractor shall not deem anything in this contract to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(c) If at any time during the performance of this contract, the Contracting Officer determines, in consultation with OHRP that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (b) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. The Contracting Officer may communicate the notice of suspension by telephone with confirmation in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, after consultation with OHRP, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved Human Subject Assurances.

(End of clause)

352.270–5 Care of laboratory animals.

(a) As prescribed in *370.403(a)*, the Contracting Officer shall insert the following provision:

Notice to Offerors of Requirement for Compliance With the Public Health Service Policy on Humane Care and Use of Laboratory Animals (January 2006)

The Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (PHS Policy) establishes a number of requirements for research activities involving animals. Before award may be made to an applicant organization, the organization shall file, with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), a written Animal Welfare Assurance (Assurance) which commits the organization to comply with the provisions of the PHS Policy, the Animal Welfare Act, and the Guide for the Care and Use of Laboratory Animals (National Academy Press, Washington, DC). In accordance with the PHS Policy, applicant organizations must establish an Institutional Animal Care & Use Committee (IACUC), qualified through the experience and expertise of its members, to oversee the institution's animal program, facilities and procedures. Applicant organizations are required to provide verification of IACUC approval prior to release of an award involving live vertebrate animals. No award involving the use of animals shall be made unless OLAW approves the Assurance and verification of IACUC approval for the proposed animal activities has been provided to the Contracting Officer. Prior to award, the Contracting Officer will notify Contractor(s) selected for projects that involve live vertebrate animals that an Assurance and verification of IACUC approval are required. The Contracting Officer will request that OLAW negotiate an acceptable Assurance with those Contractor(s) and request verification of IACUC approval. For further information, contact OLAW at NIH, 6705 Rockledge Drive, RKL1, Suite 360, MSC 7982 Bethesda, Maryland 20892–7982 (E-mail: *olaw@od.nih.gov*; Phone: 301–496–7163).

(End of provision)

(b) As prescribed in *370.404*, the Contracting Officer shall insert the following clause:

Care of Live Vertebrate Animals (October 2009)

(a) Before undertaking performance of any contract involving animal-related activities where the species is regulated by USDA, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2136 and 9 CFR sections 2.25 through 2.28. The Contractor shall furnish evidence of the registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR Sections 2.1–2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care, use and intended use of any live vertebrate animals in the performance of this contract shall conform with the Public Health Service (PHS) Policy on Humane Care of Use of Laboratory Animals (PHS Policy), the current Animal Welfare Assurance (Assurance), the Guide for the Care and Use of Laboratory Animals (National Academy Press, Washington, DC) and the pertinent laws and regulations of the United States Department of Agriculture (*see* 7 U.S.C. 2131 *et seq.* and 9 CFR Subchapter A, Parts 1–4). In case of conflict between standards, the more stringent standard shall govern.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office of Laboratory Animal Welfare (OLAW), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and standards stated in paragraphs (a) through (c) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OLAW, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved Assurances.

Note: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737 (E-mail: *ace@aphis.usda.gov*; Web site: (*http://www.aphis.usda.gov/animal_welfare*).

(End of clause)

352.270–6 Restriction on use of human subjects.

As prescribed in *370–304(b)*, the Contracting Officer shall insert the following clause:

Restriction on Use of Human Subjects (January 2006)

Pursuant to 45 CFR part 46, *Protection of Human Research Subjects*, the Contractor shall not expend funds under this award for research involving human subjects or engage in any human subjects research activity prior to the Contracting Officer's receipt of a certification that the research has been reviewed and approved by the Institutional Review Board (IRB) designated under the Contractor's Federal-wide assurance of compliance. This restriction applies to all collaborating sites, whether domestic or foreign, and subcontractors. The Contractor must ensure compliance by collaborators and subcontractors.

(End of clause)

352.270–7 Conference sponsorship request and conference materials disclaimer.

As prescribed in *370.602*, the Contracting Officer shall insert the following clause:

Conference Sponsorship Request and Conference Materials Disclaimer (October 2009)

(a) If HHS is not the sole provider of funding under this conference contract, then prior to the Contractor claiming HHS conference sponsorship, the Contractor shall submit a written request (including rationale) to the Contracting Officer for permission to claim such HHS sponsorship.

(b) Whether or not HHS is the conference sponsor, the Contractor shall include the following statement on conference materials, including promotional materials, agendas, and Web sites:

''This conference was funded, in whole or in part, through a contract (insert contract number) with the Department of Health and Human Services (HHS) (insert name of OPDIV/STAFFDIV). The views expressed in written conference materials and by speakers and moderators at this conference, do not necessarily reflect the official policies of HHS, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.''

(c) Unless authorized by the Contracting Officer's Technical Representative, the Contractor shall not display the HHS logo on any conference materials.

(End of clause)

352.270–8 Prostitution and related activities.

As prescribed in *370.701*, the Contracting Officer shall insert the following clause:

Prostitution and Related Activities (October 2009)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing and contribute to the phenomenon of trafficking in persons.

(b) Neither the Contractor nor any subcontractor(s) shall use Government funds provided under this contract to promote or advocate the legalization or practice of prostitution or sex trafficking. (**Note:** The term ''contract'' includes ''order'' wherever it appears in this clause.) The Contractor shall not construe anything in the preceding sentence to preclude providing individuals with palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(c) The Government does not require the Contractor to endorse or utilize a multisectoral approach to combating HIV/AIDS, or endorse, utilize, or participate in a prevention method or treatment program to which it has a religious or moral objection. Any information the Contractor provides about the use of condoms as part of projects or activities that are funded in connection with this contract shall be medically accurate and shall include the public health benefits and failure rates of such use.

(d) In addition, the Contractor shall have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (*i.e.*, the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency), or to any contractors that are awarded ''specified types of commercial contracts'' as set forth below.

(e) The following definitions apply for purposes of this clause:

(1) ''Commercial sex act'' means any sex act on account of which anything of value is given to or received by any person.

(2) ''Prostitution'' means procuring or providing any commercial sex act.

(3) ''Sex trafficking'' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act [22 U.S.C. 7102(9)].

(4) ''Specified types of commercial contracts'' means contracts awarded for commercial items and services as defined in Federal Acquisition Regulation (FAR) 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding. Notwithstanding the preceding definition of ''specified types of commercial contracts,'' contracts for the purposes specified in paragraphs (e)(4)(i) through (iii) of this clause, that are awarded to implement HIV/AIDS programs, require that the Contractor have a policy explicitly opposing prostitution and sex trafficking—

(i) Supplies or services provided directly to the final populations receiving such supplies or services in host countries;

(ii) Technical assistance and training furnished directly to host country individuals or entities for the provision of supplies or services to the final populations receiving such supplies and services; or

(iii) The types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in paragraphs (e)(4)(i) and (ii) of this clause, or making decisions or functioning in a recipient's chain of command (*e.g.,* providing managerial or supervisory services; approving financial transactions, personnel actions, *etc.*).

(f) The Contractor must have and maintain ''objective integrity and independence'' from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. HHS will consider the Contractor to have objective integrity and independence from such an organization if the—

(1) Organization is a legally separate entity;

(2) Organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize activities inconsistent with a policy opposing prostitution and sex trafficking; and

(3) Contractor is physically and financially separate from the organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis, and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one factor below will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(i) The existence of separate personnel, management, and governance.

(ii) The existence of separate accounts, accounting records, and timekeeping records.

(iii) The degree of separation from facilities, equipment, and supplies used by the organization to conduct activities inconsistent with a policy opposing prostitution and sex trafficking, and the extent of such activities by the organization.

(iv) The extent to which—

(A) Signs and other forms of identification that distinguish the Contractor from the organization are present, and

(B) Signs and materials that could be associated with the organization or activities inconsistent with a policy opposing prostitution and sex trafficking are absent.

(v) The extent to which the U.S. Government, HHS, and the project name are protected from public association with an organization and its activities that are inconsistent with a policy opposing prostitution and sex trafficking in materials, such as publications, conferences, and press or public statements.

(g) The Contractor shall include, as express terms and conditions, the applicable provisions of this clause in all subcontract solicitations and subcontracts awarded under this contract. The Contractor agrees that HHS may, at any reasonable time, inspect the documents and materials the Contractor maintains or prepares in the usual course of its operations that relate to the Contractor's compliance with this clause.

(h) As a prerequisite to award and payment of any Government funds under this contract, the Contractor shall certify compliance with this clause for the performance period funded by the contract. The Contractor shall provide the three following compliance certifications in a written statement addressed to the Contracting Officer:

(1) Organizational Integrity Certification:

''I certify that (*insert Contractor's name*), which will be the recipient of Government funds made available through this contract, has objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.''

(2) Subcontractor Compliance Certification:

''I certify that (*insert Contractor's name*) will include the Organizational Integrity certification in any subcontract awarded under this contract and will require such subcontractor to provide the same certification that the Contractor provided.''

(3) Acknowledgment Certification:

''I certify that (*insert Contractor's name*) acknowledges that these certifications are a prerequisite to receipt of Government funds in connection with this contract, and that any violation of these certifications by the Contractor or subcontractor(s) at any level shall be grounds for termination of the contract by HHS in accordance with the Federal Acquisition Regulation, Part 49, as well as any other remedies provided by law.''

Note: In the case of existing contracts, the Contracting Officer shall add the certification requirements whenever the contract is modified to extend the period of performance or add funds, including any options that may be exercised. In so doing, the Contracting Officer shall delete in paragraph (h) the language ''As a prerequisite to award and payment of any Government funds under this contract,'' and replace it with: ''As a prerequisite to continuation of this contract and payment of any Government funds under it,''.

(i) A person(s) authorized to bind the Contractor and any subcontractor(s) shall execute the certifications. The Contractor shall provide its certifications to the Contracting Officer. A subcontractor(s) shall provide its certifications to the Contractor. The Contracting Officer may request that the Contractor provide any subcontractor certifications. In addition, the Contractor and any subcontractors shall provide *renewed* certifications for any modification that extends the contract period of performance or adds funds to the contract, including any options that may be exercised.

(j) This clause does not affect the applicability of the FAR clause at 52.222–50 entitled, ''Combating Trafficking in Persons.''

(End of clause)

352.270–9 Non-discrimination for conscience.

As prescribed in *370.702,* the Contracting Officer shall insert the following provision:

Non-discrimination for Conscience (October 2009)

(a) Section 301(d) of the *United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act, as amended,* provides that an organization, including a faith-based organization, that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961, under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, or under any amendment to the foregoing Acts for HIV/AIDS prevention, treatment, or care—

(1) Shall not be required, as a condition of receiving such assistance, to—

(i) Endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or

(ii) Endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.

(2) Shall not be discriminated against under the provisions of law in subparagraph (a) for refusing to meet any requirement described in paragraph (a)(1) in this solicitation.

(b) Accordingly, an offeror who believes this solicitation contains work requirements that would require it to endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS, or to endorse, utilize, make referral to, become integrated with, or otherwise participate in a program or activity to which it has a religious or moral objection, shall identify those work requirements it has excluded in its technical proposal.

(c) The Government acknowledges that an offeror has specific rights, as cited in paragraph (b) of this provision, to exclude certain work requirements in this solicitation from its proposal. However, the Government reserves the right to not make an award to an offeror whose proposal does not comply with the salient work requirements of the solicitation. Any exercise of that Government right will be made by the Head of the Contracting Activity.

(End of provision)

PART 353—FORMS

Subpart 353.3—Illustrations of Forms

Sec.

353.370–674 Form HHS 674, Structured Approach Profit/Fee Objective.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 353.3—Illustrations of Forms

353.370–674 Form HHS 674, Structured Approach Profit/Fee Objective.

This form is available from local cost advisory personnel or PSC.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

SUBCHAPTERS I THROUGH L [RESERVED]

PARTS 354 THROUGH 369 [RESERVED]

SUBCHAPTER M—HHS SUPPLEMENTATIONS

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

Sec.

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370.701 Contract clause.
370.702 Solicitation provision.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

370.101 Policy.

(a) It is HHS policy that all meetings, conferences, and seminars be accessible to persons with disabilities. For the purpose of this policy, accessibility is defined as both physical access to meeting, conference, and seminar sites, and aids and services to enable individuals with sensory disabilities to fully participate in meetings, conferences, and seminars.

(b) In regard to acquisition, the policy is applicable to all contracts where the SOW/PWS requires the contractor to conduct meetings, conferences, or seminars that are open to the public or involve HHS personnel, but not to ad hoc meetings that may be necessary or incidental to contract performance.

370.102 Responsibilities.

(a) The Contracting Officer shall insert the clause in 352.270–1, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in solicitations, contracts, and orders when the SOW/PWS requires the contractor to conduct meetings, conferences, or seminars in accordance with 370.101(b).

(b) The COTR shall obtain, review, and approve the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause in 352.270–1. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars is acceptable. The COTR, prior to approving the plan, shall consult with the OPDIV or other designated organization responsible for monitoring compliance with the Architectural Barriers Act of 1968 and the Americans with Disabilities Act of 1990, to ensure that the contractor's plan meets the accessibility requirements of the contract clause. The COTR shall request the responsible organization to review, and determine the adequacy of, the contractor's plan, and respond to the COTR, in writing, within 10 working days of receiving the request from the COTR.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b), requires:

''Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such

contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).''

370.202 Applicability.

The Indian Preference clause set forth in *352.270–2* and the Indian Preference Program clause set forth in *352.270–3* implement section 7(b) of Public Law 93–638 for all HHS activities. Contracting activities shall use the clauses as follows, except that solicitations issued and contracts awarded pursuant to Title I of Public Law 93–638 (25 U.S.C. 450 *et seq.*) are exempted:

(a) The Contracting Officer shall insert the clause in *352.270–2,* Indian Preference, in solicitations, contracts, and orders when—

(1) The award is (or will be) made pursuant to an act specifically authorizing such awards with Indian organizations; or

(2) The work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The Contracting Officer shall insert the clause in *352.270–3,* Indian Preference Program, in solicitations, contracts, and orders when—

(1) The dollar amount of the acquisition is expected to equal or exceed $50,000 for nonconstruction work or $100,000 for construction work;

(2) The Indian Preference clause is included in the solicitation, contract, or order; and

(3) The Contracting Officer makes the determination, prior to solicitation, that performance will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the Contracting Officer may insert the Indian Preference Program clause in solicitations, contracts, and orders below the $50,000 or $100,000 level for nonconstruction or construction contracts, respectively, but which meet the requirements of paragraphs (b)(2) and (3) of this section *370.202,* and, in the opinion of the Contracting Officer, offer substantial opportunities for Indian employment, training, and subcontracting.

370.203 Definitions.

For purposes of this Subpart *370.2,* the following definitions shall apply:

(a) *Indian* means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual to provide evidence within 30 days from the Tribe concerned that the person is a member of the Tribe.

(b) *Indian Tribe* means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) *Indian organization* means the governing body of any Indian Tribe, or entity established or recognized by such governing body, in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451).

(d) *Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and the ownership shall encompass active operation and control of the enterprise.

(e) *Indian reservation* includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*)

(f) *On or near an Indian Reservation* means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

370.204 Compliance enforcement.

(a) The contracting activity shall conduct periodic reviews to ensure contractor compliance with the requirements of the clauses in *352.270–2* and *352.270–3.* The Indian Tribe(s) concerned may assist in the conduct of these reviews.

(b) The Contracting Officer shall promptly investigate and resolve complaints of noncompliance with the requirements of the clauses in *352.270–2* and *352.270–3* that are filed in writing with the contracting activity.

370.205 Tribal preference requirements.

(a) When the contractor will perform work under a contract on an Indian reservation, the Contracting Officer may supplement the clause in *352.270–3* by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The contracting activity and the Tribe shall jointly develop supplemental requirements for the contract. Supplemental preference requirements shall represent a further implementation of the requirements of section 7(b) of Public Law 93–638 and require the approval of the affected program director and OGC–GLD, or a regional attorney, before the Contracting Officer adds them to a solicitation and resultant contract. Any supplemental preference requirements the Contracting Officer adds to the clause in *352.270–3* shall also be part of the solicitation and clearly identified, to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in this part shall preclude tribes from independently developing and enforcing their own Tribal preference requirements. Such independently developed Tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this *370.2,* and shall not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

Subpart 370.3—Acquisitions Involving Human Subjects

370.300 Scope of subpart.

This subpart applies to all R & D activities involving human subjects conducted under contract—*see* 45 CFR 46.102(d) and (f).

370.301 Policy.

It is HHS policy that the Contracting Officer shall not award a contract involving human subjects until a prospective contractor has provided acceptable assurance that the activity will be subject to initial and continuing review by an appropriate Institutional Review Board (IRB) as described in HHS regulations at 45 CFR 46.103. The Contracting Officer shall require an applicable Federal-wide assurance (FWA), approved by the HHS Office for Human Research Protections (OHRP), of each contractor, subcontractor, or cooperating institution having responsibility for human subjects involved in performance of a contract. OHRP is responsible for negotiating assurances covering all HHS-supported or HHS-conducted activities involving human subjects. OHRP shall provide

guidance to Contracting Officers regarding non-award or termination of a contract due to inadequate assurance or breach of assurance for protection of human subjects.

370.302 Types of assurances.

(a) If an institution does not currently hold an FWA, it should submit one. An FWA listed in OHRP's current ''List of Registered Institutional Review Boards (IRBs)/Independent Ethics Committees (IECs) and Approved Assurances'' is acceptable for the purposes of this policy.

(b) The OHRP Web site includes links to instructions and the forms for submitting both a domestic and international FWA at: *http://www.hhs.gov/ohrp/assurances/assurances_index.html.* To expedite approval of a FWA, as well as any update/renewal, the institution shall use the OHRP Electronic Submission System. Once the institution ''submits'' an electronic file to OHRP, the institution must fax or mail (but not both) a copy of the signature page to initiate the review process. The institution shall mail the FWA to the OHRP, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, or fax it to OHRP at 240–453–8202 (but not both).

370.303 Notice to offerors.

(a) The Contracting Officer shall insert the provision in *352.270–4(a),* Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects, in solicitations that involve human subjects.

(b) Institutions having an OHRP-approved FWA shall certify IRB approval of submitted proposals in the manner required by instructions for completion of the contract proposal; by completion of an OMB Form No. 0990–0263, ''Protection of Human Subjects Assurance Identification/IRB Certification/Declaration of Exemption (Common Rule); or by letter indicating the institution's OHRP-assigned FWA number, the date of IRB review and approval, and the type of review (convened or expedited). The date of IRB approval must not be more than 12 months prior to the deadline for proposal submission.

(c) The Contracting Officer generally will not request FWAs for contractors, subcontractors, or cooperating institutions prior to determination that a contract proposal has been selected for negotiation. When a contractor submits an FWA, it provides certification for the initial contract period. No additional documentation is required. If the contract provides for additional years to complete the project, the contractor shall certify the noncompetitive renewal proposal in the manner described in the preceding paragraph.

370.304 Contract clauses.

(a) The Contracting Officer shall insert the clause in *352.270–4(b),* Protection of Human Subjects, in solicitations, contracts, and orders that involve human subjects.

(b) The Contracting Officer shall insert the clause in *352.270–6,* Restriction on Use of Human Subjects, in contracts and orders if the contractor has an approved Federal-wide assurance of compliance in place, but cannot certify prior to award that the research has been reviewed and approved by the IRB designated under the contractor's Federal-wide assurance of compliance, because definite plans for involvement of human subjects are not set forth in the proposal (*e.g.,* projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds). Under these conditions, the Contracting Officer may make the award without the requisite certification, as long as the Contracting Officer includes appropriate conditions in the contract or order.

Subpart 370.4—Acquisitions Involving the Use of Laboratory Animals

370.400 Scope of subpart.

This subpart applies to all R & D, research training, and biological testing activities involving live vertebrate animals conducted under contract (*see Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), Rev. 1986, Repr. 1996*).

370.401 Policy.

(a) It is HHS policy that contracting activities shall not award a contract involving live vertebrate animals until the contractor has given acceptable assurance that the work under the contract will be subject to initial and continuing review by an appropriate Institutional Animal Care and Use Committee (IACUC) as described in the PHS Policy at IV.B.6. and 7. The Contracting Officer shall require an applicable Full Animal Welfare Assurance or Inter-institutional Agreement/Assurance, approved by the Office of Laboratory Animal Welfare (OLAW), NIH, of each contractor, subcontractor, or cooperating institution having responsibility for animal care and use involved in performance of the contract—*see* PHS Policy II., IV.A., and V.B.

(b) The OLAW, NIH, is responsible for negotiating assurances covering all HHS/PHS-supported or HHS/PHS-conducted activities involving the care and use of live vertebrate animals. OLAW shall provide guidance to Contracting Officers regarding adequate animal care, and use, approval, disapproval, restriction, or withdrawal of approval of assurances—*see* PHS Policy V.A.

370.402 Assurances.

(a) Assurances may be one of two following types:

(1) *Full Animal Welfare Assurance (AWA).* An AWA describes the institution's complete program for the care and use of animals, including but not limited to the facilities, occupational health, training, veterinary care, IACUC procedures and lines of authority and responsibility. An AWA listed in OLAW's list of institutions which have an approved full AWA is acceptable for purposes of this policy.

(2) *Inter-institutional Agreement/Assurance (IAA).* An IAA describes the arrangements between an offeror and usually a subcontractor where animal activities will occur. An IAA is limited to the specific award or single project.

(b) The Contracting Officer shall forward copies of proposals selected for negotiation and requiring an assurance to the Assurance Branch, Office of Laboratory Animal Welfare, NIH MSC 7507, 6100 Executive Blvd., Room 3B01, Rockville, Maryland 20892, as early as possible to secure the necessary assurances.

(c) A contractor providing animal care services at an assured entity, such as a Government-owned, contractor-operated (GOCO) site, does not need a separate assurance. GOCO site assurances normally cover such contractor services.

370.403 Notice to offerors.

(a) The Contracting Officer shall insert the provision in *352.270–5(a),* Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals, in solicitations that involve vertebrate animals.

(b) Offerors having a full AWA on file with OLAW shall submit IACUC approval of the use of animals in the manner required by instructions for completion of the contract proposal, but prior to the technical review of the proposal. The date of IACUC approval must not be more than 36 months prior to the deadline for proposal submission.

(c) It is not necessary for non-assured offerors to submit assurances or IACUC approval with proposals. OLAW shall contact contractors, subcontractors and

cooperating institutions to negotiate necessary assurances and verify IACUC approvals when requested by the Contracting Officer.

370.404 Contract clause.

The Contracting Officer shall insert the clause in *352.270–5(b),* Care of Live Vertebrate Animals, in solicitations, contracts, and orders that involve vertebrate animals.

Subpart 370.5—Acquisitions Under the Buy Indian Act

370.500 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Buy Indian Act. This subpart applies only to acquisitions made by or on behalf of IHS.

370.501 Policy.

(a) The IHS shall utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act, 25 U.S.C. 47, prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As specified in 25 U.S.C. 47, the Buy Indian Act provides that, so far as may be practicable, Indian labor shall be employed, and purchases of the products (including, but not limited to printing, notwithstanding any other law) of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) Due to the transfer of authority from the Department of the Interior to HHS, the Secretary of HHS is authorized to use the Buy Indian Act in the acquisition of products of Indian industry, in connection with the maintenance and operation of hospital and health facilities for Indians, and for the conservation of the health of Indians. This authority has been delegated exclusively to IHS and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of IHS). However, the Buy Indian Act itself does not exempt IHS from meeting the statutorily mandated small business goals.

(c) Subsequent legislation, particularly Public Law 94–437 and Public Law 96–537, have emphasized the use of the Buy Indian Act negotiation authority.

370.502 Definitions.

(a) *Buy Indian contract* means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c) and 25 U.S.C. 47 between an Indian firm and a Contracting Officer representing IHS.

(b) *Indian* means a member of any Tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of HHS. The Secretary of HHS in making determinations may take into account the determination of the Tribe with which affiliation is claimed.

(c) *Indian firm* means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Public Law 94–437, former or currently Federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (*see 370.503(a)*).

(d) *Product of Indian industry* means anything produced by Indians through either physical labor or intellectual effort involving the use and application of their skills.

370.503 Requirements.

(a) *Indian ownership.* The degree of Indian ownership of an Indian firm shall be at least 51 percent during the period covered by a Buy Indian contract.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the Contracting Officer shall approve the joint venture prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, the Miller Act (40 U.S.C. 270a–270f) and *FAR part 28* require performance and payment bonds. Bonds are not required in the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian Tribe. However, bonds are required when dealing with private business entities that are owned by an Indian Tribe or members of an Indian Tribe. The Contracting Officer may require bonds of private business entities that are joint ventures with, or subcontractors of, an Indian Tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian Tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act 25 U.S.C. 450e, which requires that preference be given to Indians in employment, training, and subcontracting. The Contracting Officer shall include the Indian Preference clause specified in 352.270–2 in all Buy Indian solicitations and resultant contracts. The Contracting Officer shall use the Indian Preference Program clause specified in 352.270–3 as prescribed in 370.202(b). The Contracting Officer shall follow all requirements specified in subpart 370.2 which are applicable to a Buy Indian acquisition (*e.g.,* sections 370.204 and 370.205).

(e) *Subcontracting.* A contractor shall not subcontract to other than Indian firms more than 50 percent of the work under a prime contract awarded pursuant to the Buy Indian Act. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* The Contracting Officer shall include a determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a) in all contracts awarded under the Buy Indian Act for over $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian Tribe. The Contracting Officer shall include the wage rate determination in contracts with private business entities, even if they are owned by an Indian Tribe or a member of an Indian Tribe and in connection with joint ventures with, or subcontractors of, an Indian Tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian Tribe.

370.504 Competition.

(a) Contracts awarded under the Buy Indian Act are subject to competition among Indians or Indian concerns to the maximum extent practicable. When the Contracting Officer determines that competition is not practicable, a JOFOC is required in accordance with *306.303*.

(b) The Contracting Officer shall: synopsize and publicize solicitations in FedBizOpps and provide copies of the synopses to the Tribal office of the Indian Tribal government directly concerned with the proposed

acquisition as well as to Indian concerns and others having a legitimate interest. The synopses shall state that the acquisitions are restricted to Indian firms under the Buy Indian Act.

370.505 Responsibility determinations.

(a) The Contracting Officer may award a contract under the Buy Indian Act only if the Contracting Officer determines that the project or function to be contracted is likely to be: satisfactorily performed under that contract; and properly completed or maintained under that contract.

(b) The Contracting Officer shall make the determination specified in paragraph (a) of this section in writing prior to the award of a contract. The determination shall reflect an analysis of the standards set forth in *FAR 9.104–1*.

Subpart 370.6—Conference Funding and Sponsorship

370.600 Policy.

It is HHS policy that the conferences it funds or sponsors shall: be consistent with HHS missions, objectives, and policies; represent an efficient and effective use of taxpayer funds; and be able to withstand public scrutiny.

370.601 Funding and sponsorship.

Funding a conference through an HHS contract does not automatically imply HHS (OPDIV/STAFFDIV) conference sponsorship, unless the conference is funded entirely by HHS. Also, HHS staff attendance or participation at a conference does not imply HHS conference sponsorship. Accordingly, for other than conference contracts funded entirely by HHS, prior to a contractor claiming HHS conference sponsorship, the contractor must provide to the Contracting Officer a written request for permission to claim HHS as the conference sponsor—*see 370.602*. The OPDIV/STAFFDIV head, or designee, shall approve such requests.

370.602 Contract clause.

To ensure that a contractor:

(a) Properly requests approval to claim HHS as the conference sponsor, where HHS is not the sole provider of conference funding; and

(b) Includes an appropriate Federal funding disclosure and content disclaimer statement on conference materials, the Contracting Officer shall include the clause in *352.270–7,* Conference Sponsorship Request and Conference Materials Disclaimer, in solicitations, contracts, and orders that provide funding, in whole or in part, to support a conference.

Subpart 370.7—Acquisitions Under the Leadership Act

370.700 Scope of subpart.

This subpart sets forth the acquisition requirements regarding implementation of HIV/AIDS programs under the President's Emergency Plan for AIDS Relief under the Leadership Act of 2003, and under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Emergency Plan reauthorization legislation), which was signed by the President on July 30, 2008.

370.701 Contract clause.

The Contracting Officer shall insert the clause in *352.270–8,* Prostitution and Related Activities, in solicitations, contracts, and orders, and in existing contracts and orders (whenever they are modified to extend the period of performance or add funds, including any options that may be exercised): in connection with the implementation of HIV/AIDS programs under the President's Emergency Plan for AIDS Relief; or where the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003. (*Note: See 370.702* and *352.270–9* for the ''Non-discrimination for Conscience'' provision that must also be included in applicable solicitations.) In resolving any issues/complaints that offerors/contractors may raise about meeting the requirements specified in the clause, the Contracting Officer shall consult with the Office of Global Health Affairs, Office of the General Counsel, the Project Officer, and other HHS officials, as appropriate.

370.702 Solicitation provision.

The Contracting Officer shall insert the provision in *352.270–9,* Non-discrimination for Conscience, in solicitations valued at more than the micro-purchase threshold: in connection with the implementation of HIV/AIDS programs under the President's Emergency Plan for AIDS Relief; or where the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003. (*Note: See 370.701* and *352.270–8* for the ''Prostitution and Related Activities'' clause that must also be included in applicable solicitations, contracts, and orders.) In resolving any issues/complaints that offerors may raise about meeting the requirements specified in the provision, the Contracting Officer shall consult with the Office of Global Health Affairs, Office of the General Counsel, the Project Officer, and other HHS officials, as appropriate.

Dated: September 28, 2009.

E.J. Holland, Jr.

Assistant Secretary for Administration and Management, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. E9–26948 Filed 11–25–09; 8:45 am]

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S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

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