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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1233

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1731

RIN 2590–AA11

Reporting of Fraudulent Financial Instruments

AGENCY: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation that requires the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and each Federal Home Loan Bank (collectively, regulated entities) to submit a timely report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The final regulation also requires the regulated entities to establish and maintain internal controls, policies, procedures, and operational training programs to ensure that any fraudulent loan or financial instrument or possible fraudulent loan or financial instrument is discovered and reported.

DATES: *Effective Date:* February 26, 2010.

FOR FURTHER INFORMATION CONTACT: Andra Grossman, Senior Counsel, Office of the General Counsel, telephone (202) 343–1313 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) and transferred to the Federal Housing Finance Agency (FHFA) the supervisory and oversight responsibilities over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities). FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner and carry out their public policy missions.

Section 1379E of the Safety and Soundness Act (section 1379E) (12 U.S.C. 4642(a)) subjects the regulated entities to both fraud reporting and internal control requirements. Under this statutory provision, the Director of FHFA (Director) must require a regulated entity to submit a timely report upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. Additionally, the Director must require each regulated entity to establish and maintain procedures designed to discover any such transactions.

Section 1379E also provides each regulated entity and any entity-affiliated party protection from liability in making a report or requiring another to make a report if it acts in good faith. This protection extends to any liability arising under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for the submission of a report or for the failure to notify persons who are the subject of or identified in a report.

On June 17, 2009, FHFA published for comment a proposed regulation setting forth proposed reporting requirements with respect to fraudulent or suspected fraudulent financial instruments.[1] All comments received have been posted to the FHFA Web site at *http://www.fhfa.gov.*

II. Final Regulation

The final regulation implements the provisions in the proposed regulation with clarifying revisions that are made in response to comments received. The Mortgage Fraud Reporting regulation at 12 CFR part 1731 issued by the Office of Federal Housing Enterprise Oversight will be removed after the final regulation is effective.

FHFA received comments from the Enterprises and ten Federal Home Loan Banks. All comments were taken into consideration. A discussion of the significant comments as they relate to the final sections of the regulation follows.

Section 1233.1 Purpose

Several commenters requested that FHFA clarify which purchase and sale activities are subject to the reporting requirements. Specifically, the Banks sought clarification on whether the regulation applies to mortgage loans held as collateral for advances or the Affordable Housing Program.

FHFA clarifies that the purpose of this regulation is to implement the provisions of the Safety and Soundness Act, including the requirements of section 1379E, with respect to the discovery and reporting of fraud in furtherance of the supervisory responsibilities of FHFA; that is, ensuring the safe and sound operations of the regulated entities. To meet that goal, FHFA must receive timely information on actual or possible fraud on all programs and products. The information provided will be the subject of review by FHFA examiners as well as other appropriate FHFA staff. The information will also assist FHFA in assessing internal controls, management of risks, including reputation risk, and other factors relevant to the safe and sound operation of the regulated entities. FHFA's oversight of programs to discover fraud and the sharing of information with law enforcement authorities will reassure the public that the regulated entities are vigilant in discovering and reporting fraudulent practices, and can have a deterrent

[1] 74 FR 28636.

effect on financial crime. It is for all of the above reasons that FHFA will apply the regulation to all programs and products of the regulated entities.

When a regulated entity discovers fraud or suspected possible fraud, either through its internal controls or notification by outside parties, the fraud or suspected possible fraud is to be reported. For example, if a substitution is made in a pool of mortgage backed securities (MBS) and the regulated entity is notified that the substitution was made *due to fraud,* a report must be made. Due diligence requirements for the regulated entities to discover fraud or possible fraud will be provided in FHFA policy guidance for specific programs and products, such as collateral, MBS and whole loans.

The scope of this regulation is further clarified by the addition of the definitions of the term "financial instrument" and the term "purchased or sold or relating to a purchase or sale" in § 1233.2. *See* the discussion below.

One commenter suggested that the language of § 1233.1 conform to the language of section 1379E. FHFA has modified the proposed language of § 1233.1 to reflect more closely the language of section 1379E as well as referencing the Safety and Soundness Act generally.

Section 1233.2 Definitions

Entity-affiliated party. The term "entity-affiliated party" is used in proposed § 1233.5. Section 1233.5 restates the language of section 1379E(b) by providing protection to regulated entities and entity-affiliated parties from liability in connection with reporting fraud or possible fraud. One commenter questioned whether FHFA intended to include in the definition of the term "entity-affiliated party" those persons, shareholders, affiliates, consultants, or joint venture partners of a regulated entity; independent contractors; and not-for profit corporations. FHFA does intend to include such persons in conformance with section 1379E.

With respect to entity-affiliated parties who are independent contractors, one commenter questioned whether FHFA intended that the protection from liability apply only to those independent contractors who knowingly or recklessly participate in any violation of any law or regulation, any breach of fiduciary duty or any unsafe or unsound practice and such violation, breach or practice caused or is likely to cause more than a minimal financial loss to or have a significant adverse effect on the regulated entity.

As published in the proposed § 1233.5, the provision protects the regulated entity and an entity-affiliated party from liability for filing a report of fraud or possible fraud to FHFA, in good faith, or for any failure to provide notice of such report to the person who is the subject of such report or any other persons identified in the report. Whether an independent contractor participates in a wrong-doing is unrelated to fraud reporting and should not affect the protection from liability afforded by section 1379E(b), as implemented by § 1233.5. Consequently, FHFA has determined to delete from the definition of the term "entity-affiliated party" the language defining an independent contractor in terms of knowingly or recklessly participating in wrong-doing.

Fraud. Several commenters recommended adding the element of "intent" to the definition of the term "fraud" in § 1233.2 because the element of intent is included in Federal criminal statutes. Although FHFA has determined not to add the element of intent, the definition of the term "fraud" is clarified in the final regulation by adding the phrase "cannot be corrected" with respect to misstatements, misrepresentations, or omissions. As several commenters remarked, where there are misstatements or omissions that the regulated entity, after due diligence, has concluded were unintentional and can be corrected, it should do so without being required to make a report.

In addition, the term "material" is deleted in the final regulation's definition of the term "fraud" because the concept of materiality has been captured by the fraudulent or possibly fraudulent information the regulated entity "relied upon" to decide to purchase or sell a loan or financial instrument. In other words, if a decision to purchase or sell would have been different had the regulated entity possessed accurate information at the time of the transaction, then the regulated entity is required to file a report.

Financial instrument. The term "financial instrument" is added to the final § 1233.2 to mean any legally enforceable agreement, certificate, or other writing, in hardcopy or electronic form, having monetary value. The term includes, but is not limited to, any agreement, certificate, or other writing evidencing an asset pledged as collateral to a Bank by a member to secure an advance by the Bank to that member. As discussed above, FHFA has added this definition to clarify that the reporting requirements apply to all programs and products of the regulated entities.

Purchased or sold or relating to the purchase or sale. A definition of the phrase "purchased or sold or relating to the purchase or sale" is added to the final § 1233.2 to mean any transaction involving a financial instrument. The term includes, but is not limited to, any purchase, sale, other acquisition, or creation of a financial instrument by the member of a Bank to be pledged as collateral to the Bank to secure an advance by the Bank to that member, the pledging by a member to a Bank of such financial instrument to secure such an advance, the making of a grant by a Bank under its affordable housing program or community investment program, and the effecting of a wire transfer or other form of electronic payments transaction by the Bank. As discussed above, FHFA has added the definition of the phrase "purchased or sold or relating to the purchase or sale" to clarify that the reporting requirements apply to all programs and products of the regulated entities. Specific requirements for different programs and products will be outlined in future FHFA guidance.

Section 1233.3 Reporting

Proposed § 1233.3 would have required reports to the Director for any fraud or possible fraud occurring in connection with a loan, a series of loans, or other financial instruments that the regulated entity has purchased or sold, and to do so promptly after identifying such fraud or possible fraud or is notified about such fraud or possible fraud by law enforcement or other government authority.

Several commenters requested that reports be made to an examiner-in-charge rather than the Director. FHFA notes that the term "Director" is defined in § 1233.2 as the Director of FHFA or his or her designee. Regulated entities will be notified either from FHFA staff or through guidance where to submit reports.

One commenter suggested that fraud or possible fraud involving an individual loan in an MBS should not be covered by the reporting requirements of this regulation. The commenter reasoned that if MBS are included, a regulated entity would not be able to rely on the representations and warranties of the MBS issuer regarding the underlying loans, and thereby eliminate a primary benefit of MBS ownership. As discussed above, it is the intention of FHFA to include all programs and products in the requirements of this regulation, including MBS. FHFA will issue guidance on due diligence for discovering fraud. FHFA expects that

the number of reports for each program or product will differ.

The commenter also suggested modifying § 1233.3(a) to parallel the language in section 1379E. FHFA agrees and has modified proposed § 1233.3(a) in the final regulation. The revised language includes the phrase "upon discovery" and replaces "relating to any fraud or possible fraud occurring in connection with a loan, a series of loans or other financial instruments" with "fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument." The use of the word "discovery" implies discovery from any source including, but not limited to, internal processes, law enforcement, government authorities, or other third parties such as member institutions or financial counterparties.

Another commenter suggested that the obligation to report fraud in an individual loan within an MBS already resides with the financial institution originating the mortgage to file a suspicious activity report (SAR) with the Financial Crimes Enforcement Network. This commenter suggested that the final regulation should clarify that the regulation does not duplicate these requirements. FHFA recognizes that financial institutions regulated by other Federal authorities are responsible for filing SARs. Nevertheless, because neither the regulated entity nor FHFA is able to confirm whether a financial institution has filed a SAR, the regulated entity must report to FHFA.

A few commenters requested that the final regulation include the specific forms and formats to be used to satisfy the reporting requirements. FHFA has considered the comment and determined that it is more appropriate to provide instruction on the form and format of reports in forthcoming FHFA guidance.

Section 1233.4 Internal Controls, Procedures, and Training

Proposed § 1233.4 would have set forth the procedures for each regulated entity to establish and maintain adequate and efficient internal controls, procedures, and an operational training program to assure an effective system to detect and report fraud or possible fraud in connection with the purchase or sale of a loan or financial instrument.

Several commenters sought clarification on whether third-party review or controls and procedures would constitute fraud discovery controls for the regulated entities. One commenter explained that in the case of the Mortgage Partnership Finance Program, participating Banks engage the Federal Home Loan Bank of Chicago to perform much of their quality control processes, including fraud discovery. FHFA agrees that in certain circumstances third-party controls may be relied upon. Thus, a participating Bank may rely upon the Federal Home Loan Bank of Chicago to file a report with FHFA in connection with a fraud or suspected fraud associated with the Mortgage Partnership Finance Program. To the extent that FHFA does not have examination powers over the third party, the regulated entity remains responsible for complying with the due diligence requirements of the regulation and guidance. In the final § 1233.4, FHFA has replaced the word "detect" with "discover" to conform with the language of section 1379E(a), inserted "policies" in the list of requirements and made other minor grammatical changes to the language of proposed § 1233.4.

Section 1233.5 Protection From Liability for Reports

The only comments received on proposed § 1233.5 related to the definition of the term "entity-affiliated party." These comments are addressed above under § 1233.2.

Section 1233.6 Supervisory Action

Proposed § 1233.6 would have provided that failure by a regulated entity to comply with the regulation may subject the regulated entity or the board members, officers, or employees to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

One commenter recommended removal of the reference to enforcement actions against a regulated entity's board members, officers, and employees in the absence of willful and wrongful conduct directly resulting in the regulated entity's determination not to comply with the requirements of the regulation. FHFA has considered the comment and has determined not to make the change.

Effective Date

One commenter requested a period prior to the final regulation's effective date sufficient for the Banks to implement the necessary systems, policy changes, and related controls to cover private-label MBS and requested that the requirements be applied only on a prospective basis and not to mortgage assets on a Bank's balance sheet prior to the effective date of the final regulation. FHFA recognizes the new requirements established by this regulation will take time to implement. The effective date of the final regulation will be 30 days from the date it is published in the **Federal Register.** FHFA guidance will provide for a start-up phase for specific programs and products.

Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)) requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability whenever promulgating regulations that affect the Banks. In preparing the final regulation, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. In particular, the nature of the controls, policies, procedures and operational training and the extent of the regulatory requirements will be recognized in any guidance. For example, collateral securing advances may require different policies and procedures as opposed to purchased mortgages. Although the respective businesses in which the Banks and the Enterprises are engaged differ, they all, nevertheless, purchase and sell a variety of financial instruments exposing them to the risk of fraud. The Director believes that none of the unique factors relating to the Banks warrants establishing different treatment under the final regulation. However, detailed guidance will be issued to address specific business or operational differences with respect to the regulated entities.

III. Regulatory Impact

Paperwork Reduction Act

The final regulation pertains to the regulated entities and does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic

impact on a substantial number of small entities. 5 U.S.C. 605(b). In this case, the final regulation applies only to the regulated entities, none of which are small entities for purposes of this requirement. Accordingly, FHFA hereby certifies that the final regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1233

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1731

Administrative practice and procedure, Government-sponsored enterprises.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4513, 4514, 4526, and 4642, the Federal Housing Finance Agency amends chapters XII and XVII of Title 12, Code of Federal Regulations, as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter B—Entity Regulations

■ 1. Add part 1233 to Subchapter B to read as follows:

PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

Sec.
1233.1 Purpose.
1233.2 Definitions.
1233.3 Reporting.
1233.4 Internal controls, policies, procedures, and training.
1233.5 Protection from liability for reports.
1233.6 Supervisory action.

Authority: 12 U.S.C. 4511, 4513, 4514, 4526, 4642.

§ 1233.1 Purpose.

The purpose of this part is to implement the Safety and Soundness Act by requiring each regulated entity to report to FHFA upon discovery that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. In addition, each regulated entity must establish and maintain internal controls, policies, procedures, and operational training to discover such transactions.

§ 1233.2 Definitions.

The following definitions apply to the terms used in this part:

Bank or *Federal Home Loan Bank* means a Bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks" means, collectively, all the Federal Home Loan Banks.

Director means the Director of FHFA or his or her designee.

Enterprise means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and any affiliate thereof.

Entity-affiliated party means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant);

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

Financial instrument means any legally enforceable agreement, certificate, or other writing, in hardcopy or electronic form, having monetary value including, but not limited to, any agreement, certificate, or other writing evidencing an asset pledged as collateral to a Bank by a member to secure an advance by the Bank to that member.

Fraud means a misstatement, misrepresentation, or omission that cannot be corrected and that was relied upon by a regulated entity to purchase or sell a loan or financial instrument.

Possible fraud means that a regulated entity has a reasonable belief, based upon a review of information available to the regulated entity, that fraud may be occurring or has occurred.

Purchased or sold or relating to the purchase or sale means any transaction involving a financial instrument including, but not limited to, any purchase, sale, other acquisition, or creation of a financial instrument by the member of a Bank to be pledged as collateral to the Bank to secure an advance by the Bank to that member, the pledging by a member to a Bank of such financial instrument to secure such an advance, the making of a grant by a Bank under its affordable housing program or community investment program, and the effecting of a wire transfer or other form of electronic payments transaction by the Bank.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and any Federal Home Loan Bank; the term "regulated entities" means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

§ 1233.3 Reporting.

(a) *Timeframe for reporting.* (1) A regulated entity shall submit to the Director a timely written report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument.

(2) In addition to submitting a report in accordance with paragraph (a)(1) of this section, in any situation that would have a significant impact on the regulated entity, the regulated entity shall immediately report any fraud or possible fraud to the Director by telephone or electronic communication.

(b) *Format for reporting.* (1) The report shall be in such format and shall be filed in accordance with such procedures that the Director may prescribe.

(2) The Director may require a regulated entity to provide such additional or continuing information relating to such fraud or possible fraud that the Director deems appropriate.

(3) A regulated entity may satisfy the reporting requirements of this section by submitting the required information on a form or in another format used by any other regulatory agency, provided it has first obtained the prior written approval of the Director.

(c) *Retention of records.* A regulated entity or entity-affiliated party shall maintain a copy of any report submitted to the Director and the original or

business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) *Nondisclosure.* (1) A regulated entity or entity-affiliated party may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless it has first obtained the prior written approval of the Director.

(2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—

(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) *No waiver of privilege.* A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

§ 1233.4 Internal controls, policies, procedures, and training.

(a) *In general.* Each regulated entity shall establish and maintain adequate and efficient internal controls, policies, procedures, and an operational training program to discover and report fraud or possible fraud in connection with the purchase or sale of any loan or financial instrument.

(b) *Examination.* The examination by FHFA of fraud reporting programs of each regulated entity includes an evaluation of the effectiveness of the internal controls, policies, procedures, and operational training program in place to minimize risks from fraud and to report fraud or possible fraud to FHFA in accordance with this regulation.

§ 1233.5 Protection from liability for reports.

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report to the person who is the subject of such report, or any other persons identified in the report.

§ 1233.6 Supervisory action.

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1731—[REMOVED]

■ 2. Remove part 1731.

Dated: January 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–1641 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 301, 302, 305, 307, 308, 313 and 315

[Docket No. 080213181–91417–02]

RIN 0610–AA64

Revisions to the EDA Regulations

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: On October 22, 2008, the Economic Development Administration ("EDA") published an interim final rule to synchronize its Revolving Loan Fund ("RLF") regulations with significant improvements in the management and oversight of its RLF program, including the issuance of written guidance that provides EDA staff with steps to help better ensure grantee compliance with RLF requirements. Additionally, the interim final rule made changes to certain definitions in the Trade Adjustment Assistance for Firms program regulations provided notice of other substantive and non-substantive revisions made to EDA's regulations. EDA received a total of two comments on the October 22, 2008 interim final rule. This final rule responds to all substantive comments received during the public comment period and finalizes this rulemaking proceeding.

DATES: This final rule is effective as of January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Hina Shaikh, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Background

EDA published an interim final rule in the **Federal Register** (73 FR 62858) on October 22, 2008, to amend some of EDA's regulations, namely the Trade Adjustment Assistance for Firms program ("TAA Program") regulations and the RLF program regulations. The technical revisions to a few of the TAA definitions were made to help better align EDA's responsibilities in implementing the TAA Program under the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*). We made a number of changes to the RLF regulations in line with our commitment to implement the Office of Inspector General's ("OIG") audit recommendations and to improve the administration and effectiveness of the RLF program. The revisions to the RLF regulations correspond to the policy determinations that EDA made in response to the OIG's audit report titled *Aggressive EDA Leadership and Oversight Needed To Correct Persistent Problems in the RLF Program* (March 2007). EDA staff highlighted these proposed changes at training sessions for all EDA RLF Recipients. Among the major changes discussed and concluded were the switch to a Web-based semi-annual reporting form that will eliminate redundant and calculable fields; the requirement that RLF grantees submit updated RLF Plans at least once every five years; the pegging of the minimum interest rate to commercial interest rates in order to ensure RLF grantees can lend when commercial interest rates are low; and simplification of record retention requirements. EDA also took into consideration the feedback received at these training sessions, and as a result, eliminated the requirement that sequestered funds be kept in a separate bank account, as many Recipients indicated that there was substantial red tape involved in opening a separate account. Other changes were non-substantive in nature and were made for increased clarity.

Comments Received on October 22, 2008 Interim Final Rule

The October 22, 2008 interim final rule provided a deadline of December

22, 2008 for all public comments. On December 16, 2008, EDA published a notice (73 FR 76194) that extended the deadline for comments to January 22, 2009. EDA received a total of two comments on the October 22, 2008 interim final rule, as set out below:

1. "I noticed that in [section] 301.10 for formal application requirements, 'proposals' are referenced. Now that we're going to use a single application format, should this be changed, if there is going to be an update of the revisions?"

2. "The intent of the new regulations need to be clarified—it is my understanding that EDA does not require the RLF Grantee to send copies of the RLF loan minutes (approval or otherwise) or the bank turn-down letters to EDA, despite the fact that the October 22, 2008 regulations state that EDA does require such a submission."

EDA is publishing this final rule to respond to all comments received during the public comment period on all aspects of the interim final rule, and to make additional revisions to EDA's regulations to facilitate effective administration of its programs. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in EDA's regulations (*see, e.g.,* 13 CFR 300.3, 303.2, 307.8 and 314.1). Specifically, this final rule makes the following revisions to the October 22, 2008 interim final rule and to EDA's regulations codified at 13 CFR chapter III:

Part 301—Eligibility, Investment Rate and Application Requirements

Part 301 of the regulations sets forth eligibility, maximum allowable Investment Rate levels, and application requirements common to all Public Works and Economic Development Act ("PWEDA")-enumerated programs (excluding the Community Trade Adjustment Assistance Program ("Community TAA Program") and TAA Program regulations at parts 313 and 315, respectively). In general, subpart A presents an overview of eligibility requirements, subpart B addresses applicant eligibility, subpart C addresses Regional economic distress level requirements, subpart D sets forth the maximum allowable Investment Rates and corresponding Matching Share requirements for various Projects, and subpart E addresses the application requirements, as well as the evaluation criteria used by EDA in selecting Projects.

The October 22, 2008 interim final rule revised § 301.4(b)(4) to be more parallel in structure and content to section 207 of PWEDA; however, the statutory reference cited in the regulation was inadvertently incorrect. The correct statutory reference is section 204(c)(3) of PWEDA. This final rule makes this revision.

EDA received the following comment on § 301.10: "I noticed that in 301.10 for formal application requirements, 'proposals' are referenced. Now that we're going to use a single application format, should this be changed, if there is going to be an update of the revisions?" On October 1, 2008, EDA published a notice in the **Federal Register** (73 FR 57049) to introduce its new *Application for Investment Assistance* (Form ED–900). Previously, applicants were required to complete and submit a *Pre-Application for Investment Assistance* (Form ED–900P), followed by an *Application for Investment Assistance* (Form ED–900A), if EDA deemed that the proposed project merited further consideration. The Form ED–900 consolidates all EDA-specific requirements into a single application form. The notice provided a one-month period to completely phase-in the use of the new Form ED–900. Accordingly, effective November 1, 2008, EDA accepts only the Form ED–900, along with specific forms and attachments from the Standard Form ("SF") 424 family.

In line with the October 1, 2008 publication, this final rule removes all references to the Form ED–900P in EDA's regulations. Accordingly, the words "Proposal and" are removed in the title of part 301 and subpart E of part 301. The title of § 301.7 is revised from "Investment Assistance proposal" to "Investment Assistance application." Paragraph (a) in § 301.7 is revised to remove all references to the words "proposal," "Pre-application," "proponent" and "Form ED–900," and subparagraph (1) is removed because it is no longer applicable. Section 301.7(b) also is made inapplicable with the introduction of Form ED–900 and is replaced with the following: "PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance." This provision reflects long-standing EDA policy. The policy is being placed in the regulations because EDA received an inquiry from an applicant regarding our appeals process upon denial of an application; this provision serves to clarify our administrative policy regarding denial of Investment Assistance.

This final rule revises the title of § 301.8 to change it from "Proposal evaluation criteria" to "Application evaluation criteria." The words "proposals" and "proponent" are replaced with "applications" and "applicant." In paragraph (a), the phrase ", such as EDA's Balanced Scorecard or other performance matrix" is deleted because EDA does not believe it is necessary to specify a particular type of performance metric at this time. Similar to the changes made in § 301.8, the title of § 301.9 is changed from "Proposal selection criteria" to "Application selection criteria," and all references to "proposal" and "proponent" are changed to "application" and "applicant."

In § 301.10, this final rule removes paragraph (a) in its entirety because it is no longer applicable with the introduction of the single application on Form ED–900. Accordingly, the sub-heading "Formal application" of paragraph (b) is removed and paragraphs (1)–(3) thereunder are renumbered as (a), (b) and (c), for stylistic consistency with the rest of the regulations. Paragraphs (i) and (ii) under paragraph (3) are renumbered as (1) and (2), respectively.

Part 302—General Terms and Conditions for Investment Assistance

Part 302 sets forth the general terms and conditions for EDA Investment Assistance. This part applies to all Investments under PWEDA (certain provisions, such as § 302.5, also apply to the TAA Program under the Trade Act (*see* part 315)), and covers a variety of EDA requirements for Investment Assistance, including environmental reviews of Projects, relocation assistance and land acquisition requirements, inter-governmental review of Projects, and Recipients' reporting, record-keeping, post-approval and civil rights requirements. For consistency with the change made in § 301.8, this final rule removes the phrase ", such as the EDA Balanced Scorecard or other system" from § 302.16(b).

In § 302.20(a)(2), we discovered that the reference to "15 CFR 8.7 through 8.15" as the Department's implementing regulations for proscribing discrimination on the basis of sex in education programs or activities receiving federal financial assistance is incorrect. This final rule changes "15 CFR 8.7 through 8.15" to the correct citation which is "15 CFR part 8a."

Part 305—Public Works and Economic Development Investments

Part 305 describes general information about the scope of EDA's Public Works program, award and application requirements, and provisions for EDA's and Recipients' duties. This final rule makes one edit in this part for consistency with the revisions made in

part 301 and elsewhere in 13 CFR chapter III for the change from "proposal" to "application" due to the single application on Form ED–900. Accordingly, in § 305.3(a)(4), the word "proposal" is replaced with "application."

Part 307—Economic Adjustment Assistance Investments

EDA re-examined part 307 of its regulations after publication of the October 22, 2008 interim final rule to allow for consideration of matters pertaining to the effective implementation of the interim final rule. This final rule makes specific revisions to help better manage and administer the RLF program in accordance with the OIG's recommendations. The changes are described below.

In § 307.4(b), the word "proposals" is changed to "applications." Similarly, in § 307.4(c)(1) and (2), the word "proposals" is replaced with "applications." In the definition of *RLF Third Party* in § 307.8, the word "proposals" is replaced with "applications" and "and/or" is replaced with "or." This final rule also revises the definition of "*RLF Capital*" for clarity and better understanding. The definition is revised to refer to EDA grant funds plus Matching Share plus RLF Income, less any amount used for reasonable administrative expenses and any amount of loan principal written off.

This final rule adds an additional requirement for the Recipient's RLF Plan in § 307.9(a)(2), to ensure that the Plan is consistent with EDA's conflicts-of-interest rules set out in § 302.17. This revision is consistent with the change EDA has made to its RLF Standard Terms and Conditions, which are included in every RLF Grant.

EDA program staff discovered that paragraph (a)(1) of § 307.11 does not actually explain the evidence EDA will need to see in order to determine whether the RLF Recipient has adequate fidelity bond coverage. In order to clarify what adequate fidelity bond coverage is, EDA determined the amount of cash at risk for which fidelity insurance should be obtained is the amount of cash readily available to the RLF Recipient, which is generally the greater of 25 percent of the RLF Capital base, or the maximum loan amount identified in the Recipient's EDA-approved RLF Plan. Accordingly, this final rule adds the following sentence immediately after the first sentence in § 307.11(a)(1): "At a minimum, the amount of coverage shall be the greater of (i) the maximum loan amount allowed for in the EDA-approved RLF Plan, or (ii) 25 percent of the RLF Capital base."

This final rule also revises paragraph (d) of § 307.11 for clarity to read as follows: "*Interest-bearing Account.* All grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account (an "EDA funds account") by the Recipient until an RLF loan is made to a borrower." This revision does not change current practice and is made for increased clarity only.

In § 307.14(a), this final rule removes the phrase "(Form ED–209 or any successor form)" in order to help accommodate the launch and operation of EDA's new automated reporting system some time this year.

The October 22, 2008 interim final rule moved the reference to a signed bank turn-down letter from § 307.17(c) to the loan documentation requirements listed in § 307.15(b)(2). We received a comment in connection with § 307.15(b)(2)(viii), which states, "*EDA will accept alternate documentation* [to a signed bank turn-down letter] only if such documentation is allowed in the RLF Recipient's EDA-approved RLF Plan." [*Emphasis added.*] This wording is incorrect in that *EDA* would not accept the signed bank turn-down letter, board of directors' meeting minutes approving an RLF loan, or any such alternate documentation. Rather, the *RLF Recipient* would accept it for review and consideration and keep it in its loan files where EDA or an auditor can review such documentation if desired [*emphasis added*]. Accordingly, the second sentence in § 307.15(b)(2)(viii) is revised to insert the phrase "permit the RLF Recipient to" immediately after the word "will".

In § 307.15(d)(1), this final rule removes the words "prior to" in the third sentence to clarify that RLF operators may count as private leveraging any funds invested from private sources within 12 months before or after the RLF loan is made, rather than just 12 months before the loan is made. Private leveraging is included for a 12-month period both prior to and after the RLF loan closing because a borrower submits applications to financial institutions as well as to the RLF Recipient for financing assistance as the needs of the business are identified. The conventional lender may close the loan either before or after the RLF loan is closed, but every loan approved during the 12-month period is clearly part of the total financial needs of the borrower. The Generally Accepted Accounting Principles ("GAAP") define "current" as a 12-month period. Therefore, the 12-month period prior and after the RLF loan closing reflects the total current financing leveraged by the borrower.

For consistency throughout part 307 and with the title of § 307.16(c), this final rule changes all references to "capital utilization percentage" or "applicable capital utilization percentage" to "capital utilization standard." The phrases "capital utilization percentage" and "applicable capital utilization percentage" appear in paragraphs (c)(1)(i), (c)(2), (c)(2)(i) and (c)(2)(ii) of § 307.16. All such phrases are replaced with "capital utilization standard."

To facilitate better monitoring of RLF Capital and to ensure that RLF Capital is used for making RLF loans that are consistent with the RLF Plan or such other purposes approved by EDA, the October 22, 2008 interim final rule added a new paragraph (c) to § 307.17 to allow EDA to task an independent third party with conducting a compliance and loan quality review of the RLF Grant every three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations, provided the requirements set out in § 307.12 regarding RLF Income are satisfied. The wording of the first sentence in § 307.17(c) inadvertently used the word "shall" in the phrase "EDA shall require an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years," when the intention was to give EDA the ability to require a compliance and loan quality review. This final rule changes the word "shall" to "may" and revises the phrase "(3) three years" to "three (3) years" so that the Arabic numeral appears after the word "three."

Section 307.21 sets out the process for termination of RLF awards. In an effort to ensure strong recipient compliance with RLF reporting and efficient capital utilization, the October 22, 2008 interim final rule revised § 307.21(a) to include additional grounds for which EDA may suspend or terminate an RLF Grant for cause. One of these grounds, set out in § 307.21(a)(1)(viii), is the RLF Recipient's failure to comply with the audit requirements set out in OMB Circular A–133 and the related *Compliance Supplement.* This final rule adds an important reference to the *Schedule of Expenditure of Federal Awards,* which auditors are required to complete in accordance with OMB Circular A–133. Accordingly, the phrase, "including reference to the correctly valued EDA RLF federal expenditures in the *Schedule of*

Expenditures of Federal Awards ("SEFA")," is placed immediately after "*Supplement,*" in § 307.21(a)(1)(viii).

In the third sentence of § 307.21(b), to ensure that the text is clearer and more concise, this final rule replaces the phrase, "a portion of RLF property that EDA determines is attributable to RLF Income" with "the RLF Recipient's share of RLF Income (or program income) generated by the RLF."

For consistency with the changes made in part 301 to remove all references to the word "proposal," in paragraph (b)(4) of § 308.2, this final rule changes "proposal" to "application." In addition, with respect to the Community TAA Program, we amend § 313.4(a)(2) to correct the erroneous wording of "The Community submits the petition at least 180 days after the date of the most recent Cognizable Certification." Section 313.4(a)(2) shall read as "The Community submits the petition *no later than* 180 days after the date of the most recent Cognizable Certification", to track section 273 of chapter 4 of the Trade Act, as amended by the Trade and Globalization Adjustment Assistance Act of 2009 (emphasis added). *See* Subtitle I (letter 'I') of Title I of Division B of Pub. L. No. 111–5, 123 Stat. 367, at 396–436.

In § 315.7(b)(5)(iii), this final rule corrects the inadvertent italicization of the phrase "production or supply of services".

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this final rule is significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in Executive Order 13132 to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." It has been determined that this final rule does not contain policies that have federalism implications.

Paperwork Reduction Act

This final rule contains collections-of-information subject to review and approval by OMB under the Paperwork Reduction Act ("PRA"). The OMB is required to clear all federally-sponsored data collections pursuant to the PRA. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects

13 CFR Part 301

Grant administration, Grant programs, Eligibility requirements, Applicant and application requirements, Economic distress levels, Investment rates.

13 CFR Part 302

Environmental review, Federal policy and procedures, Inter-governmental review, Fees, Pre-approval requirements, Project administration, Reporting and audit requirements, Conflicts-of-interest, Post-approval requirements, Civil rights.

13 CFR Part 305

Public works, Economic development, Award and application requirements, Requirements for approved projects.

13 CFR Part 307

Economic adjustment assistance, Award and application requirements, Revolving loan fund, Pre-loan requirements, Merger, Income, Record and reporting requirements, Sales and securitizations, Liquidation, Termination.

13 CFR Part 308

Performance awards, Planning performance awards.

13 CFR Part 313

Trade adjustment assistance for communities, Impacted community, Petition and affirmative determination requirements, Strategic plan, Implementation grant.

13 CFR Part 315

Administrative practice and procedure, Trade adjustment assistance, Eligible petitioner, Firm selection, Certification requirements, Recordkeeping and audit requirements, Adjustment proposals.

Regulatory Text

■ For reasons stated in the preamble, this final rule amends title 13, chapter III of the *Code of Federal Regulations* as follows:

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

■ 2. Revise the heading to part 301 to read as set forth above.

■ 3. Revise paragraph (b)(4) of § 301.4 to read as follows:

§ 301.4 Investment rates.

* * * * *

(b) * * *

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 204(c)(3) of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

* * * * *

Subpart E—Application Requirements; Evaluation Criteria

■ 4. Revise § 301.7 to read as follows:

§ 301.7 Investment Assistance application.

(a) The EDA Investment Assistance process begins with the submission of an Investment Assistance application. The *Application for Investment Assistance* (Form ED–900 or any

successor form) may be obtained from EDA's Internet Web site at *http://www.eda.gov* or from the appropriate regional office. EDA generally accepts applications on a competitive and continuing basis to respond to market forces in Regional economies. The timing with which competitive investment opportunities arise, as determined by the criteria set forth in § 301.8, paired with the availability of funds in a given fiscal year, will affect EDA's ability to participate in any given Project. EDA will evaluate all applications using the criteria set forth in § 301.8 and will:

(1) Return the application to the applicant for specified deficiencies and suggest resubmission upon corrections; or

(2) Deny the application for specifically stated reasons and notify the applicant.

(b) PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance.

■ 5. Revise § 301.8 to read as follows:

§ 301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the applicant to implement the proposed Project. EDA also will consider the degree to which an Investment in the proposed Project will satisfy one (1) or more of the following criteria:

(a) *Is market-based and results driven.* An Investment will capitalize on a Region's competitive strengths and will positively move a Regional economic indicator measured and evaluated by EDA on a performance matrix system. These Regional economic indicators include measures such as an increased number of higher-skill, higher-wage jobs, increased tax revenue, or increased private sector investment resulting from an Investment.

(b) *Has strong organizational leadership.* An Investment will have strong leadership, relevant Project management experience and a significant commitment of human resources talent to ensure a Project's successful execution.

(c) *Advances productivity, innovation and entrepreneurship.* An Investment will embrace the principles of entrepreneurship, enhance Regional industry clusters and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

(d) *Looks beyond the immediate economic horizon, anticipates economic changes and diversifies the local and Regional economy.* An Investment will be part of an overarching, long-term Comprehensive Economic Development Strategy that enhances a Region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters or attracting new Regional economic drivers.

(e) *Demonstrates a high degree of local commitment.* An Investment will exhibit:

(1) High levels of local government or non-profit Matching Share and private sector leverage;

(2) Clear and unified leadership and support by local elected officials; and

(3) Strong cooperation among the business sector, relevant Regional partners and Federal, State and local governments.

(f) Other criteria as set forth in the applicable FFO.

■ 6. Revise § 301.9 to read as follows:

§ 301.9 Application selection criteria.

(a) EDA will review completed application materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO and other applicable federal statutes and regulations. From those applications that meet EDA's technical and legal requirements, EDA will select applications for further consideration based on the:

(1) Availability of funds;

(2) Competitiveness of the applications based on the criteria set forth in § 301.8; and

(3) Funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify applicants regarding whether their applications are selected as soon as practicable.

■ 7. Revise § 301.10 to read as follows:

§ 301.10 Formal application requirements.

Each formal application for EDA Investment Assistance must:

(a) Include evidence of applicant eligibility (as set forth in § 301.2) and of economic distress (as set forth in § 301.3);

(b) Identify the sources of funds, both eligible federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under § 301.5); and

(c) For construction Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements of the preceding sentence shall not apply to:

(1) Strategy Grants, as defined in § 307.3 of this chapter; and

(2) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

■ 8. The authority citation for part 302 continues to read as follows:

Authority: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10–4.

■ 9. Revise paragraph (b) of § 302.16 to read as follows:

§ 302.16 Reports by Recipients.

* * * * *

(b) Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system.

* * * * *

■ 10. Revise paragraph (a)(2) of § 302.20 to read as follows:

§ 302.20 Civil rights.

(a) * * *

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA) and 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 CFR part 8a;

* * * * *

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

■ 11. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

■ 12. Revise paragraph (a)(4) of § 305.3 to read as follows:

§ 305.3 Application requirements.

(a) * * *

(4) Demonstrate how the proposed Project meets the application evaluation criteria set forth in § 301.8 of this chapter.

* * * * *

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

■ 13. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

■ 14. Revise paragraphs (b), (c)(1) and (c)(2) of § 307.4 to read as follows:

§ 307.4 Award requirements.

* * * * *

(b) Strategy Grants. EDA will review Strategy Grant applications to ensure that the proposed activities conform to the CEDS requirements set forth in § 303.7 of this chapter.

(c) * * *

(1) EDA will review Implementation Grant applications for the extent to which the:

(i) Applicable CEDS meets the requirements in § 303.7 of this chapter; and

(ii) Proposed Project is identified as a necessary element of or consistent with the applicable CEDS.

(2) *Revolving Loan Fund Grants.* For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review applications for the:

(i) Need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS;

(ii) Types of financing activities anticipated; and

(iii) Capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

* * * * *

■ 15. In § 307.8, revise the definitions of *RLF Capital* and *RLF Third Party* to read as follows:

§ 307.8 Definitions.

* * * * *

RLF Capital means Grant funds plus Local Share plus RLF Income, less any amount used for eligible and reasonable costs necessary to administer the RLF and any amount of loan principal written off.

* * * * *

RLF Third Party, for purposes of this subpart B only, means an Eligible Recipient or for-profit entity selected by EDA through a request for applications or Cooperative Agreement to facilitate or manage the intended liquidation of an RLF.

* * * * *

■ 16. Revise paragraph (a)(2) of § 307.9 to read as follows:

§ 307.9 Revolving Loan Fund Plan.

* * * * *

(a) * * *

(2) Part II of the Plan titled "Operational Procedures" must serve as the RLF Recipient's internal operating manual and set out administrative procedures for operating the RLF consistent with "Prudent Lending Practices," as defined in § 307.8, and EDA's conflicts of interest rules set out in § 302.17 of this chapter.

* * * * *

■ 17. Revise paragraphs (a)(1) and (d) of § 307.11 to read as follows:

§ 307.11 Disbursement of funds to Revolving Loan Funds.

(a) * * *

(1) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the greater of the maximum loan amount allowed for in the EDA-approved RLF Plan, or 25 percent of the RLF Capital base. Such insurance coverage must exist at all times during the duration of the RLF's operation; and

* * * * *

(d) *Interest-bearing Account.* All grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account (an "EDA funds account") by the Recipient until an RLF loan is made to a borrower.

* * * * *

■ 18. Revise paragraph (a) of § 307.14 to read as follows:

§ 307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission.

* * * * *

■ 19. Revise paragraphs (b)(2)(viii) and (d)(1) of § 307.15 to read as follows:

§ 307.15 Prudent management of Revolving Loan Funds.

* * * * *

(b) * * *

(2) * * *

(viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

(d) * * *

(1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months of approval of an RLF loan, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities; or

(iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

* * * * *

■ 20. Revise paragraph (c) of § 307.16 to read as follows:

§ 307.16 Effective utilization of Revolving Loan Funds.

* * * * *

(c) Capital utilization standard. (1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply:

(i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital

utilization standard greater than twenty-five (25) percent; and

(ii) EDA may require an RLF Recipient with an RLF Capital base in excess of $4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the capital utilization standard, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the capital utilization standard is referred to as "excess funds."

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the capital utilization standard for two (2) consecutive Reporting Periods, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in § 314.5 of this chapter) of the RLF Grant shall be remitted to the U.S. Treasury. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds.

(ii) Persistent non-compliance. An RLF Recipient will generally be allowed a reasonable period of time to lend excess funds and achieve the capital utilization standard. However, if an RLF Recipient fails to achieve the capital utilization standard after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

* * * * *

■ 21. Revise paragraph (c) of § 307.17 to read as follows:

§ 307.17 Uses of capital.

* * * * *

(c) *Compliance and Loan Quality Review.* To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three (3) years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations provided the requirements set forth in § 307.12 are satisfied.

* * * * *

■ 22. Revise paragraphs (a)(1)(viii) and (b) of § 307.21 to read as follows:

§ 307.21 Termination of Revolving Loan Funds.

(a)(1) * * *

(viii) Comply with the audit requirements set forth in OMB Circular A–133 and the related Compliance Supplement, including reference to the correctly valued EDA RLF federal expenditures in the Schedule of Expenditures of Federal Awards ("SEFA"), timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of the RLF as a "major program" (as that term is defined in OMB Circular A–133);

* * * * *

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the RLF Recipient may retain and use for other economic development activities the RLF Recipient's share of RLF Income (or program income) generated by the RLF.

* * * * *

PART 308—PERFORMANCE INCENTIVES

■ 23. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

■ 24. Revise paragraph (b)(4) of § 308.2 to read as follows:

§ 308.2 Performance awards.

* * * * *

(b) * * *

(4) Fulfill the application evaluation criteria set forth in § 301.8 of this chapter; or

* * * * *

PART 313—COMMUNITY TRADE ADJUSTMENT ASSISTANCE

■ 25. The authority citation for part 313 continues to read as follows:

Authority: 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. No. 111–5; 42 U.S.C. 3211; Department of Commerce Organizational Order 10–4.

■ 26. Revise paragraph (a)(2) of § 313.4 to read as follows:

§ 313.4 Affirmative determinations.

(a) * * *

(2) The Community submits the petition no later than 180 days after the date of the most recent Cognizable Certification.

* * * * *

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

■ 27. The authority citation for part 315 continues to read as follows:

Authority: 19 U.S.C. 2341 *et seq.,* as amended by Division B, Title I, Subtitle I, Part II of Pub. L. No. 111–5; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 28. Revise paragraph (b)(5)(iii) of § 315.7 to read as follows:

§ 315.7 Certification requirements.

* * * * *

(b) * * *

(5) * * *

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

Dated: January 15, 2010.

Brian P. McGowan,

Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2010–1350 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1148; Directorate Identifier 2009–SW–36–AD; Amendment 39–16185; AD 2010–03–02]

RIN 2120–AA64

Airworthiness Directives; Lifesavings Systems Corp., D-Lok Hook Assembly

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 Lifesavings Systems Corp., D-Lok Hook assembly installed on certain rescue hoist assemblies. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that rescue hoist operators have reported surface irregularities and discontinuities on certain D-Lok Hooks because of an unapproved change in the hook design and manufacturing process from forged material to cast material that have different physical properties. The

actions are intended to prevent failure of a hook during rescue hoist operations, loss of the rescued passenger, and subsequent serious injury or fatality.

DATES: This AD becomes effective on February 11, 2010.

We must receive comments on this AD by March 29, 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 your comments electronically.
- *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.

You may get the service information identified in this AD from Goodrich Corporation, Sensors and Integrated Systems, 1550 S. Valley Vista Dr., Diamond Bar, California 91765, telephone 1–909–569–0210, fax 1–909–569–0387; and from Breeze-Eastern Corporation, 700 Liberty Avenue, Union, NJ 07083–8198, telephone 1–908–686–4000, Ext. 3897 or 3890 or 1–800–929–1919 (toll free United States and Canada only), fax 1–908–688–6495, e-mail *customerservice@breeze-eastern.com.*

Examining the 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 economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is stated in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2009–0183–E, dated August 14, 2009, which is the latest of 4 MCAI ADs that have been issued, to correct an unsafe condition for certain helicopters with certain D-Lok Hook assemblies installed on Goodrich and Breeze-Eastern rescue hoists. The MCAI AD states that rescue hoist operators have reported surface irregularities and discontinuities on certain D-Lok Hooks because of an unapproved change in the hook design and manufacturing process from forged material to cast material that have different physical properties. The actions are intended to prevent failure of a hook during rescue hoist operations, loss of the rescued passenger, and subsequent serious injury or fatality.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

Goodrich has issued Service Bulletin (SB) 42315–489–01, Revision 1, dated June 5, 2009, and Breeze-Eastern Corporation has issued SB BLH–20200–504–25–01, dated June 12, 2009. These SBs were issued following the discovery of surface irregularities and discontinuities on D-Lok Hooks assemblies, part number (P/N) 410–A and 410–F, manufactured by Lifesaving Systems Corp., which are used on Goodrich and Breeze-Eastern rescue hoist assemblies. The SBs specify inspecting and removing all D-Lok hooks that have surface irregularities and discontinuities that exceed specified acceptable limits.

The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

Agusta S.p.A. Model A109 series and AB139/AW139; Eurocopter Model AS332, AS350, AS355, SA–365, AS–365, EC 155 series, EC225LP; Eurocopter Deutschland GmbH Model EC135 and MBB–BK 117; and Sikorsky Aircraft Corporation S–61, S76, and S92 helicopters, all serial numbers; and other helicopters may have a rescue hoist assembly installed with a Lifesaving Systems Corp. D-Lok Hook Assembly with P/N 410–A or 410–F and lot number 208 or 1108. These hook assemblies were manufactured using a design and a manufacturing process using cast material instead of forged material, which was not approved by the FAA. Without FAA approval, these D-Lok hook assemblies, in addition to creating an unsafe condition, are not eligible for use in aircraft operating in the United States. Pursuant to our bilateral agreement with the member countries of the European Community, EASA has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

This AD requires, within 200 hoist lifts, unless already done, replacing each affected D-Lok Hook assembly with an airworthy hook assembly other than D-Lok Hook assembly, P/N 410–A or 410–F, lot number 208 or 1108.

Differences Between This AD and the MCAI AD

The latest MCAI AD requires a visual inspection to determine whether the affected hook assembly has surface irregularities and discontinuities that exceed certain manufacturer limits. If it is within limits, the MCAI AD requires replacing the D-Lok Hook within 30 days from July 11, 2009 or upon reaching 1000 lift cycles since installation of the affected hook, whichever occurs first. This AD does not require an inspection and requires replacing each affected D-Lok Hook within 200 hoist lifts. Also, the MCAI AD is limited to Agusta, Eurocopter, and Sikorsky helicopters, and this AD applies to all helicopters with a Lifesavings Systems Corp. D-Lock Hook Assembly, P/N 410–A or 410–F, lot number 208 or 1108, installed.

Costs of Compliance

We estimate that this AD will affect about 91 helicopters of U.S. registry. We also estimate that it will take about 1 work-hour per helicopter to replace each affected D-Lok Hook with an airworthy hook. The average labor rate is $80 per work-hour. Required parts will cost about $3000 per hoist. Based on these figures, we estimate the cost of this AD on U.S. operators will be $280,280, assuming all 91 helicopters have the D-Lok Hook replaced.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adopting this rule because of reports that the unapproved D-Lok Hooks have been found to have irregularities and discontinuities and if used to carry rescued passengers could lead to loss of the rescued passenger.

Testing shows that the affected hooks could fail at 200 lifts. At least one operator involved in training exercises exceeds 200 lifts in a month, which is a short period of time. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include "Docket No. FAA–2009–1148; Directorate Identifier 2009–SW–36–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 product(s) 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.

Therefore, 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 an economic 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, 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:

2010–03–02 Lifesaving Systems Corp.: Amendment 39–16185. Docket No. FAA–2009–1148; Directorate Identifier 2009–SW–36–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on February 11, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to all helicopters, which have a rescue hoist assembly installed that contains a Lifesaving Systems Corp. D-Lok Hook assembly, part number (P/N) 410–A or 410–F, lot number 208 or 1108. These hooks are installed on but not limited to Goodrich Rescue Hoist Assembly P/N 42325–16–4, 42325–16–5, 44301–10 series, 44315–10, 44307–480, 44307–481, 44316–12–101, 44316–10–101, 42325–12 series, 42325–14 series, 44311–10 series, 712768–240–D 76370–140–D and 76378–260–D; and Breeze-Eastern Corporation Rescue Hoist Assembly, P/N BLH–20200–504 series.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that rescue hoist operators have reported surface irregularities and discontinuities on certain D-Lok Hooks supplied by Lifesaving Systems because of an unapproved change in the hook design and manufacturing process from forged material to cast material that have different physical properties. The actions are intended to prevent failure of a hook during rescue hoist operations, loss of the rescued passenger, and subsequent serious injury or fatality.

Actions and Compliance

(e) Within 200 hoist lifts, unless already done, replace each affected D-Lok Hook assembly with an airworthy hook assembly other than D-Lok Hook assembly, P/N 410–A or 410–F, lot number 208 or 1108.

Differences Between This AD and the MCAI AD

(f) The latest MCAI AD requires a visual inspection to determine whether the affected hook assembly has surface irregularities and discontinuities that exceed certain manufacturer limits. If it is within limits, the MCAI AD requires replacing the D-Lok Hook within 30 days from July 11, 2009, or upon reaching 1000 total lift cycles since installation of the affected lock, whichever occurs first. This AD does not require an inspection and requires replacing each affected D-Lok Hook within 200 lift cycles. Also, the MCAI AD is limited to Agusta, Eurocopter, and Sikorsky helicopters, and this AD applies to all helicopters with a Lifesavings Systems Corp. D-Lock Hook Assembly, P/N 410–A or 410–F, lot number 208 or 1108, installed.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) EASA MCAI AD No. 2009–0124, dated June 12, 2009; 2009–0148–E, dated July 9, 2009; 2009–0179–E, dated August 11, 2009; 2009–0183–E, dated August 14, 2009; and Goodrich Service Bulletin (SB) 42315–489–01, Revision 1, dated June 5, 2009 and Breeze-Eastern Corporation SB BLH–20200–504–25–01, dated June 12, 2009, contain related information.

Joint Aircraft System/Component (JASC) Code

(i) JASC Code 2520: Passenger Compartment Equipment.

Dated: Issued in Fort Worth, Texas, on January 20, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–1518 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0750; Airspace Docket No. 09–AEA–16]

Establishment of Class D and E Airspace and Modification of Class E Airspace; State College, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E airspace and modifies existing Class E airspace at State College, PA, to accommodate a new air traffic control tower at University Park Airport. The FAA is taking this action to enhance the safety and management of instrument Flight Rules (IFR) operations.

DATES: *Effective Date:* 0901 UTC, April 8, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On October 23, 2009, the FAA proposed to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D and E airspace and modifying Class E airspace at University Park Airport, State College, PA (74 FR 54763). A newly commissioned air traffic control tower at University Park Airport was established. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class D airspace designations, Class E surface airspace designations (E2) and Class E airspace designations as extensions to a Class D surface area (E4) are published in Paragraph 5000, 6002 and 6004, respectively, in 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 D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D and E airspace and modifies existing Class E surface airspace at State College, PA. Class D airspace and Class E airspace designated as an extension to a Class D surface area has been established to support the operation of the new air traffic control tower at University Park Airport. Also, additional controlled airspace will be added to the Class E airspace, designated as a surface area for the airport. This action also imparts a minor update to the geographical coordinates of the University Park Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 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 Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA PA D State College, PA [New]

University Park Airport, PA
(Lat. 40°50′57″ N., long. 77°50′55″ W.)

That airspace extending upward from the surface up to and including 3,500 feet MSL within a 4.5-mile radius of the University Park Airport. This Class D airspace area is effective during 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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA PA E2 State College, PA [Amended]

University Park Airport, PA
(Lat. 40°50′57″ N., long. 77°50′55″ W.)

That airspace extending from the surface within a 4.5-mile radius of the University Park Airport; and 1.1 mile either side of the 302° bearing from the airport, extending from the 4.5-mile radius to 5.9 miles northwest of the airport; and that airspace 2.5 miles either side of the 053° bearing from the University Park Airport, extending from the 4.5-mile radius to 13.1 miles northeast of the airport. This Class E airspace area is effective during 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 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AEA PA E4 State College, PA [New]

University Park, PA
(Lat. 40°50′57″ N., long. 77°50′55″ W.)

That airspace extending from the surface 1.1 mile either side of the 302° bearing from the airport extending from the 4.5-mile radius to 5.9 miles northwest of the airport; and that airspace 2.5 miles either side of the 053° bearing from the University Park Airport extending from the 4.5-mile radius to 13.1 miles northeast of the airport. This Class E airspace area is effective during 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.

* * * * *

Issued in College Park, Georgia, on January 15, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1377 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0706; Airspace Docket No. 09–ASO–26]

Establishment of Class E Airspace; Lewisport, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** September 14, 2009 that establishes Class E Airspace at Hancock Co.—Ron Lewis Field, Lewisport, KY.

DATES: *Effective Date:* 0901 UTC, January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on September 14, 2009 (74 FR 46896), Docket No. FAA–2009–0706; Airspace Docket No. 09–ASO–26. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on January 15, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1365 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0705; Airspace Docket No. 09–ASO–25]

Establishment of Class E Airspace; Hertford, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** September 14, 2009 that establishes Class E Airspace at Harvey Point Defense Testing Activity, Hertford, NC.

DATES: *Effective Date:* 0901 UTC, January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on September 14, 2009 (74 FR 46892), Docket No. FAA–2009–0705; Airspace Docket No. 09–ASO–25. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on January 14, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1384 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0605; Airspace Docket No. 09–ASO–19]

Establishment of Class E Airspace; Clayton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** September 14, 2009 that establishes Class E Airspace at Heaven's Landing Airport, Clayton, GA.

DATES: *Effective Date:* 0901 UTC, January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on September 14, 2009 (74 FR 46893), Docket No. FAA–2009–0605; Airspace Docket 09–ASO–19. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on January 14, 2010.

Myron A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1381 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0603; Airspace Docket No. 09–ASO–16]

Establishment of Class E Airspace; Saluda, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** September 14, 2009 that establishes Class E Airspace at Saluda County Airport, Saluda, SC.

DATES: *Effective Date:* 0901 UTC, January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on September 14, 2009 (74 FR 46894), Docket No. FAA–2009–0603; Airspace Docket No. 09–ASO–16. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on January 14, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1382 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0604; Airspace Docket No. 09–ASO–18]

Establishment of Class E Airspace; Tompkinsville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** September 14, 2009 that establishes Class E Airspace at Tompkinsville—Monroe County Airport, Tompkinsville, KY.

DATES: *Effective Date:* 0901 UTC, January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on September 14, 2009 (74 FR 46890), Docket No. FAA–2009–0604; Airspace Docket No. 09–ASO–18. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on January 14, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1373 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0653; Airspace Docket 09–ASO–22]

Modification of Class E Airspace; Anniston, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** October 28, 2009 that modifies the Class E airspace at Anniston Metropolitan Airport, Anniston, AL.

DATES: *Effective Date:* 0901 UTC, January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on October 28, 2009 (74 FR 55449), Docket No. FAA–2009–0653; Airspace Docket 09–ASO–22. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia on January 13, 2010.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–1374 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 92

[Docket No. FR–5351–F–03]

RIN 2501–AD48

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System; Withdrawal of Rescinded Regulatory Amendments

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Final rule; withdrawal of rescinded regulatory amendments.

SUMMARY: On December 29, 2009, HUD published a final rule to require the use of the Enterprise Income Verification (EIV) system by public housing agencies and multifamily housing owners and management agents when verifying the employment and income of program participants. The purpose of the December 2009, final rule was to clarify certain provisions of HUD's January 27, 2009, final rule on the same subject matter, and to return other regulatory provisions to their pre-January 2009, final rule content. Although the preamble to the December 29, 2009, final rule clearly stated that the December 29, 2009, final rule was rescinding specified regulatory changes made by the January 27, 2009, final rule, the regulatory text of the December 29, 2009, final rule inadvertently omitted the corresponding regulatory instruction to that effect. This final rule corrects this omission by formally withdrawing the rescinded regulatory amendments consistent with the stated purpose of the December 29, 2009, final rule.

DATES: The amendments to 24 CFR 5.508, 5.516, 5.518, 5.609 and 92.203 published at 74 FR 4832, January 27, 2009, which were delayed at 74 FR 13339, March 27, 2009, and further delayed at 74 FR 44285, August 28, 2009, are withdrawn effective January 31, 2010.

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Program Advisor for the Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 4214, Washington, DC 20410, telephone number 202–402–4267. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 6138, Washington, DC 20410, telephone number 202–402–2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On January 27, 2009, at 74 FR 4832, HUD published a final rule, entitled "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs" (January 2009 Final Rule). The January 2009 Final Rule revised HUD's public and assisted housing program regulations to implement the upfront income verification process for program participants and to require the use of HUD's EIV system by public housing agencies and owners and management agents. The January 2009 Final Rule was originally scheduled to become effective on March 30, 2009. Consistent with Administration policy to review rules issued during the transition from one Administration to another, on February 11, 2009, at 74 FR 6839, HUD published a notice in the **Federal Register** seeking public comment on whether to delay the effective date of the January 2009 Final Rule and requesting comment generally on this rule.

Following publication of the February 11, 2009, **Federal Register** notice, HUD issued a final rule on March 27, 2009 (74 FR 13339), that extended the effective date of the January Final Rule to September 30, 2009. The purpose of this extension was to provide HUD with time to review the public comments received in response to the February 11, 2009, notice. On August 28, 2009, at 74 FR 44285, HUD published a final rule that further extended the effective date of the January 2009 Final Rule to January 31, 2010. The further extension was undertaken to allow the two HUD Assistant Secretaries, who have responsibility for the programs affected by the rule and were then only recently confirmed, sufficient time to review the subject matter of the January 2009 Final Rule, and to review and consider the public comments received on HUD's February 11, 2009, **Federal Register** notice.

On October 15, 2009, at 74 FR 52931, HUD published a proposed rule soliciting public comment on proposed regulatory revisions to the January 2009 Final Rule to address the issues and concerns raised by the public commenters on the January 2009 Final Rule. The regulatory changes proposed by HUD in the October 15, 2009, proposed rule were few and the changes focused on addressing issues raised by the commenters regarding the purpose of the January 2009 Final Rule, which is full implementation of the EIV system. Other issues raised by the commenters but extraneous to EIV implementation were deferred for future consideration. Specifically, HUD proposed to withdraw the January 2009 Final Rule amendments to the definition of annual income and to HUD's noncitizens regulations and return these provisions to their pre-January 2009 content.

On December 29, 2009, (74 FR 68924), HUD published a final rule following publication of the October 15, 2009, proposed rule, and taking into consideration the public comments received on the proposed rule. Consistent with the preceding October 2009, proposed rule, the purpose of the December 2009, final rule was to clarify certain provisions of HUD's January 2009 Final Rule and to return other regulatory provisions to their pre-January 2009, final rule content. Although the preamble to the December 29, 2009, final rule clearly stated that the December 29, 2009, final rule was rescinding specified regulatory changes made by the January 2009 Final Rule, the regulatory text of the December 29, 2009, final rule inadvertently omitted the corresponding regulatory instruction to that effect.[1]

This final rule corrects this omission by formally withdrawing the rescinded regulatory amendments, as of the effective date of the December 29, 2009, final rule, as intended. Interested readers may refer to the preamble of the December 29, 2009, final rule for additional information regarding the regulatory changes.

Dated: January 21, 2010.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2010–1637 Filed 1–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 404

Labor Organization Officer and Employee Reports

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 100 to 499, revised as

[1] *See e.g.* 74 FR at 68924, first column, and 68925, middle column.

of July 1, 2009, on page 153, in § 404.1, remove the first paragraph (i), including its subparagraphs (1) through (4).

[FR Doc. 2010–1740 Filed 1–26–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS JASON DUNHAM (DDG 109) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective January 27, 2010 and is applicable beginning January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS JASON DUNHAM (DDG 109) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Four, Paragraph 15 by adding, in alpha numerical order, by vessel number, an entry for USS JASON DUNHAM (DDG 109):

■ B. In Table Four, Paragraph 16 by adding, in alpha numerical order, by vessel number, an entry for USS JASON DUNHAM (DDG 109):

■ C. In Table Five, by adding, in alpha numerical order, by vessel number, an entry for USS JASON DUNHAM (DDG 109):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FOUR PARAGRAPH 15

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	*	* * *
USS JASON DUNHAM	DDG 109	1.89 meters.
* * *	*	* * *

* * * * *

TABLE FOUR PARAGRAPH 16

Vessel	Number	Obstruction angle relative ship's headings
* * *	*	* * *
USS JASON DUNHAM	DDG 109	107.09 thru 112.50 [degrees].
* * *	*	* * *

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*		*
USS JASON DUNHAM	DDG 109	X	X	X	14.5
* * *	*	*	*		*

* * * * *

Approved: January 14, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: January 19, 2010.

A.M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–1524 Filed 1–26–10; 8:45 am]

BILLING CODE 3810–FF–P

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property; Penalties and Other Law

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The U.S. Postal Service is amending the Code of Federal Regulations to increase the maximum penalty for violations of the rules concerning conduct on Postal Service property. The authorized maximum penalty should allow the courts more flexibility in determining the appropriate means of promoting compliance with the regulation.

DATES: *Effective Date:* January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth P. Martin, General Counsel, Joint Legal Services Center, U.S. Postal Inspection Service/Office of Inspector General, (703) 248–2100.

SUPPLEMENTARY INFORMATION: The current rules governing conduct on Postal Service property establish the maximum penalty for a violation as a fine of not more than $50 or imprisonment of not more than 30 days, or both. As revised by this notice, the maximum penalty for a violation will be increased to a fine of not more than that allowed under title 18 of the United States Code or imprisonment of not more than 30 days, or both.

To promote compliance with the regulation and to maintain the deterrent effect, the Postal Service has determined it is appropriate to increase the maximum penalty allowed for a violation of this regulation. The authorized maximum penalty should allow the courts more flexibility in determining the appropriate means of promoting compliance with the regulation.

The current regulations have not been changed for over 30 years. The current maximum fine does not reflect either the seriousness of some of the infractions, nor the effect that inflation has had over the past 30 years. This current low monetary penalty provision gives the court little flexibility in arriving at a fair and just resolution to an infraction. The revisions to the maximum monetary penalty allow for this flexibility. Further, the revision to the maximum penalty more accurately reflects the range of conduct covered by this regulation.

List of Subjects in 39 CFR Part 232

Authority delegations (Government agencies), Crime, Federal buildings and facilities, Government property, Law enforcement officers, Postal Service, Security measures.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR Part 232 as set forth below:

PART 232—[AMENDED]

■ 1. The authority citation for part 232 continues to read as follows:

Authority: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7), 1201(2).

■ 2. In § 232.1, paragraph (p)(2) is revised to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(p) * * *

(2) Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to fine of not more than that allowed under title 18 of the United States Code or imprisonment of not

more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–1643 Filed 1–26–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0273; FRL–8807–2]

Novaluron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of novaluron in or on multiple commodities discussed later in this document. Additionally, this regulation removes the established tolerance on tomato, as it is included as a member in "vegetable, fruiting, group 8". Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 27, 2010. Objections and requests for hearings must be received on or before March 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0273. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods & Guidelines" on the left-side navigation menu.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0273 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 29, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0273, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of June 10, 2009 (74 FR 27538) (FRL–8417–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7546) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.598 be amended by establishing tolerances for residues of the insecticide novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy]phenyl] amino]carbonyl]-2,6-difluorobenzamide, in or on berry, low growing, subgroup 13-07G at 0.50 parts per million (ppm); Swiss chard at 12 ppm; bean, snap, succulent at 0.60 ppm; bean, dry at 0.20 ppm; vegetable, cucurbit, group 9 at 0.25 ppm; and the following commodities at 1.1 ppm: cocona; eggplant, African; eggplant, pea;

eggplant, scarlet; goji berry; huckleberry, garden; martynia; naranjilla; okra; roselle; sunberry; tomato, bush; tomato, currant; tomato, tree; and vegetable, fruiting, group 8. That notice referenced a summary of the petition prepared on behalf of IR-4 by Makhteshim-Agan of North America, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised several of the proposed tolerance levels. Additionally, the Agency has revised the entry for berry, low growing, subgroup 13-07G to exclude lowbush blueberry. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of novaluron on vegetable, fruiting, group 8 at 1.0 ppm; vegetable, cucurbit, group 9 at 0.15 ppm; berry, low growing, subgroup 13-07G, except lowbush blueberry at 0.45 ppm; cocona at 1.0 ppm; eggplant, African at 1.0 ppm; eggplant, pea at 1.0 ppm; eggplant, scarlet at 1.0 ppm; goji berry at 1.0 ppm; huckleberry, garden at 1.0 ppm; martynia at 1.0 ppm; naranjilla at 1.0 ppm; okra at 1.0 ppm; roselle at 1.0 ppm; sunberry at 1.0 ppm; tomato, bush at 1.0 ppm; tomato, currant at 1.0 ppm; tomato, tree at 1.0 ppm; bean, snap, succulent at 0.60 ppm; bean, dry, seed at 0.30 ppm; and Swiss chard at 12 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Novaluron has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant and is not a dermal sensitizer. In subchronic and chronic toxicity studies, novaluron primarily produced hematotoxic effects such as methemoglobinemia, decreased hemoglobin, decreased hematocrit, and decreased RBCs (or erythrocytes) associated with increased erythropoiesis. Increased spleen weights and/or hemosiderosis in the spleen were considered to be due to enhanced removal of damaged erythrocytes and not to an immunotoxic effect.

There was no maternal or developmental toxicity seen in the rat and rabbit developmental toxicity studies up to the limit doses. In the 2–generation reproductive toxicity study in rats, both maternal and offspring toxicity were evidenced by enlargement of the spleen. Reproductive toxicity (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) was observed only in males.

Signs of neurotoxicity were seen in the rat acute neurotoxicity study at the limit dose, including clinical signs (piloerection, fast/irregular breathing), functional observation battery (FOB) parameters (head swaying, abnormal gait) and neuropathology (sciatic and tibial nerve degeneration). No signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats or in any other subchronic or chronic toxicity study in rats, mice or dogs. Therefore, there is no concern for neurotoxicity resulting from exposure to novaluron.

There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies and no evidence of mutagenic activity in the submitted mutagenicity studies, including a bacterial (*Salmonella, E. coli*) reverse mutation assay, an *in vitro* mammalian chromosomal aberration assay, an *in vivo* mouse bone-marrow micronucleus assay and a bacterial DNA damage or repair assay. Based on the results of these studies, EPA has classified novaluron as "not likely to be carcinogenic to humans."

Specific information on the studies received and the nature of the adverse effects caused by novaluron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Novaluron: Human-Health Risk Assessment for Proposed Section 3 Uses on Vegetable, Fruiting, Group 8; Vegetable, Cucurbit, Group 9; Berry, Low-growing, Subgroup 13-07G; Miscellaneous Fruiting Vegetables; Bean, Snap; Bean, Dry, Seed; and Swiss Chard," pages 27–30 in docket ID number EPA–HQ–OPP–2009–0273.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the

probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for novaluron used for human risk assessment can be found at *http://www.regulations.gov* in the document "Novaluron: Human-Health Risk Assessment for Proposed Section 3 Uses on Vegetable, Fruiting, Group 8; Vegetable, Cucurbit, Group 9; Berry, Low-growing, Subgroup 13-07G; Miscellaneous Fruiting Vegetables; Bean, Snap; Bean, Dry, Seed; and Swiss Chard," pages 12–13 in docket ID number EPA–HQ–OPP–2009–0273.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to novaluron, EPA considered exposure under the petitioned-for tolerances as well as all existing novaluron tolerances in 40 CFR 180.598. EPA assessed dietary exposures from novaluron in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for novaluron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA incorporated anticipated residues derived from average field trial residues for pome fruit, sugarcane, bushberry, *Brassica* leafy greens, stone fruit, bell pepper, non-bell pepper, cucumber, summer squash, cantaloupe, strawberry, succulent snap bean, dry bean seed, and Swiss chard; average greenhouse trial residues for tomato; empirical processing factors for apple juice (translated to pear and stone fruit juice), tomato paste and purèe; and Dietary Exposure Evaluation Modeling (DEEM) default processing factors for the remaining processed commodities. In estimating dietary exposure from secondary residues in livestock, EPA relied on anticipated residues for meat, hog, and milk commodities. One-hundred percent crop treated (PCT) was assumed for all existing and new uses of novaluron.

iii. *Cancer*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, EPA has classified novaluron as "not likely to be carcinogenic to humans." Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water*. The residues of concern in drinking water are novaluron and its chlorophenyl urea and chloroaniline degradates. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for novaluron and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of novaluron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The following models were used to assess residues of concern in drinking water: the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for parent novaluron in surface water; the First Index Reservoir Screening Tool (FIRST) for chlorophenyl urea and chloroaniline degradates in surface water; and the Screening Concentration in Ground Water (SCI-GROW) model for novaluron, chlorophenyl urea and chloroaniline in ground water. The estimated drinking water concentrations (EDWCs) of novaluron, chlorophenyl urea, and chloroaniline for chronic exposures for non-cancer assessments are estimated to be 0.76 parts per billion (ppb), 0.89 ppb and 2.6 ppb, respectively, for surface water and 0.0056 ppb, 0.0045 ppb and 0.0090 ppb, respectively, for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The highest drinking water concentrations were estimated for surface water. Of the three EDWC values for surface water, the chronic EDWC for the terminal metabolite, chloroaniline, is the highest (assuming 100% molar conversion from parent to aniline). This is consistent with the expected degradation pattern for novaluron. Therefore, for chronic dietary risk assessment, the water concentration value for chloroaniline of 2.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Novaluron is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found novaluron to share a common mechanism of toxicity with any other substances, and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that novaluron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of

safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for novaluron includes rat and rabbit prenatal developmental toxicity studies and a 2–generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility following *in utero* exposure to rats or rabbits in the developmental toxicity studies and no evidence of increased quantitative or qualitative susceptibility of offspring in the reproduction study. Neither maternal nor developmental toxicity was seen in the developmental studies up to the limit doses. In the reproduction study, offspring and parental toxicity (increased absolute and relative spleen weights) were similar and occurred at the same dose; additionally, reproductive effects (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) occurred at a higher dose than that which resulted in parental toxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for novaluron is complete except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. Although effects were seen in the spleen in two studies, as explained in Unit III.A., EPA has concluded that novaluron does not directly target the immune system and the Agency does not believe that conducting a functional immunotoxicity study will result in a NOAEL lower than the regulatory dose for risk assessment; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There were signs of neurotoxicity in the acute neurotoxicity study in rats, including clinical signs (piloerection, fast/irregular breathing), functional observation battery (FOB) parameters (head swaying, abnormal gait), and neuropathology (sciatic and tibial nerve degeneration). However, the signs observed were not severe, were seen only at the limit dose (2,000 milligrams/kilogram/day (mg/kg/day)) and were not reproducible. No signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats at doses up to 1,752 mg/kg/day in males and 2,000 mg/kg/day in females or in any other subchronic or chronic toxicity study in rats, mice or dogs, including the developmental and reproduction studies. Therefore, novaluron does not appear to be a neurotoxicant, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that novaluron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level or anticipated residues derived from reliable residue field trials. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to novaluron in drinking water. Residential exposures are not expected. These assessments will not underestimate the exposure and risks posed by novaluron.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, novaluron is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to novaluron from food and water will utilize 84% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for novaluron.

3. *Short-term and intermediate-term risk*. Sort-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Novaluron is not registered for any use patterns that would result in residential exposure. Therefore, the short-term and intermediate-term aggregate risk is the sum of the risk from exposure to novaluron through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies and no evidence of mutagenic activity in the submitted mutagenicity studies; therefore, novaluron is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The following adequate enforcement methodologies are available to enforce the tolerance expression: A gas chromatography/electron-capture detection (GC/ECD) method and a high-performance liquid chromatography/ultraviolet (HPLC/UV) method. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for residues of novaluron on commodities associated with this petition.

C. Revisions to Petitioned-for Tolerances

Based on analysis of the residue field trial data supporting the petition, EPA revised the proposed tolerances on vegetable, cucurbit, group 9 from 0.25 ppm to 0.15 ppm; berry, low growing, subgroup 13-07G, except lowbush

blueberry from 0.50 ppm to 0.45 ppm; bean, dry, seed from 0.20 ppm to 0.30 ppm; and the following commodities from 1.1 ppm to 1.0 ppm: vegetable, fruiting, group 8; cocona; eggplant, African; eggplant, pea; eggplant, scarlet; goji berry; huckleberry, garden; martynia; naranjilla; okra; roselle; sunberry; tomato, bush; tomato, currant; and tomato, tree. EPA revised these tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*. EPA also revised the entry for berry, low growing, subgroup 13-07G to exclude lowbush blueberry. Lowbush blueberry is included as a member of bushberry subgroup 13-07B, which has an established tolerance for novaluron at 7.0 ppm; therefore, because the established subgroup 13-07B tolerance is higher (at 7.0 ppm), EPA has excluded lowbush blueberry from subgroup 13-07G (at 0.45 ppm).

V. Conclusion

Therefore, tolerances are established for residues of novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy) ethoxy]phenyl]amino]carbonyl]-2,6-difluorobenzamide, in or on vegetable, fruiting, group 8 at 1.0 ppm; vegetable, cucurbit, group 9 at 0.15 ppm; berry, low growing, subgroup 13-07G, except lowbush blueberry at 0.45 ppm; cocona at 1.0 ppm; eggplant, African at 1.0 ppm; eggplant, pea at 1.0 ppm; eggplant, scarlet at 1.0 ppm; goji berry at 1.0 ppm; huckleberry, garden at 1.0 ppm; martynia at 1.0 ppm; naranjilla at 1.0 ppm; okra at 1.0 ppm; roselle at 1.0 ppm; sunberry at 1.0 ppm; tomato, bush at 1.0 ppm; tomato, currant at 1.0 ppm; tomato, tree at 1.0 ppm; bean, snap, succulent at 0.60 ppm; bean, dry, seed at 0.30 ppm; and Swiss chard at 12 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 19, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.598 is amended by:

■ i. Removing the entry for "Tomato" from the table in paragraph (a); and

■ ii. Alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.598 Novaluron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Bean, dry, seed	0.30
Bean, snap, succulent	0.60
Berry, low growing, subgroup 13-07G, except lowbush blueberry	0.45
* * * * *	
Cocona	1.0
* * * * *	
Eggplant, African	1.0
Eggplant, pea	1.0
Eggplant, scarlet	1.0
* * * * *	
Goji berry	1.0
* * * * *	
Huckleberry, garden	1.0
Martynia	1.0
* * * * *	
Naranjilla	1.0
Okra	1.0
* * * * *	
Roselle	1.0
* * * * *	
Sunberry	1.0
Swiss chard	12
Tomato, bush	1.0
Tomato, currant	1.0
Tomato, tree	1.0
* * * * *	
Vegetable, cucurbit, group 9	0.15

Commodity	Parts per million
Vegetable, fruiting, group 8	1.0

* * * * *

[FR Doc. 2010–1609 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0876; FRL–8804–2]

Pendimethalin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues or residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, in or on grass forage, fodder, and hay crop group 17, forage; grass forage, fodder, and hay crop group 17, hay; and grass forage, fodder, and hay crop group 17, straw. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 27, 2010. Objections and requests for hearings must be received on or before March 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0876. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Phil Errico, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6663; e-mail address: *errico.philip@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0876 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 29, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0876, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 13, 2009 (74 FR 16866) (FRL–8396–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7396) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.361 be amended by establishing tolerances for combined residues of the herbicide, pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, expressed as the stoichiometric equivalent of pendimethalin, in or on grass forage, fodder, and hay crop group 17, forage; grass forage, fodder, and hay crop group 17, hay; and grass forage, fodder, and hay crop group 17, straw at 40 parts per million (ppm), 80 ppm, and 4.5 ppm, respectively. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, at *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has changed the requested tolerances for the combined residues for pendimethalin and its metabolite in or on grass forage, fodder, and hay, crop group 17, forage; grass forage, fodder, and hay, crop group 17, hay; and grass forage, fodder, and hay crop group 17, straw from 40 ppm, 80 ppm, and 4.5 ppm, respectively, to 20 ppm, 13 ppm, and 4.0 ppm, respectively. EPA also changed the commodities names to reflect the regulatory names as stated in 40 CFR 180.41(c). The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, on grass forage, fodder, and hay crop group 17, forage; grass forage, fodder, and hay crop group 17, hay; grass forage, fodder, and hay, crop group 17, straw at 20 ppm, 13 ppm, and 4.0 ppm, respectively. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pendimethalin has low acute oral, dermal, and inhalation toxicity, and is not a dermal sensitizer. The thyroid is a target organ for pendimethalin. Thyroid toxicity in chronic and subchronic rat and mouse studies was manifested as alterations in thyroid hormones, increased thyroid weight, and microscopic thyroid lesions. The available prenatal and postnatal developmental toxicity data provided no indication of qualitative or quantitative susceptibility to the young. Pendimethalin is considered a possible human carcinogen based on a statistically significant increased trend and pair-wise comparison between the high dose group and controls for thyroid folliculate cell adenomas in male and female rats. A threshold approach is being used to evaluate cancer risk because mode of action studies are available demonstrating that the thyroid tumors are due to a thyroid-pituitary imbalance (a threshold effect), and also because pendimethalin was shown to be non-mutagenic in mammaliam somatic cells and germ cells. Specific information on the studies received and the nature of the adverse effects caused by pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled "Pendimethalin: Human Health Risk and Exposure Assessment for Proposed Section 3 Registration for use on Grasses for Seed Production and Dormant Bermudagrass Pasture and Hay Fields," page 10, in docket ID number EPA–HQ–OPP–2008–0876.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, used for human risk assessment can be found at *http://www.regulations.gov* in the document titled "Pendimethalin: Human Health Risk and Exposure Assessment for Proposed Section 3 Registration for use on Grasses for Seed Production and Dormant Bermudagrass Pasture and Hay Fields," page 29 in docket ID number EPA–HQ–OPP–2008–0876.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, EPA considered exposure under the petitioned-for tolerances as well as all existing pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, tolerances in (40 CFR 180.361). EPA assessed dietary exposures from pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the

possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the chronic dietary exposure analysis was based on the following assumptions:

a. All currently registered raw agricultural commodities (RACs) and all proposed uses on RACs have tolerance level residues of pendimethalin and its metabolite, 4-[(1-ethylpropy)amino]-2-methyl-3,5-dinitrobenzyl alcohol.

b. All crops for which tolerances exist or are proposed were treated, i.e., 100 percent crop treated (PCT).

iii. *Cancer*. Pendimethalin is classified as a "Group C," possible human carcinogen, based on a statistically significant increase trend and pair-wise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. A non-quantitative approach (i.e., non-linear, RfD approach) was employed by the Agency since mode of action studies are available that demonstrate that the thyroid tumors are due to a thyroid-pituitary imbalance. Pendimethalin was shown to be non-mutagenic in mammalian somatic cells and germ cells. Cancer risk was assessed using the same estimates as discussed in Unit III.C.1.ii., chronic exposure. Based on concern for the hormonal changes (alterations in thyroid weights and histopathological lesions) seen in several studies following oral administration of pendimethalin for 14, 28, and 92 days, as well as the following chronic exposure and the likelihood that pendimethalin may cause disruption in the thyroid, the Agency has required a developmental thyroid study to further characterize these effects. This study has not been submitted.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, acute exposures are estimated to be 77.7 parts per billion (ppb) for surface water and 0.036 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 6.0 ppb for surface water and 0.036 ppb for ground water, and for chronic exposures for cancer assessments are estimated to be 4.8 ppb for surface water. Due to the tight sorption to soil, pendimethalin is not considered a cancer risk in ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model for PRZM-EXAMS concentrations.

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

Pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, is currently registered for the following uses that could result in residential exposures: Turf grass. EPA assessed residential exposure using the following assumptions: The scenarios used were short-term in duration and consisted of dermal (for adults and children), and oral (hand-to-mouth, and soil ingestion, for children only) exposure. The level of concern for oral, dermal, and inhalation exposure is an MOE of less than 300.

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

EPA has not found pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, to share a common mechanism of toxicity with any other substances, and pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The Agency concluded there is potential for prenatal and/or postnatal toxicity (thyroid) in developing offspring resulting from exposure to pendimethalin. There was no indication of prenatal and/or postnatal qualitative or quantitative increased susceptibility in the developmental studies in rats and rabbits or the 2–generation reproduction studies in rats. However, because developmental LOAELs for thyroid toxicity could not be determined in the developmental studies, the Agency has requested developmental thyroid toxicity data to determine potential thyroid toxicity following prenatal and/or postnatal exposure to pendimethalin.

3. *Conclusion*. Based on the following considerations, EPA has determined that the FQPA SF should be retained for the subchronic and chronic thyroid endpoints:

i. The toxicity database for pendimethalin is not complete. Based on the hormonal changes, alterations in thyroid weights and histopathological lesions, observed in several studies following oral administration of pendimethalin, it is likely that pendimethalin may cause disruption in the endocrine system. There is concern that perturbation of thyroid homeostasis may lead to hypothyroidism and possibly result in adverse effects on the developing nervous system. Consequently, EPA has recommended that a developmental thyroid assay be conducted to evaluate the impact of pendimethalin on thyroid hormones, structure, and/or thyroid hormone homeostasis during development. This study has not yet been submitted.

In accordance with 40 CFR part 158 Toxicology Data Requirements, acute and subchronic neurotoxicity studies and an immunotoxicity study are required for pendimethalin. However, since there was no evidence of neurotoxic clinical signs, changes in brain weight, or histopathology of the nervous system in any study with pendimethalin, the Agency determined that an additional factor for database uncertainties is not needed to account for lack of these data. Additionally, there is no need for a developmental neurotoxicity study. In the absence of specific immunotoxicity studies, EPA has evaluated the available pendimethalin toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by pendimethalin, and pendimethalin does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic.

Therefore, the Agency determined that an additional uncertainty factor for database uncertainties is not need to account for lack of these data.

ii. There was no indication of prenatal and/or postnatal qualitative or quantitative increased susceptibility in the developmental studies in rats and rabbits or the 2–generation reproduction studies in rats. However, the developmental studies in rats and rabbits were not adequate to determine the potential for thyroid toxicity during development. Consequently, there is concern for potential increased sensitivity or susceptibility in offspring regarding thyroid effects, and a developmental thyroid toxicity study has been required.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine.

Although the exposure estimate is very conservative and there are no neurotoxic concerns for pendimethalin, there is sufficient uncertainty regarding thyroid effects, particularly thyroid effects in the young, that EPA is retaining the 10X FQPA SF for all subchronic and chronic exposures whose endpoint is based on thyroid effects. Pendimethalin has not been shown to cause acute effects. EPA has also determined that the traditional 10X uncertainty factor to account for interspecies variation may be reduced to 3X for these subchronic and chronic exposures, since it has been established that rats are more susceptible to thyroid effects than humans. These factors, together with the traditional 10X uncertainty factor to account for intraspecies variation, result in a total uncertainty factor of 300X (10X, 3X, and 10X).

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, from food and water will utilize 15% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, is not expected to exceed the MOEs of concern.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 650 for adult males and 580 for adult females. The aggregate exposure estimate for children results in a total MOE of 350 and 340 due to a residential exposure estimate of 0.024 mg/kg/day and 0.025 mg/kg/day when children are exposed to application rates (to residential turf) of 2 lbs ai/Acre and 3 lbs ai/Acre, respectively. The level of concern is a value less than 300, therefore these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the

sum of the risk from exposure to pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. As explained in Unit III.C.iii, the chronic risk assessment is considered to be protective of any cancer effects since available studies demonstrate that the thyroid tumors are due to a thyroid pituitary imbalance, and pendimethalin was shown to be non-mutagenic in mammalian somatic cells and germ cells.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, using liquid chromatography/mass spectrometry analysis (LC/MS/MS), is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established or proposed Codex Maximum Residue Levels (MRLs) for pendimethalin.

C. Revisions to Petitioned-For Tolerances

EPA has revised the requested tolerances to reflect the residue chemistry data submitted to support the proposed label for the use of pendimethalin on grass grown for seed and dormant Bermuda grass as requested by the petitioner. The commodity names were also changed to coincide with the regulatory Crop Group names as stated in 40 CFR 180.41(c).

V. Conclusion

Therefore, tolerances are established for combined residues of pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, expressed as the stoichiometric equivalent of pendimethalin, in or on grass forage, fodder, and hay, crop group 17, forage; grass forage, fodder, and hay, crop group 17, hay; grass forage, fodder, and hay, crop group 17, straw at 20 ppm, 13 ppm, and 4.0 ppm, respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 19, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

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

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Grass forage, fodder, and hay crop group 17, forage	20
Grass forage, fodder, and hay crop group 17, hay	13

Commodity	Parts per million
Grass forage, fodder, and hay crop group 17, straw	4.0
* * * * *	

* * * * *

[FR Doc. 2010–1610 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0276; FRL–8808–6]

Triticonazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of triticonazole in or on grain, cereal, group 15, except rice, and grain, cereal, forage, fodder and straw, group 16, except rice. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 27, 2010. Objections and requests for hearings must be received on or before March 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0276. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8050; e-mail address: *Maignan.Tawanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods & Guidelines" on the left-side navigation menu.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0276 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before March 29, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0276, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of August 19, 2009, (74 FR 41900) (FRL–8426–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7420) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528. The petition requested that 40 CFR 180.583 be amended by establishing tolerances for residues of the fungicide triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on grain, cereal, group 15, except rice, and grain, cereal, forage, fodder and straw, group 16, except rice, at 0.05 and 0.10 parts per million (ppm), respectively. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing. Based upon review of the data supporting the petition, EPA has modified both the crop group terminology, and tolerance levels for

grain, cereal, group 15, except rice, at 0.01 ppm, and the crop group terminology (only) for grain, cereal, forage, fodder and straw, group 16, except rice, at 0.10 ppm. These tolerances replace previously established individual tolerances for barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw at 0.05 ppm. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol on grain, cereal, group 15, except rice, at 0.01 ppm, and grain, cereal, forage, fodder and straw, group 16, except rice, at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Triticonazole has low acute toxicity, is not a skin, eye, or respiratory irritant, or a dermal sensitizer. Non-acute toxicity studies show that the liver (rat, mouse, dog) and adrenals (rat, dog, rabbit) are target organs across species. Adverse body weight changes (rat, dog, rabbit, mouse) and clinical signs (rat, dog, mouse) also were observed in multiple species. In the developmental and reproductive toxicity studies, adverse effects were seen at the same dose level in the offspring and parental animals, and the offspring were not qualitatively more susceptible compared with adults. In the rat subchronic study, decreased thymus weights were reported at a dose level (~2,300 milligrams/kilogram/day (mg/kg/day)) two times higher than the limit dose (1,000 mg/kg/day). Triticonazole was negative for mutagenicity, and the cancer classification is "Not Likely to Be Carcinogenic to Humans" based on a lack of evidence of carcinogenicity in the two guideline studies conducted on rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by triticonazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Triticonazole. Human Health Risk Assessment for Proposed Seed Treatment Use on Cereal Grains (Crop Group 15) Including Barley, Field Corn, Oats, Popcorn, Rye, Sorghum Grain, Sweet Corn, Triticale, and Wheat (Excluding Rice); and Forage, Fodder, and Straw of Cereal Grains (Crop Group 16), Excluding Rice," at pages 34 to 36 in docket ID number EPA–HQ–OPP–2009–0276.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for triticonazole used for human risk assessment can be found at *http://www.regulations.gov* in the document "Triticonazole. Human Health Risk Assessment for Proposed Seed Treatment Use on Cereal Grains (Crop Group 15) Including Barley, Field Corn, Oats, Popcorn, Rye, Sorghum Grain, Sweet Corn, Triticale, and Wheat (Excluding Rice); and Forage, Fodder, and Straw of Cereal Grains (Crop Group 16), Excluding Rice," at pages 15 to 16 in docket ID number EPA–HQ–OPP–2009–0276.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to triticonazole, EPA considered exposure under the petitioned-for tolerances as well as all existing triticonazole tolerances in 40 CFR 180.583. EPA assessed dietary exposures from triticonazole in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of

Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance level residues of triticonazole were found in all commodities and that all commodities consumed were 100% crop treated. Anticipated residues and/or percent crop treated (PCT) information were not used.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance level residues in all commodities, and 100% crop treated for all treated commodities. Anticipated residues and/or PCT information were not used.

iii. *Cancer*. Triticonazole is classified as "not likely to be carcinogenic to humans" based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies. There is no evidence that triticonazole is carcinogenic to humans, therefore an exposure assessment to evaluate cancer risk is not needed.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for triticonazole. Tolerance level residues and/or 100% crop treated were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for triticonazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of triticonazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The estimated drinking water concentrations (EDWCs) used in the dietary risk assessment were provided by OPP's Environmental Fate and Effects Division and incorporated directly into the dietary assessment. The EDWCs used in the dietary assessment were modeled using the surface water model, Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS). For the acute point estimate, the PRZM-EXAMS 1-in-10 year annual maximum EDWC was used. For the chronic point estimate, the PRZM-EXAMS 1-in-10 year annual mean EDWC was used. PRZM-EXAMS EDWCs were used because they were higher (and therefore more protective) than the groundwater model's, (Screening Concentration in Groudwater model (SCI-GROW's)) EDWC. Based on the PRZM/EXAMS, the EDWCs of triticonazole for acute exposures are 75.5 parts per billion (ppb) for surface water and 5.7 ppb for ground water, and chronic exposures for non-cancer assessments are estimated to be 32.8 ppb for surface water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 75.5 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 32.8 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Triticonazole is currently registered for the following uses that could result in residential exposures: Residential and commercial turfgrass, golf courses, and sod farms. EPA quantitatively assessed the risk from residential exposure to children from children's incidental oral post-application scenarios (hand to mouth, mouthing grass, and soil ingestion). Children and adults may also have post-application dermal exposure but dermal toxicity studies with triticonazole did not identify any adverse effects from such exposure.

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

EPA has not found triticonazole to share a common mechanism of toxicity with any other substances, and triticonazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that triticonazole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Triticonazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice; some induce thyroid tumors in rats; and some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Triticonazole and other triazole-containing pesticides can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including triticonazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov*, Docket

Identification (ID) Number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for triticonazole includes rat and rabbit developmental toxicity studies and a two generation reproduction study in rats. There is no evidence of increased susceptibility following *in utero* and/or postnatal exposure in the developmental toxicity studies in rats or rabbits, and in the 2-generation rat reproduction study.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for triticonazole is complete with the exception of a newly required immunotoxicity study. In accordance with 40 CFR Part 158 toxicity data requirements, an immunotoxicity study (Harmonized guideline 870.7800) is required for triticonazole. In the absence of specific immunotoxicity studies, EPA has evaluated the available triticonazole toxicity data to determine whether an additional uncertainty factor is needed to account for potential immunotoxicity. The toxicological database for triticonazole does not indicate that the immune system is the primary target organ. Decreased thymus weight was observed in only one species (rat) at the highest dose tested (~2x the limit dose of 1,000 mg/kg/day); these findings may be due to secondary effects of overt systemic toxicity. Based on this evidence, EPA does not believe that conducting immunotoxicity testing will result in a point of departure lower than those already selected for triticonazole risk assessment, and an additional uncertainty factor is not needed to account for potential immunotoxicity.

ii. There are no indications that triticonazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that triticonazole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure database. The dietary food exposure assessments were performed based on 100% crop treated and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to triticonazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the combined acute dietary exposure from food and water to triticonazole will occupy < 1% of the aPAD for (females 13 to 49 years old), the population subgroups receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to triticonazole from food and water will utilize 1.4% of the cPAD for all infants (< 1 year old), the subgroup receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of triticonazole is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triticonazole is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to triticonazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of: 1,100 for children 1 to 2 years old, and 1,100 for all infants < 1 year old. Because the level of concern is for MOEs below 100, these MOEs are not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triticonazole is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to triticonazole through food and water with intermediate-term exposures for triticonazole.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures aggregated result in aggregate MOEs of: 780 for children 1 to 2 years old, and 740 for all infants < 1 year old. Because the level of concern is for MOEs below 100, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population*. Triticonazole is classified as "not likely to be carcinogenic to humans" based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies. Thus, triticonazole is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry (LC/MS), and liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) methods (Method 148.02) is available to

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

B. International Residue Limits

There are no established Codex or Mexican maximum residue levels (MRLs)/tolerances for triticonazole on wheat or barley. Triticonazole is registered as a seed treatment in Canada for oats, barley, and wheat, and has established MRL levels at 0.01 ppm on barley, oats, and wheat and for livestock commodities at 0.05 ppm. The Canadian MRLs on barley, oats, and wheat are in harmony with the United States' 0.01 ppm tolerance level for grain, cereal, group 15, except rice. Additionally, no U.S. tolerances have been established on livestock commodities. No harmonization issues exist in connection with the proposed use on turf.

C. Revisions to Petitioned-for Tolerances

EPA determined the tolerances for grain, cereal, group 15, except rice, should be established at 0.01 ppm, based on a harmonization concern with Canada, and residue data which supported this tolerance level. Thus the proposed tolerance level of 0.05 ppm was deemed excessive. Upon establishing the grain, cereal, group 15, except rice, tolerance at 0.01 ppm, the individual tolerances established for barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw at 0.05 ppm are being removed from 40 CFR 180.583(a).

V. Conclusion

Therefore, tolerances are established for residues of triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on grain, cereal, group 15, except rice, at 0.01 ppm, and grain, cereal, forage, fodder and straw, group 16, except rice, at 0.10 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 19, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.583 is amended by revising the table in paragraph (a) to read as follows:

§ 180.583 Triticonazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Grain, cereal, forage, fodder and straw, group 16, except rice	0.10
Grain, cereal, group 15, except rice	0.01

* * * * *

[FR Doc. 2010–1614 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0675; FRL–8805–3]

Oxirane, 2-Methyl-, Polymer with Oxirane, Dimethyl Ether; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-,polymer with oxirane, dimethyl ether (CAS Reg. No. 61419–46–3); minimum number average molecular weight (in AMW) 2,800; when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether (CAS Reg. No. 61419–46–3) on food or feed commodities.

DATES: This regulation is effective January 27, 2010. Objections and requests for hearings must be received on or before March 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0675. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0675 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 29, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0675, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL–8792–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7595) filed by BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether (CAS Reg. No. 61419–46–3). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments in response to the notice.

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

tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

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

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Oxirane, 2-methyl-, polymer with oxirane, dimethyl ether (CAS Reg. No. 61419–46–3) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number AMW greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number AMW of 2,800 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below AMW 500 and less than 25% oligomeric material below AMW 1,000, and the polymer does not contain any reactive functional groups.

Thus, oxirane, 2-methyl-, polymer with oxirane, dimethyl ether meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, 2-methyl-, polymer with oxirane, dimethyl ether.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, 2-methyl-, polymer with oxirane, dimethyl ether could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number AMW of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether is 2,800 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, 2-methyl-, polymer with oxirane, dimethyl ether conforms to the criteria that identify a low-risk polymer there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." For the purposes of this tolerance action, EPA has not assumed that oxirane, 2-methyl-, polymer with oxirane, dimethyl ether has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether.

VIII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for oxirane, 2-methyl-, polymer with oxirane, dimethyl ether nor have any CODEX Maximum Residue Levels

(MRLs) been established for any food crops at this time.

IX. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 19, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.960, the table is amended by alphabetically adding the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
* * * * * * *	
Oxirane, 2-methyl-, polymer with oxirane, dimethyl ether, minimum number average molecular weight (in amu), 2,800	61419–46–3
* * * * * * *	

[FR Doc. 2010–1577 Filed 1–26–10 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0699; FRL– 8807–4]

2-Propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate; when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate on food or feed commodities.

DATES: This regulation is effective January 27, 2010. Objections and requests for hearings must be received on or before March 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0699. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0699 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 29, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0699, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL–8792–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7609) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate; CAS Reg. No. 68240–06–2. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

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

III. Risk Assessment and Statutory Findings

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

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate is 18,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." For the purposes of this tolerance action, EPA has not assumed that 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate.

VIII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population. If you received specific comments-consider addressing them here.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 19, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
* * * * *	* *
2-Propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate, minimum number average molecular weight (in amu), 18,000	68240–06–2

Polymer					CAS No.	
*	*	*	*	*	*	*

[FR Doc. 2010–1578 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 723

[EPA–HQ–OPPT–2002–0051; FRL–8805–5]

RIN 2070–AD58

Premanufacture Notification Exemption for Polymers; Amendment of Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the polymer exemption rule, which provides an exemption from the premanufacture notification (PMN) requirements of the Toxic Substances Control Act (TSCA), to exclude from eligibility polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length. This exclusion includes polymers that contain any one or more of the following: Perfluoroalkyl sulfonates (PFAS), perfluoroalkyl carboxylates (PFAC), fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule (affected polymers). In general, any person who intends to manufacture (which is defined by TSCA to include import into the customs territory of the United States) any of these polymers not already on the TSCA Inventory (Inventory) must complete the TSCA PMN review process prior to commencing the manufacture or import of such polymers. Alternatively, manufacturers or importers may submit a request for a different exemption, such as the Low Volume Exemption (LVE) or Low Release and Exposure Exemption (LoREX), for affected polymers that they reasonably believe may qualify for such exemptions. Those persons who are currently manufacturing or importing affected polymers, or who have previously manufactured or imported them but are not doing so now, in full compliance with the 1995 polymer exemption rule, may continue manufacturing or importing them until January 27, 2012. After that date, manufacture of these polymers will no longer be authorized under the polymer exemption rule, and continued manufacture or import must be authorized under a different TSCA section 5(h)(4) exemption or under a different TSCA section 5 authority, such as TSCA section 5(a)(1) or section 5(e). This change is necessary because, based on current information, EPA can no longer conclude that these polymers "will not present an unreasonable risk to human health or the environment" under the terms of the polymer exemption rule, which is the determination necessary to support an exemption under TSCA section 5(h)(4).

DATES: This final rule is effective February 26, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2002–0051. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Geraldine Hilton, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8986; e-mail address: *hilton.geraldine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or import polymers that contain as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length (affected polymers). As specified in the regulatory text of this final rule (40 CFR 723.250(d)(6)), these perfluoroalkyl moieties include any one or more of the following: PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. Persons who import or intend to import polymers that are covered by this final rule would be subject to TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Those persons must certify that they are in compliance with the PMN requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Importers of formulated products that contain a polymer that is subject to this final rule as a component (for example, for use as a water-proof coating for textiles or as a top anti-reflective coating (TARC) used to manufacture integrated circuits) may also be potentially affected. A list of potential monomers and reactants that could be used to manufacture polymers that would be affected by this final rule may be found in the public docket (Ref. 7). Potentially affected entities may include, but are not limited to: Chemical manufacturers or importers (NAICS code 325), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 723.250. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** issue of March 7, 2006 (Ref. 26), the Agency proposed to exclude from the polymer exemption rule (40 CFR 723.250), which exempts certain chemical substances from TSCA section 5 PMN requirements, polymers containing as an integral part of their composition, except as impurities, certain perfluoroalkyl moieties consisting of a CF3- or longer chain length. The proposed exclusion included polymers that contain any one or more of the following: PFAS, PFAC, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. EPA is finalizing the rule as proposed, with two changes related to the implementation of the final rule. The first applies to the effective date of the final rule, which will be 30 days after date of publication in the **Federal Register** instead of 12 months, as was proposed. The second will allow persons who are currently manufacturing or importing affected polymers, or who have previously manufactured or imported them but are not doing so now, in full compliance with the 1995 polymer exemption rule, 24 months to complete the TSCA section 5 review process instead of 12 months, as was proposed. EPA is also clarifying that manufacturers and importers of affected polymers may submit a request for a different TSCA section 5(h)(4) exemption, such as a LVE or LoREX request, in lieu of a PMN, if they reasonably believe that the subject polymers may qualify for those exemptions. See Unit III.E. for additional information on implementation of the final rule.

Non-confidential information related to this final rule may be found in administrative record number (AR) AR–226, which is the public administrative record that the Agency has established for perfluorinated chemical substances generally. Interested parties should consult AR–226 for additional information on PFAS, PFAC, fluorotelomers, or other perfluoroalkyl moieties. To receive an index of AR–226, contact the EPA/DC by telephone: (202) 566–1744 or e-mail: *docket-customerservice@epa.gov*.

Additional information may be found in docket ID number EPA–HQ–OPPT–2003–0012 which covers the Agency's enforceable consent agreement (ECA) process for certain of these chemical substances. See **ADDRESSES** for instructions on accessing a public docket.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(1)(A) of TSCA requires persons to notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. Section 3(9) of TSCA defines a "new chemical substance" as any chemical substance that is not on the Inventory compiled by EPA under TSCA section 8(b). Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of TSCA section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or any combination of such activities will not present an unreasonable risk of injury to human health or the environment. Section 5(h)(4) of TSCA also authorizes EPA to amend or repeal such rules. EPA has acted under these authorities to amend the polymer exemption rule at 40 CFR 723.250.

C. Why is the Agency Taking this Action?

1. *Polymers containing PFAS or PFAC.* EPA is amending the polymer exemption rule, last amended in 1995, to exclude polymers containing PFAS or PFAC, because the Agency has received information which suggests that polymers containing PFAS or PFAC may degrade and release fluorochemical residual compounds into the environment. Once released, PFAS or PFAC are expected to persist in the environment, may bioaccumulate, and may be highly toxic. Accordingly, EPA can no longer make the determination that the manufacturing, processing, distribution in commerce, use, or disposal of polymers containing PFAS or PFAC "will not present an unreasonable risk to human health or the environment" under the terms of the polymer exemption rule, as required under TSCA section 5(h)(4).

2. *Polymers containing fluorotelomers or other perfluoroalkyl moieties.* EPA is also excluding polymers that contain fluorotelomers, or that contain perfluoroalkyl moieties consisting of a CF3- or longer chain length that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule. Initial studies have demonstrated toxic effects of certain compounds containing fluorotelomers (derived from the 8–2 alcohol, Chemical Abstracts Service Registry Number (CAS No.) 678–39–7). Preliminary investigations have found that fluorotelomer alcohols were present in the air above several cities, indicating that these chemical substances may be widely distributed and that air may be a route of exposure. Based on the available data, EPA expects that polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule may degrade in the environment thereby releasing fluorotelomer alcohols or other perfluoroalkyl–containing chemical substances. It is possible that, once released, such moieties may potentially degrade to form PFAS or PFAC. Accordingly, EPA can no longer conclude that polymers containing fluorotelomers and these other perfluoroalkyl moieties "will not present an unreasonable risk of injury to health or the environment" under the terms of the polymer exemption rule, as required for an exemption under TSCA section 5(h)(4). Therefore, EPA is excluding such polymers from the polymer exemption at 40 CFR 723.250.

III. Final Rule

A. History Subsequent to the 1995 Amendment to the Polymer Exemption Rule

The 1995 amendments to the polymer exemption rule published in the **Federal Register** issue of March 29, 1995 (Ref. 28) expanded the polymer exemption to include polymers made from reactants that contain certain halogen atoms, including fluorine. The best available information in 1995 indicated that most halogen containing compounds, including unreactive polymers containing PFAS and PFAC chemical substances, were chemically and environmentally stable and would not

present an unreasonable risk to human health and the environment. In 1999, however, the 3M Company (3M) provided the Agency with preliminary reports that indicated widespread distribution of perfluorooctane sulfonate (PFOS) in humans, the environment and wildlife (Refs. 8–10). In addition, on May 16, 2000, 3M announced that it would phase out perfluorooctanyl chemistry in light of the persistence of certain fluorochemicals and their detection at extremely low levels in the blood of the general population and wildlife. 3M indicated that production of these chemical substances would be substantially discontinued by the end of 2000 (Ref. 11). Based on this information from 3M, EPA began to investigate potential risks from PFOS and other perfluorinated chemical substances, as well as polymers containing these chemical substances. It is possible that polymers containing PFAS or PFAC chemical substances may degrade, releasing these chemical substances into the environment where they are expected to persist. The number of carbon atoms on the PFAS or PFAC molecule, whether as a single compound, or as a component of a polymer, may influence bioaccumulation potential and toxicity. Based on the available data, EPA expects that polymers containing fluorotelomers or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule may degrade, releasing these chemical substances into the environment where they may further degrade into PFAS or PFAC.

B. EPA's Responses to Comments Received on the Proposed Rule

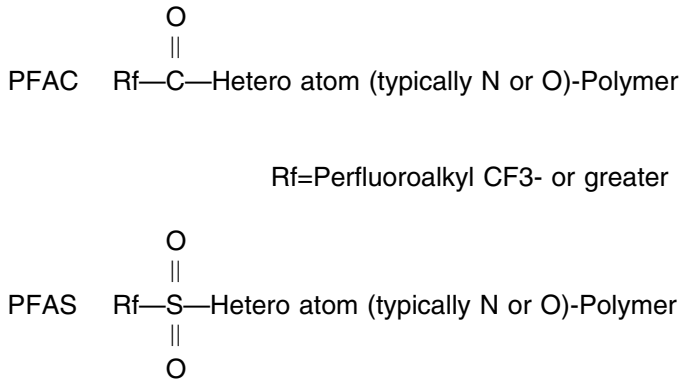
EPA specifically requested comments on the following issues in the proposed rule:

- Whether exemption is appropriate under the polymer exemption rule for polymers containing perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule and where the perfluoralkyl moiety consists of a CF3- or longer chain length.
- Alternatives for implementing the final rule that would achieve the purposes of TSCA section 5 without disrupting ongoing manufacture or import of currently exempt polymers.

The Agency received comments on these and other aspects of the proposed rule. Comments were submitted by the Society of the Plastics Industry, E.I. DuPont de Nemours and Company, 3M Company, the People's Republic of China, International Imaging Industry Association, Peach State Labs, Inc., Dainippon Ink & Chemicals, Inc., and Clariant Corporation. Summaries of significant comments and EPA's responses to them are included in a separate document entitled "Response to Comments on the Polymer Exemption Rule Amendment" (Ref. 2). This document is available in the public docket established for this final rule.

C. Defining Polymers that are Subject to this Final Rule

1. *Polymers containing PFAS or PFAC.* This final rule applies to a large group of polymers containing one or more fully fluorinated alkyl sulfonate or carboxylate groups. None of these polymers occur naturally. Such polymers are considered "new chemical substances" under TSCA if they have not been included in the Inventory compiled and published under TSCA section 8(b) (15 U.S.C. 2607(b)). For a list of examples of the Ninth Collective Index of Chemical Abstracts of chemical names and CAS numbers of chemical substances used to make polymers that are subject to this final rule, see Ref. 7. EPA has concerns for the perfluorinated carbon atoms in the Rf (Rf=Perfluoroalkyl CF3- or greater) substituent, in this unit, when that Rf unit is associated with the polymer through the carbonyl (PFAC) or sulfonyl (PFAS) group. How these materials are incorporated into the polymer is immaterial (they may be counter ions, terminal/end capping agents, or part of the polymer backbone).



This final rule specifically excludes from the polymer exemption at 40 CFR 723.250 polymers that contain any PFAS or PFAC group consisting of a CF3- or longer chain length. EPA has increasing concerns as the number of carbon atoms that are perfluorinated in any individual Rf substituent increases. PFOA (perfluorooctanoate) is a PFAC (see top structure) which has 7 carbon atoms in the Rf moiety (CAS nomenclature rules count the carbonyl carbon atom as the eighth carbon for naming purposes, hence the octanoate terminology). PFOS is a PFAS (see bottom structure) which has 8 carbon atoms in the Rf moiety. Generally, the longer the chain of perfluorinated C atoms, the greater the persistence and retention time in the body; furthermore, the C8 chain length has been associated with adverse health effects in laboratory animals.

Most of the toxicity data currently available on PFAS and PFAC chemical substances pertain to the PFOS potassium salt (PFOSK) and the PFOA ammonium salt (APFO). There is some evidence that PFAS/PFAC moieties with longer carbon chains may present greater concerns than PFAS/PFAC moieties with shorter-carbon chains (Refs. 3, 12–14). However, EPA has insufficient information at this time to determine a limit for which shorter chain lengths "will not present an unreasonable risk to human health or the environment" under the terms of the polymer exemption rule.

2. *Polymers containing fluorotelomers or other perfluoroalkyl moieties*. EPA is also excluding from the polymer exemption at 40 CFR 723.250 polymers that contain fluorotelomers, or that contain perfluoroalkyl moieties of a CF3- or longer chain length that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

i. *Fluorotelomers*. One method that is commonly used to incorporate perfluorinated compounds into polymers is to use fluorotelomers, such as perfluoroalkyl ethanol or its derivatives. Telomerization is the reaction of a telogen with a polymerizable ethylenic compound to form low molecular weight polymeric compounds, commonly referred to as a telomer. For example, the reaction of pentafluoroethyl iodide (a telogen) with tetrafluoroethylene forms a fluorotelomer iodide intermediate which is then reacted with ethylene and converted into perfluoroalkyl ethanol. This chemical substance can be further reacted to form a variety of useful intermediates which may subsequently be incorporated into the polymer (Ref. 15). The fluorochemical group formed by the telomerization process is predominantly straight chain, and depending on the telogen used produces a product having an even number of carbon atoms. However, the chain length of the fluorotelomer varies widely. A representative structure for these compounds is:

$F–(CF_2–CF_2)x–$Anything (often $CH_2–CH_2–O–$Polymer) $x \geq 1$

ii. *Other perfluoroalkyl moieties*. Perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule can be attached to the polymers using conventional chemical reactions. A representative structure for these compounds is:

$F–(CF_2)x–(C,S)–$Polymer $x \geq 1$

D. Concerns with Respect to Polymers Containing PFAS, PFAC, Fluorotelomers, or Other Perfluoroalkyl Moieties

1. *Polymers containing PFAS or PFAC*. EPA has received and reviewed data on the PFAS and PFAC chemical substances PFOS and PFOA, respectively, and on other perfluoroalkyl acids. PFAS and PFAC are used in a variety of polymeric chemical substances to impart oil and water resistance, stain and soil protection, and reduced flammability. The same features that make the polymeric coatings containing PFAS or PFAC useful, allow the polymeric compound to be stable to the natural environmental conditions that produce degradation. However, it has been demonstrated in certain circumstances that PFAS and PFAC–containing compounds will undergo degradation (chemical, microbial, or photolytic) of the non–fluorinated portion of the molecule leaving the remaining perfluorinated acid untouched (Ref. 22). Further degradation of the perfluoroalkyl residual compounds is extremely difficult. In particular, EPA has evidence that polymers containing PFAS or PFAC may degrade, possibly by incomplete incineration, and that these perfluorinated chemical substances may be released into the environment (Ref. 16). Under routine conditions of municipal waste incinerators (MWIs), incinerated chemical substances are exposed to 1,000°C temperature for long retention times. Those conditions are sufficient to cleave the normally stable C–F bonds. However, when MWIs do not maintain sufficiently high temperatures or sufficiently long retention times to cleave the stable C–F bond, it is possible that the PFAS and PFAC produced by oxidative thermal decomposition of the polymers will remain intact and can be released into the environment (Ref. 16).

PFOS and PFOA have been found in the blood of workers exposed to the chemical substances and in the general populations of the United States and other countries (Refs. 3, 17, and 18). They have also been found in many terrestrial and aquatic animal species worldwide (Refs. 3, 17, and 18). As discussed in this unit, PFAS and PFAC chemical substances used in the production of polymers may be released into the environment by degradation. It is possible, therefore, that the widespread presence of PFOS and PFOA in the environment may be due, in part, to the degradation of such polymers and the subsequent release of the PFAS and PFAC components into the environment. However, the method of degradation and global distribution is uncertain. The widespread distribution of the chemical substances also suggests, and biomonitoring studies confirm, that human exposure to PFOS and PFOA may be widespread. In particular, in a 2007 National Health and Nutrition Examination Survey (NHANES) report, PFOS, PFOA, perfluorohexane sulfonic acid (PFHxS) and perfluorononanoic acid (PFNA) were detected in > 98% of the serum samples from a representative sample of the general U.S. population ≥ 12 years of age (Ref. 21 and see also the Response to Comments Document (Ref. 2)).

PFOS and PFOA have shown liver, developmental, and reproductive toxicity in animal studies (Ref. 3). Animal test data indicate that PFOS and PFOA may cause cancer (Ref. 3). An occupational study reported an excess of bladder cancer in a small number of workers at a plant that manufactured perfluorinated chemical substances; however, follow up studies have not confirmed an increase in bladder cancer incidence in workers (Ref. 3). EPA included a comprehensive discussion of use and production volume data, exposure data, and environmental fate and health effects data for PFOS and PFOA and other PFAS and PFAC chemical substances in the proposed rule (Ref. 26, pp. 11489–11497). That comprehensive discussion is incorporated here as modified by EPA's responses to public comments received by the Agency on aspects of that discussion (Ref. 2). Although the Agency has far more data on PFOS and PFOA than on other PFAS and PFAC chemical substances, EPA expects that, based on available data, other PFAS and PFAC chemical substances of CF3- or longer chain length may share similar toxicity, persistence, and bioaccumulation characteristics that need to be evaluated.

Some commenters objected to EPA's statement in the proposed rule that it believes other PFAS and PFAC chemical substances of CF3- or longer chain length may share similar toxicity, persistence, and bioaccumulation characteristics that need to be evaluated and what they asserted were other "generalized" statements in the proposed rule, noting that each PFAS and PFAC chemical substance should be examined on its own merits with respect to toxicity, bioaccumulation, and persistence. EPA agrees that individual PFAS and PFAC chemical substances, like the polymers that contain them, should be evaluated based on their own merits. That is precisely why it has excluded affected polymers from the polymer exemption rule. This action will allow EPA to evaluate affected polymers individually, based on their own merits, through the PMN process or under other appropriate exemption criteria. EPA also emphasizes that it has not stated in the preambles to the proposed rule or this final rule that other PFAS or PFAC chemical substances categorically share similar toxicity, bioaccumulation, and persistence characteristics with PFOS and PFOA. EPA has only stated that it believes that they may, or are expected to, share similar characteristics, based

on available information and its professional judgment and experience.

Consideration of available information on specific chemical substances in light of EPA's professional judgment and expertise, in order to draw reasonable conclusions about the potential risks of similar chemical substances, has long been an integral component of EPA's implementation of the polymer exemption rule. This has been the case whether EPA is expanding the scope of the exemption (see, for example, Ref. 27, pp. 7679, 7682–7683, in which EPA explained the basis for expanding the scope of the exemption to include polymers that contain halogen groups, based on analysis of health and ecotoxicity data for specific polymers that previously had been evaluated under the PMN program) or narrowing it (see, for example, Ref. 28, pp. 16316, 16319–16320, in which EPA excluded a category of water–absorbing polymers from the exemption, based on a single toxicity study submitted under TSCA section 8(e)).

In this instance, EPA stated in the proposed rule that, based on currently available information, EPA believed that, while all PFAS and PFAC chemical substances are expected to persist, the length of the perfluorinated chain may have an effect on the other areas of concern for these chemical substances, such as bioaccumulation and toxicity. EPA also stated that there was evidence that PFAS/PFAC moieties with longer carbon chains may present greater concerns for bioaccumulation potential and toxicity than PFAS/PFAC moieties with shorter-carbon chains. However, carbon chain length may only be one factor in determining retention time. As discussed in the Response to Comments document (Ref. 2), data received since the proposed rule was published generally supports these statements.

The Agency continues to investigate the physicochemical properties, the environmental fate and distribution, and the toxicity of PFAS and PFAC chemical substances, including polymers already in production. A recent journal article provides an overview of the monitoring data available for the environment, wildlife, and humans, as well as recent advances in the toxicology and mode of action for this class of compounds (Ref. 3). These data help the Agency to evaluate these polymers to ascertain any potential risks on a case–by–case basis. However, available data are still insufficient to determine the carbon number below which PFAS and PFAC chemical substances "will not present an unreasonable risk." At this time, therefore, EPA can no longer conclude that polymers containing PFAS or PFAC will not present an unreasonable risk to human health or the environment under the terms of the polymer exemption rule. Therefore, this final rule excludes polymers containing PFAS or PFAC from eligibility for exemption from TSCA section 5(a)(1)(A) reporting requirements for new chemical substances under the polymer exemption rule.

2. *Polymers containing fluorotelomers or other perfluoroalkyl moieties.* EPA has received data on various perfluorinated chemical substances that indicate that the Agency should evaluate polymers that contain these perfluoroalkyl moieties through the PMN process. As discussed in the proposed rule (Ref. 26, p. 11497), there is a growing body of data demonstrating that fluorotelomer alcohols metabolize or degrade to generate PFOA. For example, the fluorotelomer alcohol [CA Index Name: 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10–Heptadecafluorodecan–1–ol; CAS No. 678–39–7], also known as 8–2 alcohol, has been shown to degrade to form PFOA when exposed to activated sludge during accelerated biodegradation studies (Refs. 3, 19, and 20).

Initial test data from a study in rats dosed with fluorotelomer alcohol and other preliminary animal studies on various telomeric products containing fluorocarbons structurally similar to PFAC or PFAS have demonstrated a variety of adverse effects including liver, kidney and thyroid effects (Refs. 3 and 5).

Preliminary investigations have demonstrated the presence of fluorotelomer alcohols in the air in six different cities (Ref. 6). This finding is significant because it is indicative of not only widespread fluorotelomer alcohol distribution, but also it further indicates that air may be a route of direct or indirect exposure to these chemical substances, which can be degraded or metabolized to form PFOA. Fluorotelomer alcohols are generally incorporated into the polymers via covalent ester linkages, and it is possible that degradation of the polymers may result in release of the fluorotelomer alcohols to the environment.

Based on the presence of fluorotelomer alcohols in the air, the growing data demonstrating that fluorotelomer alcohols metabolize or degrade to generate PFOA, the preliminary toxicity data on certain compounds containing fluorotelomers (such as the 8–2 alcohol), and the possibility that polymers containing fluorotelomers as an integral part of the polymer composition may degrade in the environment thereby releasing fluorotelomer alcohols or other perfluoroalkyl-containing chemical substances, EPA can no longer conclude that polymers containing fluorotelomers as an integral part of the polymer composition "will not present an unreasonable risk of injury to health or the environment" under the terms of the polymer exemption rule as required for an exemption under TSCA section 5(h)(4).

Although EPA does not have specific data demonstrating that polymers containing perfluoroalkyl moieties other than PFAS, PFAC, or fluorotelomers present the same concerns as those containing PFAS, PFAC, or fluorotelomers, EPA is nevertheless excluding polymers containing perfluoroalkyl groups, consisting of a CF3- or longer chain length, that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule from the polymer exemption. Based on available data which indicate that compounds containing PFAS or PFAC may degrade in the environment thereby releasing the PFAS or PFAC moiety, and that fluorotelomers may degrade in the environment to form PFAC, it is possible that polymers containing these other types of perfluoroalkyl moieties may also degrade over time in the environment thereby releasing the perfluoroalkyl moiety. Based on available data, EPA expects that once released, such moieties may potentially degrade to form PFAS or PFAC. EPA therefore cannot continue to make the "will not present an unreasonable risk of injury to health or the environment" finding under the terms of the polymer exemption rule for such polymers.

E. Implementation

The proposed rule would have established an effective date for the final rule that was 1 year after the date of publication of the final rule. This would have allowed manufacturers or importers of affected polymers who were already manufacturing or importing such polymers in full compliance with the terms of the polymer exemption rule, to continue manufacture or import for a period of 1 year after the date of publication of the final rule. However, in order to continue manufacturing or importing affected polymers after the 1–year period, manufacturers or importers would have had to complete the PMN review process within the 1–year period before the final rule became effective.

As an alternative to the 1 year effective date, EPA also specifically

sought comment on an implementation approach that would have established an effective date 30 days after publication of the final rule, but provide an extended compliance date for those who, prior to the effective date, had already initiated the manufacture or import of affected polymers (see Ref. 26, pp. 11484, 11488). Under the alternative approach, the TSCA section 5(a)(1)(A) requirement to submit a PMN for a new chemical substance would have been re-established with respect to affected polymers beginning 30 days after publication of the final rule. However, those who were manufacturing or importing affected polymers in full compliance with the existing exemption would have had 1 year from the effective date to complete the PMN process. EPA specifically requested comment on these or other implementation approaches.

Commenters generally asserted that 1 year was not enough time to develop a PMN and to complete the PMN review process. Several commenters suggested as an alternative that EPA require submission of a PMN within a year or that it extend the 1–year "grace period" to 3 years. One commenter also requested clarification regarding whether a LVE request could be submitted in lieu of a PMN in order to comply with this final rule. Upon review of these comments and proposed alternatives, EPA agrees that 1 year would likely not provide sufficient time to complete the PMN review process for all affected polymers currently being manufactured or imported under the polymer exemption rule. The Agency has therefore changed the proposed approach, and is also clarifying that requests for different TSCA section 5(h)(4) exemptions, such as a LVE or LoREX request, may be submitted to comply with the final rule, if manufacturers or importers reasonably believe affected polymers may qualify for such exemptions.

The effective date of this final rule will be 30 days after its publication in the **Federal Register**, which is the minimum required by section 553(c) of the Administrative Procedure Act. Accordingly, the TSCA section 5(a)(1)(A) requirement to submit a PMN (or alternate exemption request, if appropriate) for a new chemical substance applies to all affected polymers beginning 30 days after publication of the final rule in the **Federal Register**. However, EPA is providing an extended compliance date for those who, prior to the effective date of the final rule, had already initiated the manufacture or import of affected polymers in full compliance with the 1995 polymer exemption rule. Specifically, this final rule allows manufacturers or importers of affected polymers, who are in full compliance with the terms of the 1995 polymer exemption rule, to continue manufacture or import of such polymers under the polymer exemption rule until January 27, 2012. If PMNs for these polymers have not been reviewed by the Agency and the polymers have not been listed on the TSCA Inventory or, in the case of exemption requests, EPA has not granted the exemption request by January 27, 2012, such manufacture or import must cease. With respect to PMN submissions, the company must submit a notice of commencement (NOC) within 30 days of commencing non-exempt manufacturing (see 40 CFR 720.102), so that the polymer can be placed on the TSCA Inventory where appropriate, after the review of the PMN submission. The NOC must be filed as a condition of continued manufacture or import. A company may at any time during the review process elect to withdraw its PMN or exemption request. If a manufacturer or importer elects to withdraw its PMN or exemption request, all manufacturing or importing activity must cease as of January 27, 2012.

EPA will strive to complete the review of the PMN (or alternate exemption request) submitted in response to this final rule promptly. For those PMNs for which EPA determines that action under TSCA section 5(e) may be necessary, the 90–day review period is generally suspended by the reviewer as the consent order is developed/negotiated. In addition, at any time in the review period, EPA may determine that good cause exists to extend the PMN notice review period for a total period of extension not to exceed 90 days (see 40 CFR 720.75). However, for polymers currently being manufactured under the terms of the existing polymer exemption rule, the TSCA section 5 review process must be completed by January 27, 2012. Therefore, the Agency recommends that manufacturers currently manufacturing affected polymers under the polymer exemption rule submit their PMNs early in the 24 months following the publication of this final rule. In particular, manufacturers intending to submit an LVE or LoREX should do so as soon after the effective date as possible to ensure that they have adequate time to submit a PMN in case the Agency denies the LVE or LoREX. In addition to reviewing the applicable regulations pertaining to submission of PMNs and alternate TSCA section 5(h)(4) exemption requests, manufacturers may consult with the OPPT New Chemicals Management Branch ((202) 564–9373) in the TSCA New Chemicals Program to determine what information will enable timely review.

EPA decided on this approach because the proposed rule would have inadvertently allowed polymers not already being manufactured under the polymer exemption rule to be manufactured or imported for a year without going through the PMN or other TSCA section 5 review process. As noted in the proposed rule, the delayed effective date was intended to provide current manufacturers or importers of affected polymers who are in full compliance with the terms of the existing polymer exemption rule additional time to come into compliance with the final rule, without disrupting their ability to manufacture or import those polymers. (Ref. 26, p. 11487). Those who are not currently manufacturing or importing affected polymers would not experience such disruptions. Accordingly, EPA believes it is reasonable to make the effective date of the final rule 30 days after publication in the **Federal Register**, but provide additional time to complete the TSCA section 5 review process for manufacturers or importers who began manufacturing or importing affected polymers in full compliance with the terms of the existing polymer exemption rule prior to the effective date of the final rule.

EPA has extended by 12 months the time that manufacturers and importers who are currently manufacturing or importing affected polymers would have had under the proposed rule to complete the TSCA section 5 review process. Under the proposed rule, such manufacturers would have had to submit a PMN to EPA within 6 months after publication of the final rule in order for EPA to have had the entire 180 day period authorized by TSCA section 5 to complete the PMN review. This time frame may have been too short in some circumstances. For example, one trade group indicated that notifications for imported affected polymers might take longer than normal to prepare because its members would need to coordinate with non-domestic suppliers to obtain information, which may be proprietary, on formulations that they import. Another commenter observed that manufacturers or importers may need to submit bona fide letters of intent prior to submitting a PMN to determine whether affected polymers that they manufacture or import are already listed on the Inventory.

Under this final rule, such manufacturers and importers will have up to 18 months to submit a PMN in order for EPA to have the entire 180 day review period (90 days plus opportunity for up to a 90–day extension under TSCA section 5(c)) to complete the review. This approach will allow such manufacturers and importers additional time to compile the information necessary to prepare and submit PMNs or exemption requests. However, EPA encourages manufacturers and importers to submit PMNs or alternate exemption requests as soon as possible after publication of the final rule. Doing so will provide EPA with more time to complete consent orders and, if necessary, establish testing requirements for those polymers for which EPA may have concerns of potential unreasonable risk to human health or the environment.

The proposed regulatory text in 40 CFR 723.250(d)(6)(i) has therefore been changed from "Except ... may no longer be manufactured after January 27, 2011 unless that polymer has undergone a premanufacture review ..." to: "Any polymer that has been manufactured previously in full compliance with the requirements of this section prior to February 26, 2010 may no longer be manufactured under this section after January 27, 2012."

Manufacturers or importers of affected polymers that are already on the Inventory compiled and published under TSCA section 8(b) (15 U.S.C. 2607(b)) are not impacted by this final rule. The PMN requirements in TSCA section 5(a) apply only to new chemical substances which are those that are not included on the Inventory of Chemical Substances.

IV. Objective and Rationale for this Final Rule

The objective of this final rule is to amend the polymer exemption rule to exclude polymers containing as an integral part of the polymer composition, except as impurities, any one or more of certain perfluoroalkyl moieties consisting of a CF3- or longer chain length from eligibility for the exemption from TSCA section 5 reporting requirements allowed under the 1995 amendments to the polymer exemption rule. In TSCA section 5(a)(1)(A), Congress prohibited persons from manufacturing (including importing) new chemical substances unless such persons submitted a PMN to EPA at least 90 days before such manufacture. Pursuant to TSCA section 5(h)(4), EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of TSCA section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, will not present an unreasonable risk of injury to health or the environment. Section 5(h)(4) of TSCA also authorizes EPA to amend or repeal such rules.

The polymer exemption rule is intended to exempt certain polymers from certain TSCA section 5 requirements polymers because EPA believes those exempted polymers pose a low risk of injury to health or the environment. The exemption criteria are therefore designed to exempt polymers that are of low concern because of their stability, molecular size, and lack of reactivity, among other properties. EPA has excluded certain polymers from the exemption where:

- The Agency has insufficient data and review experience to support a finding that they will not present an unreasonable risk; or
- The Agency has found that under certain conditions, the polymers may present risks which require a closer examination of the conditions of manufacturing, processing, distribution, use, and disposal during a full 90–day PMN review (i.e., the Agency has information suggesting that the conditions for an exemption under TSCA section 5(h)(4) are not met).

This approach allows the Agency to maintain full regulatory oversight over potentially higher risk polymers while streamlining the review process for low-risk polymers.

Based on the data currently available, for the reasons stated herein, EPA can no longer can make a generally applicable finding, without additional information, that the manufacture, processing, distribution in commerce, use, and/or disposal of affected polymers will not present an unreasonable risk of injury to health or the environment under the terms of the polymer exemption rule.

V. Economic Considerations

EPA has evaluated the potential costs of eliminating the polymer exemption for the chemical substances described in this final rule. The results of this evaluation are contained in a document entitled "Economic Analysis of the Amendment to the Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers" (Ref. 1). A copy of this economic analysis is available in the public docket for this action, and is briefly summarized here.

The industry costs for completing and submitting a PMN reporting form are estimated to be $8,269 per chemical substance. Because the final rule would eliminate the cost of complying with the recordkeeping and reporting requirements of the polymer exemption rule, the cost for completing and submitting a PMN as a result of this amendment is reduced by $372, for a net cost of $7,897 per chemical substance (Ref. 1).

Companies that currently manufacture an affected polymer under the exemption are estimated to incur a total net cost of $7,897 per chemical substance. Companies that do not currently manufacture an affected polymer, but begin to manufacture such polymers in the future, may also incur potential net costs of $14,522 associated with potential delays in commercialization of the new chemical substance. These companies are estimated to incur a total cost of $22,419 per chemical substance as a result of this final rule (Ref. 1). These net costs do not include the following per chemical substance costs that would have been incurred had a manufacturer of an affected polymer been allowed to continue to submit an exemption notification under the polymer exemption rule (i.e., had this amendment to the polymer exemption rule not been finalized):

- $372 for recordkeeping and reporting costs.
- $9,572 commercialization delay cost.

The potential number of PMNs that may be submitted each year under the final rule was estimated using the 292 polymer reports received by EPA annually between 1996 and 2006 under the polymer exemption rule. EPA estimates this final rule could affect a maximum of 6% of the 292 polymers reported annually, and, therefore, estimates that a maximum of 18 PMNs may be submitted each year under the final rule. Using the same estimated number of 18 chemical substances per year for the 14 years (1996 through 2009) during which affected polymers were exempt from PMN requirements under the polymer exemption rule, 252 previously exempt chemical substances (18 chemical substances x 14 years) could be expected to have a PMN submitted under the final rule. EPA expects to receive the majority of PMNs for previously exempt chemical substances during the second year of the proposed rule. However, because EPA has no way of predicting accurately the actual timing of the submissions, EPA is averaging the 252 PMNs over the 2–year period and is assuming that 126 PMNs for previously exempt chemical substances will be submitted in each of

the first 2 years after publication of the final rule.

In addition, EPA is expecting a maximum of 18 PMNs to be submitted to the Agency each year for new chemical substances. Therefore, the Agency estimates that a maximum of 144 PMNs (126 + 18) might be submitted during each of the first 2 years after the effective date of the final rule, and that a maximum of 18 PMNs might be submitted in each subsequent year.

Using the estimated per chemical substance costs and the estimated number of PMNs anticipated, EPA estimates the potential PMN submission costs to industry in each of the first 2 years of the final rule for manufacturers of 144 chemical substances (126 previously exempt new chemical substances and 18 new chemical substances) to be $1,398,564, or $1.4 million per year, including $995,022 for previously exempt chemical substances (126 chemical substances x $7,897 per chemical substance) + $403,542 (18 new chemical substances x $22,419). This will decrease to an estimated annual cost of $403,542 in the third year and beyond for the maximum of 18 PMNs that EPA believes could be submitted annually by manufacturers and importers of new chemical substances that are no longer eligible for the exemption.

While the final rule clarifies that other TSCA section 5(h)(4) exemption requests may be submitted. EPA estimates that the cost of preparing an LVE or a LoREX is equal to the cost of preparing a PMN. However, LVEs and LoREXs are not subject to the $2,500 user fee. Accordingly, if the Agency receives no LVE or LoREXs notices as a result of this clarification, then Agency estimated costs are not affected by this clarification. However, if the Agency does receive any LVE or LoREX notices, then estimated costs would be overstated because these notices would not be subject to the user fee. The Agency has never received a photographic film exemption request and does not expect to as a result of this final rule

In addition, as was the case prior to the promulgation of the polymer exemption rule in 1995, the Agency recognizes that the submission of a PMN may lead to other regulatory actions under TSCA, for example consent orders issued under TSCA section 5(e). Any such actions are highly dependent on the circumstances surrounding the individual PMN (e.g., available information and scientific understanding about the chemical substance and its risks at the time the PMN is being reviewed). Such potential actions and any costs associated with them would not be a direct result of this final rule. Nevertheless, the economic analysis does contain a brief discussion of the Agency's previous and ongoing regulatory activities with respect to potentially affected polymers.

VI. References

As indicated under **ADDRESSES**, a docket has been established for this final rule under docket ID number EPA–HQ–OPPT–2002–0051. The following is a listing of the documents that are specifically referenced in this final rule. References from the proposed rule that have not been referenced in the final rule are relevant to EPA's decisions in this final rule and can also be found in this docket. The docket includes these documents and other information considered by EPA in developing this final rule, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Reference documents identified with an "AR" designation are cross-indexed to non-regulatory, publicly accessible information files maintained in the EPA/DC. Copies of these documents can be obtained as described in **ADDRESSES**.

1. EPA. Economic Analysis of the Amendment to the Polymer Exemption Rule To Exclude Certain Perfluorinated Polymers. Wendy Hoffman (EPA/OPPT/Economics, Exposure and Technology Division (EETD)). October 19, 2009.

2. EPA. Response to Comments on the Polymer Exemption Rule Amendment. July 14, 2009.

3. Lau, C.; Anitole, K.; Hodes, C.; Lai, D.; Pfahles-Hutchens, A.; Seed, J. Perfluoroalkyl Acids: A Review of Monitoring and Toxicological Findings. *Toxicological Sciences*. Vol. 99(2), pp. 366–394. 2007.

4. (AR–226–1440) Hagen, D.F.; Belisle, J.; Johnson, J.D.; Venkateswarlu, P. Characterization of fluorinated metabolites by a gas chromatographic-helium microwave plasma detector—the biotransformation of 1H, 1H, 2H, 2H-perfluorodecanol perfluorooctanoate. *Analytical Biochemistry*. Vol. 118(2), pp. 336–343. 1981.

5. (AR–226–1147) DuPont presentation to the Agency at the meeting held on November 25, 2002.

6. (AR–226–1281) Scott Mabury, P.I. Interim Annual Report of Activities for TRP Grant to University of Toronto; Project years: 1 September, 2001 to 1 September, 2002.

7. Memo from Dr. Gregory Fritz (EPA/OPPT/EETD) to Mary Begley (EPA/OPPT/Chemical Control Division (CCD)) re: Polymer Feedstocks Resulting in Excluded Polymers. April 18, 2002.

8. (AR–226–0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

9. (AR–226–0547) The Science of Organic Fluorochemistry. 3M. St. Paul, MN. February 5, 1999.

10. (AR–226–0548) Perfluorooctane Sulfonate: Current Summary of Human Sera, Health and Toxicology Data. 3M. St. Paul, MN. January 21, 1999.

11. (AR–226–0600) Weppner, William A. Phase-out Plan for PFOS-Based Products. 3M. St. Paul, MN. July 7, 2000.

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14. (AR–226–1030a109) Fluorochemical Decomposition Processes. 3M. St. Paul, MN. April 4, 2001.

15. Bultman, David and Pike, Myron. The Use of Fluorochemical Surfactants in Floor Polish. 3M. St. Paul, MN.

16. (AR–226–0550) Fluorochemical Use, Distribution and Release Overview. 3M. St. Paul, MN. May 26, 1999.

17. (AR–226–1093) Seed, Jennifer. Hazard Assessment of Perfluorooctanoic Acid and Its Salts, Revised Draft (EPA/OPPT/Risk Assessment Division (RAD)). Washington, DC. November 4, 2002.

18. (AR–226–1140) Organization for Economic Co-operation and Development (OECD), Hazard Assessment of Perfluorooctane sulfonate (PFOS) and its Salts. OECD Publication No. ENV/JM/ RD(2002)17/FINAL. November 21, 2002.

19. (AR–226–1149) Biodegradation screen studies for telomer type alcohols. 3M. November 6, 2002.

20. (AR–226–1262) DuPont Executive Summary—Biodegradation Screening Studies of 8–2 Telomer B Alcohol. March 20, 2003.

21. Calafat, A.; Wong, L.; Kuklenyik, Z.; Reidy, J.; Needham, L. Polyfluoroalky Chemicals in the U.S. Population: Data from the National Health and Nutrition Examination

Survey (NHANES) 2003–2004 and Comparisons with NHANES 1999–2000. *Environmental Health Perspectives*. Vol. 115(11), pp. 1596–1602. 2007.

22. Remde, A. and Debus, R. Biodegradability of Fluorinated Surfactants Under Aerobic and Anaerobic Conditions. *Chemosphere*. Vol. 32(8), pp. 1563–1574. 1996.

23. OECD, Screening Information Data Sets (SIDS). Ammonium Perfluorooctanate & Perfluorooctanoic Acid, SIDS Initial Assessment Report (SIAR). April 2006.

24. United Nations Environment Program/Persistent Organic Pollutants/ Persistent Organic Pollutants Review Committee (UNEP/POPS/POPRC). Draft risk profile: Perfluorooctane sulfonate (PFOS). July 2006.

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26. EPA. Premanufacture Notification Exemption for Polymers; Amendment of Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers; Proposed Rule. **Federal Register** (71 FR 11483, March 7, 2006) (FRL–7735–5).

27. EPA. Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers; Proposed Rule. **Federal Register** (58 FR 7679, February 8, 1993) (FRL–3890–1).

28. EPA. Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers; Final Rule. **Federal Register** (60 FR 16316, March 29, 1995) (FRL–4929–8).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), and was not therefore reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

EPA has prepared an economic analysis of the potential impacts associated with this action. A copy of this economic analysis, "Economic Analysis of the Amendment to the Polymer Exemption Rule to Exclude Certain Perfluorinated Polymers" (Ref. 1) is available in the public docket for this action and is briefly summarized in Unit V.

B. Paperwork Reduction Act

The information collection requirements related to the submission of PMNs are already approved by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. That Information Collection Request (ICR) document has been assigned EPA ICR number 0574 and OMB control number 2070–0012. This final rule does not impose any new requirements that require additional OMB approval.

Under PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required PMN, and maintain the required records.

Based on the estimated burden in the existing ICR, if an entity were to submit a PMN to the Agency, the annual reporting burden is estimated to average between 95 and 114 hours per response, with a midpoint respondent burden of 107 hours. This estimate was adjusted to account for the elimination of the existing burden related to the recordkeeping and reporting requirements in the polymer exemption rule, which is estimated to impose a burden on industry of 6 hours per chemical substance, i.e., 2 hours for reporting, and 4 hours for recordkeeping. The net paperwork burden for submitting a PMN as a result of this final amendment is therefore estimated to be 101 hours per PMN submission. The net cost to submit a PMN under the final rule is estimated to be $5,397. In addition, PMN submissions must be accompanied by a user fee of $2,500 (set at $100 for small businesses with annuals sales of less than $40 million). These net paperwork hours and associated costs do not include the per chemical substance 6 hour burden and $372 associated cost that would have been incurred had a manufacturer of an affected polymer been allowed to continue to submit an exemption notification under the polymer exemption rule (i.e., had this amendment to the polymer exemption rule not been finalized).

The final rule clarifies that other TSCA section 5(h)(4) exemption requests may be submitted in lieu of PMNs. EPA estimates that the cost of preparing an LVE or a LoREX is equal to the cost of preparing a PMN. However, LVEs and LoREXs are not subject to the $2,500 user fee. Accordingly, if the Agency receives no LVE or LoREXs notices as a result of this clarification, then Agency estimated costs are not affected by this clarification. However, if the Agency does receive any LVE or LoREX notices, then estimated costs would be overstated because these notices would not be subject to the user fee. The Agency has never received a photographic film exemption request and does not expect to as a result of this final rule.

For the first 2 years after publication of the final rule, EPA estimates that the one-time burden for the companies that submit PMNs for chemical substances already in production will be a maximum of 12,726 hours (126 chemical substances x 101 hours per submission). Based on the high-end assumption of 18 PMNs for new chemical substances annually, the annual burden is estimated to be 1,818 hours (18 x 101 hours). Therefore, EPA estimates that the burden in each of the first two years for the 144 PMNs will be 14,544 hours. The burden is expected to decrease to 1,818 hours in the third year of the final rule and beyond.

An agency may not conduct or sponsor, and a person is not required to respond to an information collection request subject to PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and included on any related collection instrument (e.g., on the form or survey).

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency hereby certifies that this action will not have a significant adverse economic impact on a substantial number of small entities. The Agency's basis is briefly summarized here and the analysis is detailed in the economic analysis (Ref. 1).

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 based on the applicable NAICS code for the business sector impacted.

2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The regulated community does not include any small governmental jurisdictions or small not-for-profit

organizations. For small businesses, the Agency assessed the impacts on small chemical manufacturers in NAICS codes 325 and 324110. The SBA size standards for sectors under NAICS code 325 range from 500 to 1,000 employees or fewer in order to be classified as small. The size standard for NAICS code 324110, petroleum refineries, is 1,500 employees.

As summarized in Unit V., the industry costs for completing and submitting a PMN reporting form are estimated to be $7,897 per chemical substance (Ref. 1). Small businesses with less than $40 million in annual sales are entitled to a reduced user fee of $100 for submitting a PMN, rather than the $2,500 user fee, which would reduce the per PMN costs for small businesses to $5,497 per chemical substance.

Based on estimates of the number of PMNs expected to be submitted as a result of this action, it appears that 12 or fewer businesses would be affected per year (Ref. 1). The five companies that manufacture the majority of the volume of chemical substances that will be affected by the polymer exemption rule belong to either or both of the Fluoropolymer Manufacturers Group and the Telomer Research Program. These two groups, which have no other members beyond the five companies, have negotiated TSCA section 4 ECAs and other voluntary testing arrangements with the Agency for testing specific chemical substances that would be affected by the polymer exemption rule. The two groups have told the Agency that their member companies manufacture the majority of the volume of chemical substances that would be affected by the final rule. None of these five companies meet the definition of small under the Small Business Administration employee size criteria. The remaining volume of chemical substance that could be affected by the final rule is low enough so that even if a small company were to be affected, a significant number of businesses would not be affected, nor would any individual small business experience significant impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates for State, local, or tribal governments or the private sector under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538. This action will not have an annual impact of $100 million or more on the private sector, nor will it impact State or tribal governments. Based on EPA's experience with past PMNs, State, local, and tribal governments have not been affected by this reporting requirement, and EPA does not have any reason to believe that any State, local, or tribal government will be affected by this final rule. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202 or 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this action does not have federalism implications because 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 the Order. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), EPA has determined that this action does not have tribal implications because it will not have any affect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045

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

H. Executive Order 13211

This action is not a "significant energy action" as defined in Executive Order 13211, entitled *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.

I. National Technology Transfer Advancement Act

Since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 723

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 15, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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

PART 723—[AMENDED]

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

■ 2. Section 723.250 is amended by adding the definitions below in alphabetical order to paragraph (b) and by adding a new paragraph (d)(6) to read as follows:

§ 723.250 Polymers.

* * * * *

(b) * * *

Fluorotelomers means the products of telomerization, which is the reaction of a telogen (such as pentafluoroethyl iodide) with an ethylenic compound (such as tetrafluoroethylene) to form low molecular weight polymeric compounds, which contain an array of saturated carbon atoms covalently bonded to each other (C-C bonds) and to fluorine atoms (C-F bonds). This array is predominantly a straight chain, and depending on the telogen used produces a compound having an even number of carbon atoms. However, the carbon chain length of the fluorotelomer varies widely. The perfluoroalkyl groups formed by this process are usually, but do not have to be, connected to the polymer through a functionalized ethylene group as indicated by the following structural diagram: (Rf-CH_2CH_2-Anything).

* * * * *

Perfluoroalkyl carboxylate (PFAC) means a group of saturated carbon atoms covalently bonded to each other in a linear, branched, or cyclic array and covalently bonded to a carbonyl moiety and where all carbon-hydrogen (C-H) bonds have been replaced with carbon-fluorine (C-F) bonds. The carbonyl moiety is also covalently bonded to a hetero atom, typically, but not necessarily oxygen (O) or nitrogen (N).

Perfluoroalkyl sulfonate (PFAS) means a group of saturated carbon atoms covalently bonded to each other in a linear, branched, or cyclic array and covalently bonded to a sulfonyl moiety and where all carbon - hydrogen (C-H) bonds have been replaced with carbon - fluorine (C-F) bonds. The sulfonyl moiety is also covalently bonded to a hetero atom, typically, but not necessarily oxygen (O) or nitrogen (N).

* * * * *

(d) * * *

(6) *Polymers which contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length.* Except as provided in paragraph (d)(6)(i), after February 26, 2010, a polymer cannot be manufactured under this section if the polymer contains as an integral part of its composition, except as impurities, one or more of the following perfluoroalkyl moieties consisting of a CF3- or longer chain length: Perfluoroalkyl sulfonates (PFAS), perfluoroalkyl carboxylates (PFAC), fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

(i) Any polymer that has been manufactured previously in full compliance with the requirements of this section prior to February 26, 2010 may no longer be manufactured under this section after January 27, 2012.

(ii) [Reserved]

* * * * *

[FR Doc. 2010–1477 Filed 1–26–2010; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

Regulatory Guidance Concerning the Applicability of the Federal Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle Drivers

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

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA announces regulatory guidance concerning texting while driving a commercial motor vehicle (CMV). The guidance is applicable to all interstate drivers of CMVs subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: *Effective Date:* This regulatory guidance is effective on January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: MCPSD@dot.gov. Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations which ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators. (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate." (49 U.S.C. 31133(a)(8) and (10), respectively).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

This document provides regulatory guidance concerning the applicability of 49 CFR 390.17, "Additional equipment and accessories," to CMV operators engaged in "texting" on an electronic device while driving a CMV in interstate commerce.

Currently, 49 CFR 390.17 states, "Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, *provided such equipment and accessories do not decrease the safety of operation* of the commercial motor vehicles on which they are used." [Emphasis added]. As used in § 390.17, "this subchapter" means Subchapter B [49 CFR parts 350–399] of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (CFRs).

CMVs are defined in 49 CFR 390.5 as "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed

by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C."

Section 390.17 is therefore applicable to drivers of CMVs, as defined by § 390.5, when the CMV is being used by a motor carrier operation subject to the FMCSRs. The general applicability of Parts 390 through 399 [49 CFR Parts 390 through 399] of the FMCSRs is prescribed by § 390.3.

Basis for This Notice

FMCSA recently completed its "Driver Distraction in Commercial Vehicle Operations" study and released the final report on October 1, 2009.[1] The purpose of the study was to investigate the prevalence of driver distraction in CMV safety-critical events (*e.g.,* crashes, near-crashes, lane departures) recorded in a naturalistic data set that included over 200 truck drivers and 3 million miles of data. The dataset was obtained by placing monitoring instruments on vehicles and recording the behavior of drivers conducting real-world revenue operations.

Odds ratios (OR) were calculated to identify tasks that were high risk. For a given task, an odds ratio of "1.0" indicated the task or activity was equally likely to result in a safety-critical event as a non-event or baseline driving scenario. An odds ratio greater than "1.0" indicated a safety-critical event was more likely to occur, and odds ratios of less than "1.0" indicated a safety-critical event was less likely to occur. The most risky behavior identified by the research was "text message on cell phone,"[2] with an odds ratio of 23.2. This means that the odds of being involved in a safety-critical event is 23.2 times greater for drivers who are texting while driving than for those who do not. Texting drivers took their eyes off the forward roadway for an average of 4.6 seconds during the 6-second interval immediately preceding a safety-critical event. At 55 mph (or 80.7 feet per second), this equates to a driver traveling 371 feet, the approximate length of a football field, including the end zones, without looking at the roadway. At 65 mph (or 95.3 feet per second), the driver would have traveled approximately 439 feet without looking at the roadway. This clearly creates a significant risk to the safe operation of the CMV.

Because of the safety risks associated with texting, FMCSA will address the problem of texting in an expedited, stand-alone rulemaking to be completed in 2010. In addition to studies documenting the safety risks associated with texting while driving, the feedback the Department received during its Distracted Driving Summit, held September 30–October 1, 2009, in Washington, DC, from four United States Senators, several State legislators, safety advocacy groups, senior law enforcement officials, the telecommunications industry, and the transportation industry suggest there is widespread support for a ban against texting while driving. However, until the Agency has the opportunity to complete a notice-and-comment rulemaking proceeding to adopt an explicit prohibition against texting, the regulatory guidance below informs motor carriers and drivers about the applicability of the existing regulations to the use of electronic devices for texting.

Other Electronic Devices

FMCSA acknowledges the concerns of motor carriers that have invested significant resources in electronic dispatching tools and fleet management systems; this regulatory guidance should not be construed to prohibit the use of such technology. The regulatory guidance below should also not be construed to prohibit the use of cell phones for purposes other than text messaging.

The Agency will address the use of other electronic devices while driving in a notice-and-comment rulemaking proceeding rather than through regulatory guidance.

It is worth noting, however, that while fleet management systems and electronic dispatching tools are used by many of the Nation's largest trucking fleets, the Department believes safety-conscious fleet managers would neither allow nor require their drivers to type or read messages while driving. To the extent that there are fleets that require drivers to type and read messages while they are driving, the Agency will consider appropriate regulatory action to address the safety problem.

Compliance With State and Local Laws, Ordinances and Regulations

In addition to announcing regulatory guidance on CMV drivers' use of electronic devices to engage in texting while driving, FMCSA reminds motor carriers and drivers subject to the FMCSRs that the Federal regulations require compliance with the laws, ordinances, and regulations of the jurisdiction in which the CMV is being operated. Section 392.2, "Applicable operating rules," requires that "Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with." Thus, in the States and localities having laws, ordinances, and regulations related to "texting" while driving, non-texting cell phone use, or any other similar traffic offenses, a violation of the State or local provision is also a violation of § 392.2 for those CMV drivers to whom it applies.

Summary

Based on the clear consensus that emerged from the Distracted Driving Summit, FMCSA's top priority is to initiate a rulemaking to address the safety risks associated with texting by prohibiting all truck and bus drivers from texting while they are operating on public roads. The regulatory guidance issued today clarifies the applicability of the Agency's current safety regulations and serves as an interim measure to deter texting while driving.

Regulatory Guidance

Part 390—Federal Motor Carrier Safety Regulations; General

Sections Interpreted

Section 390.17 Additional equipment and accessories:

Question 1: Do the Federal Motor Carrier Safety Regulations prohibit "texting" while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered "additional equipment and accessories" within the context of § 390.17. "Texting" is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the

[1] This report is available at FMCSA's Research Web page at: *http://www.fmcsa.dot.gov/facts-research/art-research.aspx?*

[2] Although the final report does not elaborate on text messaging, the drivers were engaged in the review of, or preparation and transmission of, typed messages via wireless phones.

activity involves a combination of visual, cognitive and manual distraction from the driving task. Research has shown that during 6-second intervals immediately preceding safety-critical events (*e.g.,* crashes, near crashes, lane departure), texting drivers took their eyes off the forward roadway an average of 4.6 seconds. Therefore, the use of electronic devices for texting by CMV operators while driving on public roads in interstate commerce decreases safety and is prohibited by 49 CFR 390.17.

Issued on: January 22, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–1573 Filed 1–22–10; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XU01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, January 23, 2010, through 6 a.m., local time, January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

The southern subzone is that part of the Florida west coast subzone, which from November 1 through March 31, extends south and west from 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary) to 25°20.4' N. lat. (a line directly east from the Monroe/Miami-Dade County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary) and 25°48' N. lat. (a line directly west from the Collier/Monroe County, FL, boundary), i.e., the area off Collier County (50 CFR 622.42(c)(1)(i)(A)(*3*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone will be reached on January 23, 2010. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, January 23, 2010, through 6 a.m., local time, January 18, 2011, the beginning of the next fishing season, i.e., the day after the 2011 Martin Luther King Jr. Federal holiday.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

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

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

Dated: January 21, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–1574 Filed 1–22–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 17
Wednesday, January 27, 2010

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

RIN 3206–AL24

Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Office of Personnel Management (OPM) hereby withdraws a notice of proposed rulemaking (NPRM) regarding Personnel Records, published in the **Federal Register** January 18, 2008. OPM has determined withdrawal of the NPRM is appropriate as it would be impractical to issue this rule without the existence of a Governmentwide employee identifier.

DATES: The proposed rule, published on January 18, 2008, in the **Federal Register** (73 FR 3410), is withdrawn as of January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Goldberg, Human Resources Specialist, Office of Personnel Management, Office of the Chief Information Officer, Records Management, Room 7439, 1900 E Street, NW., Washington, DC 20415. *E-mail: barbara.goldberg@opm.gov*. Telephone: (202) 606–4054. *Facsimile:* (202) 606–1719.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2008, OPM issued a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (73 FR 3410) to achieve a consistent and effective policy for the restricted use of Social Security Numbers (SSN) by Federal agencies to combat fraud and identity theft.

The comment period for the NPRM closed on March 18, 2008. OPM received and considered all 66 written comments in response to the NPRM. Comments were received from 6 Federal agencies, 1 agency component, 1 Federal commission, 6 Federal insurance carriers and 1 labor union. The following is a discussion of the comments OPM received during the public comment period raised in connection with the merits of the proposed rule.

Some agencies were applying the restricted use of the SSN imposed by these rules across all government functions. OPM received several comments suggesting the adaptation of changes to part 293 was useful in understanding various positions; however, the comments were not directly related to the subpart of these rules.

Several agencies asked for clarification regarding the language used in various parts of the proposed rules.

The primary concern from all categories of respondents was the necessity to put into place an alternate employee identifier prior to implementing the proposed rules. Comments centered on the numerous systems and business practices, both internal and external to government systems, which use the SSN as a primary identifier. Systems and processes cited included electronic recruitment systems, payment of various Federal benefits (health related, Social Security, Worker's Compensation, *etc.*), determinations for security clearances, taxpayer identification and union dues withholding through payroll deduction, among others.

Accordingly, the proposed rule, published on January 18, 2008, in the **Federal Register** (73 FR 3410), is withdrawn as of January 27, 2010.

Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–1616 Filed 1–26–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0060; Directorate Identifier 2010–SW–06–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Sikorsky Model S–92A helicopters. The AD would require replacing the main gearbox (MGB) filter bowl assembly with a two-piece MGB filter bowl assembly and replacing the existing mounting studs. The AD would also require inspecting the MGB lube system filters, the housing, the housing threads, and the lockring counterbore and repairing or replacing them as necessary. This proposed AD is prompted by tests indicating that an existing MGB filter bowl assembly can fail under certain loading conditions including those associated with a damaged MGB filter or mounting stud resulting from high frequency maintenance tasks. Testing of the improved MGB filter bowl assembly demonstrates a significant increase in strength and durability over the existing filter bowl. The actions specified by this proposed AD are intended to prevent failure of the MGB filter bowl assembly due to failure of the mounting studs or the filter bowl, loss of oil from the MGB, failure of the MGB, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before March 29, 2010.

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

- *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.

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com*.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2010–0060, Directorate Identifier 2010–SW–06–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the Sikorsky Model S–92A helicopters. The AD would require replacing the MGB filter bowl assembly with a two-piece MGB filter bowl assembly and replacing the existing mounting studs. The AD would also require inspecting the MGB lube system filters, the housing, the housing threads, and the lockring counterbore and repairing and replacing them as necessary. This proposed AD is prompted by tests indicating the existing MGB filter bowl assembly can fail under certain loading conditions including those associated with a damaged MGB filter or mounting stud resulting from high frequency maintenance tasks that can lead to complete loss of oil from the MGB. Testing of the improved MGB filter bowl assembly demonstrates a reduced susceptibility to damage of MGB filter bowl assembly during routine maintenance. This proposed AD is intended to prevent failure of the MGB filter bowl assembly due to failure of the mounting studs or the filter bowl, loss of oil from the MGB, failure of the MGB, and subsequent loss of control of the helicopter.

We have reviewed Sikorsky Alert Service Bulletin No. 92–63–022A, dated December 18, 2009 (ASB), which describes procedures for replacing the existing MGB filter bowl assembly with a new, two-piece filter bowl assembly. The ASB also describes procedures for replacing the existing studs with new studs.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require the following within 60 days.

• Removing the MGB filter bowl assembly and the MGB lube system filter.

• Removing the primary filter element, part number (P/N) 70351–38801–102, and visually inspecting it for damage. If the primary filter element has "wavy" pleats, internal buckling, or indented dimples, before further flight, replacing it with an airworthy filter element.

• Visually inspecting the secondary filter element, P/N 70351–38801–103, for damage. If the secondary filter element has "wavy" pleats or an elongated cup, before further flight, replacing it with an airworthy filter element.

• Replacing the MGB lube system filter assembly mounting studs by removing the studs and visually inspecting the tapped holes for any damage to the threads, visually inspecting the housing to determine that the housing threads are free from damage and corrosion, and visually inspecting housing lockring counterbore to determine if the housing is airworthy.

• If you find damage or corrosion to the housing threads, the housing, or the lockring counterbore, stopping work and contacting the FAA.

• If you do not find damage to the housing threads, the housing, or the lockring counterbore that requires repair, replacing the mounting studs.

• Installing an airworthy, two-piece MGB filter bowl assembly modification kit, P/N 92070–35005–011.

The AD would require that specified portions of the ASB be followed.

We estimate that this proposed AD would affect 22 helicopters of U.S. registry. We also estimate that it would take about 6 hours to inspect the existing filter bowl assembly and replace the MGB lube system filters, the mounting studs, and to install an improved filter bowl assembly at an average labor rate of $80 per work hour. Required parts would cost about $3,257 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $82,214.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2010–0060; Directorate Identifier 2010–SW–06–AD.

Applicability: Model S–92A helicopters, with main gearbox (MGB) filter bowl assembly, part number (P/N) 92351–15802–101, installed, certificated in any category.

Compliance: Required as indicated, unless done previously.

To prevent failure of the MGB filter bowl assembly due to failure of the mounting studs or the filter bowl, loss of oil from the MGB, failure of the MGB, and subsequent loss of control of the helicopter, do the following:

(a) Within 60 days:

(1) Remove the MGB filter bowl assembly by following the Accomplishment Instructions, paragraphs 3.A.(1) through 3.A.(5), of Sikorsky Alert Service Bulletin No. 92–63–022A, dated December 18, 2009 (ASB).

(2) Remove the primary filter element, P/N 70351–38801–102, from the MGB lube system filter and visually inspect it for damage as depicted in Figures 1, 2, and 3 of the ASB. If the primary filter element has "wavy" pleats, internal buckling, or indented dimples, before further flight, replace it with an airworthy filter element.

(3) Visually inspect the secondary filter element, P/N 70351–38801–103, for damage as depicted in Figures 4 and 5 of the ASB. If the secondary filter element has "wavy" pleats or an elongated cup, before further flight, replace it with an airworthy filter element.

(4) Replace the MGB lube system filter assembly mounting studs:

(i) Remove the studs by following the Accomplishment Instructions, paragraphs 3.B.(1) through 3.B.(4) of the ASB. Visually inspect the tapped holes for any damage to the threads. Serrations on the entire counter bore (360 degrees) are acceptable. Serrations in the housing must be intact, and mating serrations on the lock ring must line up with serrations on the housing. Visually inspect the housing to determine that the housing threads are free from damage and corrosion. Visually inspect housing lockring counterbore to determine if the housing is airworthy.

(ii) If you find damage or corrosion to the housing threads, the housing, or the lockring counterbore, stop work and contact Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

(iii) If you do not find damage to the housing threads, the housing, or the lockring counterbore that requires repair, replace the mounting studs by following the Accomplishment Instructions, paragraphs 3.B.(7) through 3.B.(15) of the ASB.

(5) Install an airworthy, two-piece MGB filter bowl assembly modification kit, P/N 92070–35005–011, as depicted in Figures 8 and 9 of the ASB and by following the Accomplishment Instructions, paragraphs 3.C.(1) through 3.C.(20), of the ASB.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, ATTN: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6320: Main Rotor Gearbox.

Issued in Fort Worth, Texas, on January 20, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–1521 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–13–000]

Credit Reforms in Organized Wholesale Electric Markets

Issued January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing, pursuant to section 206 of the Federal Power Act, to amend its regulations to reform credit practices in organized wholesale electric markets to ensure that credit practices result in jurisdictional rates that are just and reasonable. The Commission seeks public comment on the proposed regulations.

DATES: Comments are due March 29, 2010.

ADDRESSES: You may submit comments identified in Docket No. RM10–13–000, by one of the following methods:

Agency Web Site: http://www.ferc.gov. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Christina Hayes (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6194.

Lawrence Greenfield (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6415.

Scott Miller (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8456.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to section 206 of the Federal Power Act (FPA),[1] the Commission is proposing to revise Part 35 of Title 18 of the Code of Federal Regulations (CFR) to reform credit practices in organized wholesale electric markets.[2] While this matter has been one of ongoing Commission interest, the recent turmoil in financial markets has emphasized the importance of sound credit practices that provide competitive markets with adequate access to capital without excessive risk and without excessive cost. Credit policies are particularly important in the organized energy markets, in which regional transmission organizations (RTOs) and independent system operators (ISOs) must balance the need for market liquidity against corresponding risk. In order to ensure that credit policies result in jurisdictional rates that are just and reasonable, the Commission proposes to require RTOs and ISOs to adopt tariff revisions reflecting these proposed credit reforms. The Commission seeks public comment on these proposed reforms.

II. Background

2. The Commission has long been interested in credit policies in wholesale electric markets. The Commission considered issues related to credit practices in 1996 in crafting the *pro forma* Open Access Transmission Tariff (OATT) in Order No. 888,[3] where it directed that each transmission provider's tariff include reasonable creditworthiness provisions, and again in 2004 in a subsequent policy statement that provided additional guidance regarding creditworthiness.[4] Since then, the individual organized wholesale electric markets have developed credit practices on a case-by-case basis, in response to individual concerns and issues and with varying levels of stakeholder support. More recently, some in the industry have expressed concern that these credit practices may no longer be adequate to protect the integrity of these markets and, in turn, to protect consumers from the high costs that would flow from excessive defaults and associated risks in the markets.

3. Credit practices and related risk management tools within organized wholesale electric markets have developed incrementally. Until the 1980s, electricity was generally produced and consumed within a single utility system, or bought from neighboring traditional utility suppliers. Because the risk of non-performance was deemed minimal, collateral requirements and other credit practices were not rigidly managed. Credit practices began to evolve with the development of independent generators and then with increased bulk trading between traditional utilities and independent generators and marketers in the 1990s. Credit practices further progressed in this decade, as power trading with multiple counterparties became a recognized multi-billion dollar industry.

4. Today, parties operating outside the organized wholesale electricity markets typically use bilateral contracts such as the Western Systems Power Pool (WSPP) standard contract and the Edison Electric Institute (EEI) standard contract to sell power, managing credit risk within the terms of those agreements. However, the majority of transactions based on quantity and volume is in the organized wholesale electric markets.[5] Individual RTOs and ISOs developed their own individual processes for assessing risk, extending unsecured credit, and settling accounts.

5. To a large degree, early credit policies in the organized wholesale electric markets were based on the practices of their transmission owning members. In Order No. 888, the Commission required each transmission provider to have "reasonable credit review procedures * * * in accordance with standard commercial practices,"[6] but otherwise allowed the transmission provider to develop its own individual credit practices.[7] As the organized markets were being formed, they tended to use practices based on those of their transmission-owning members.

6. Over time, the credit policies in each RTO and ISO have evolved and, in November 2004, the Commission issued its *Policy Statement on Electric Creditworthiness* to encourage consideration of specific reforms.[8] In particular, the Commission recommended that transmission providers establish qualitative and quantitative measures to assess credit risk and post those measures on their Open Access Same-Time Information System (OASIS) Web sites or in their tariffs. Further, the Commission recommended that organized wholesale electric markets seek to minimize the risk of default by shortening the settlement period, netting obligations owed by and to market participants wherever possible, and adopting other measures.

7. Subsequent to the *Policy Statement,* various proposals to amend credit policies have been filed by RTOs and ISOs and accepted by the Commission. PJM Interconnection, LLC (PJM), for example, has made several filings revising its tariff to modify its credit practices. The Commission recently accepted PJM's proposal to revise its tariff to reduce its settlement cycle from 30 days to seven days, reduce the amount of unsecured credit allowed to $50 million for a member company and $150 million for an affiliated group, and eliminate unsecured credit in the financial transmission rights market.[9] Earlier, the Commission accepted a shortened period to cure defaults and other tariff revisions intended to improve credit practices.[10]

8. Likewise, the Commission has accepted recent tariff revisions filed by California Independent System Operator Corporation (CAISO), reducing the level of unsecured credit that may be obtained by a market participant from $250 million to $150 million,[11] and eventually to $50 million.[12] The Commission has also accepted CAISO's proposal to shorten its "settlement and

[1] 16 U.S.C. 824e. *Accord* 16 U.S.C. 824d (providing that rates must be just and reasonable).

[2] For purposes of this Notice of Proposed Rulemaking, organized wholesale electric markets include energy, transmission and ancillary service markets operated by independent system operators and regional transmission organizations. These entities are responsible for administering electric energy and financial transmission rights markets. As public utilities, they have on file as jurisdictional tariffs the rules governing such markets.

[3] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,937 (1996) (pro forma OATT, section 11 (Creditworthiness)), order on reh'g, Order No. 888–A, 62 FR 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888–B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888–C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (DC Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

[4] Policy Statement on Electric Creditworthiness, 109 FERC ¶ 61,186 (2004) (Policy Statement).

[5] FERC Staff, 2008 State of the Markets Report, 51 (Sept. 2009).

[6] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,937.

[7] While the OATT applies to transmission providers, since 1996 a number of transmission providers have developed RTOs and ISOs.

[8] *See supra* note 4.

[9] *PJM Interconnection, LLC,* 127 FERC ¶ 61,017, at P 4 (2009).

[10] *PJM Interconnection, LLC,* 126 FERC ¶ 61,084 (2009).

[11] California Independent System Operator Corp., 126 FERC ¶ 61,285 (2009).

[12] California Independent System Operator Corp., 129 FERC ¶ 61,142 (2009).

payment period" from more than 80 days to approximately 25 days.[13]

9. Notwithstanding the progress that has been made in some of the organized wholesale electric markets in reforming credit practices, the Commission is concerned that more needs to be done to ensure that rates for service in those markets are just and reasonable. Past experience in the markets has highlighted aspects of the credit management tools that require modification,[14] as was emphasized at a technical conference on credit and capital issues held by the Commission in January 2009.[15] Concerns of default, especially large defaults that have not been minimized by market safeguards, are troubling in the organized wholesale electric markets, in which losses due to default are borne among all market participants.[16] As part of our continuing oversight and assessment of these markets, the Commission is acting today to ensure that the credit policies in place in those markets are sufficient to reasonably protect consumers against the adverse effects of default.

III. Discussion

10. Given a decade or more of experience and evolution by the markets with credit practices, the Commission believes that it is appropriate to now consider adoption of specific requirements regarding credit practices for organized wholesale electric markets, to be set forth in the Commission's regulations. To promote confidence in the markets, the Commission proposes reforming credit practices of the organized wholesale electric markets to limit potential future market disruptions and to dampen the possible ripple effect of such disruptions. These reforms include shortening settlement periods and reducing the amount of unsecured credit, as described below. The Commission believes that these reforms, if adopted, will enhance certainty and stability in the markets and, in turn, ensure that costs associated with market participant defaults do not result in unjust or unreasonable rates.

11. The Commission also notes that some market participants may pose different credit risks than others. For instance, Mr. Robert Levin stated that, in his experience, "[in] discussing it with a number of the ISOs and RTOs, and it was certainly brought to our attention, that [municipalities] are pretty good credit risks."[17] Thus, the Commission requests comment on whether the credit practices discussed below should be applied in the same way to all market participants or whether they should be applied differently to certain market participants depending on their characteristics.

12. While the Commission proposes that the tariff changes be submitted no later than June 30, 2011, to go into effect no later than 60 days after filing, the Commission also requests comment on whether the changes proposed should be put in place earlier. In proposing this deadline, the Commission seeks to balance the needs of the organized wholesale electric markets to modify their practices to comply with the proposed reforms against the benefits to the markets and consumers of having the reforms in place before the winter peak season in 2011–2012. In addition, the Commission specifically requests the views of the ISO's and RTO's managements, as the entities responsible for administering these markets, on each of the proposals set forth below.[18]

A. Shortening the Settlement Cycle

13. The length of the settlement (i.e., billing) period raises both cash management and risk issues. As discussed in our *Policy Statement,* the size of credit risk exposure is, in large part, a function of the length of time between completion of the various parts of electricity transactions, i.e., the provision of service, the billing for service, and the payment for service. Since the risk of default begins at the time the product or service is committed for delivery and continues until the account payable is ultimately extinguished, reductions in settlement periods would serve to: (1) lower the level of financial assurances required (i.e., collateral requirement provided by individual participants); (2) reduce the quantity of the aggregate level of payables outstanding at any point in time, thereby reducing the potential exposure of a defaulting entity; (3) enable updated transaction prices and charges to be utilized in a timely manner in determining credit risk exposure; and (4) provide earlier identification of default situations by lessening the opportunity for an unrecognized default and its severity. Accordingly, the Commission believes that ISOs/RTOs can minimize the exposure period and significantly reduce the credit risk to all market participants by reducing the time between when a cost is incurred and when payment is ultimately received by an ISO/RTO (i.e., shortening the settlement period).[19]

14. PJM has since commissioned a study that concluded, among other things, that shorter settlement periods would reduce default exposures. Based on this analysis, PJM estimated when it filed for weekly billing that the total credit risk exposure would be reduced by $2.1 billion (68 percent) and the necessary financial security provided by members would be reduced by $700 million (73 percent).[20]

15. The Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to implement a settlement cycle of no more than seven calendar days with no more than an additional seven calendar days for final payment. The Commission recognizes that software system adjustments may be necessary and is also aware that similar system changes have resulted in significant delays of other market changes.[21] The Commission further requests comment on the practicality of organized wholesale electric markets implementing daily settlement periods within one year of implementation of weekly settlement periods.

16. We recognize that net wholesale buyers in organized wholesale electric markets may incur cash management costs by paying within the shortened timeframe, given that they receive

[13] California Independent System Operator Corp., 128 FERC ¶ 61,265, at P 4 (2009).

[14] *See New England Power Pool,* 97 FERC ¶ 61,387 (2001) (accepting alternative payment and financial assurance arrangements filed by NEPOOL in response to defaults associated with the bankruptcy of Enron).

[15] Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 91:23–25 (Mr. Robert Ludlow, Vice President and Chief Financial Officer, ISO–NE) (Jan. 13, 2009); Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 101:3–5 (Mr. Philip Leiber, Chief Financial Officer and Treasurer, CAISO) (Jan. 13, 2009).

[16] *Policy Statement,* 109 FERC ¶ 61,186 at P 17 ("If collateral posted by a defaulting party is not sufficient to cover the amount of its default, the remaining credit risk exposure and costs are socialized across an ISO's/RTO's members.").

[17] Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 133:12–14 (Mr. Robert Levin, Managing Director, Energy Research, Chicago Mercantile Exchange) (Jan. 13, 2009).

[18] The views of management may be expressed through the ISO–RTO Council (IRC).

[19] *Policy Statement,* 109 FERC ¶ 61,186 at P 21.

[20] PJM Credit & Clearing Analysis Project: Findings & Recommendations (June 2008) (found on Dec. 31, 2009 at: *http://www.pjm.com/~/media/committees-groups/committees/mc/20080626-item-03d-crmsc-market-reform-credit-recommendations.ashx*).

[21] To the extent possible, the Commission encourages use of software already used in markets that are currently operating on a seven-day settlement timeframe. For example, PJM and ISO–NE already use a seven day settlement timeframe. *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 4; *New England Power Pool,* 107 FERC ¶ 61,201, at P 10–12 (2004).

revenues from their own retail buyers on a 30-day basis.[22] To reconcile the discrepancy in cash flow, a market participant may need to arrange cash management facilities to manage the more frequent payments. The Commission invites comments on this proposal, and whether it would involve a one-time cost to establish such a facility or ongoing costs that could significantly affect liquidity and rates.

B. Use of Unsecured Credit

17. As suggested above, as the timeframe of settlement shrinks, so does the amount of unsecured credit that a participant may need. This is because the number of outstanding transactions and the size of the amounts outstanding become smaller, thus minimizing the credit exposure to any market participant.[23]

18. While RTOs and ISOs have tightened risk and credit standards over the years, the vestiges of the practices historically used for unsecured credit are still substantial in some markets. Following those practices, RTOs and ISOs, after credit analysis, generally allow significant amounts of unsecured credit. The Commission understands that the level of unsecured credit allowed has also varied widely among the organized wholesale electric markets (during the financial crisis in fall 2008, ranging from 50 to 80 percent).

19. The Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to reduce the extension of unsecured credit to no more than $50 million per market participant. The Commission seeks comment on whether there should be a further aggregate cap to cover an entire corporate family (e.g., holding company, subsidiaries, associates, and affiliates) and also whether the cap should be different for markets of different sizes. Reducing the level of unsecured credit combined with shortening the settlement timeframe should reduce the risk of default and consequently reduce the cost of default that is shared among market participants.

20. The Commission further requests comment on the practicality of eliminating unsecured credit in connection with adopting daily settlement within one year of implementation of weekly settlement periods.

C. Financial Transmission Rights Markets

21. The above-proposed reforms are not directly applicable to markets for financial transmission rights, because financial transmission rights have a longer-dated obligation to perform which can run from a month to a year or more. The Commission has also noted that financial transmission rights markets have unique risks that distinguish them from other wholesale electric markets, and that the value of a financial transmission right depends on unforeseeable events, including unplanned outages and unanticipated weather conditions.[24] Moreover, financial transmission rights are relatively illiquid, adding to the inherent risk in their valuation.[25]

22. For example, PJM suffered a significant default in December 2007 in its financial transmission rights market[26] and moved to eliminate the use of unsecured credit in that market due to its risk.[27] That default illustrates the unique risk of financial transmission rights. Given a change in market conditions, a set of financial transmission rights positions became highly unprofitable. Because financial transmission rights obligations cannot be terminated prior to the expiration of the contract, from one month to several years, losses can mount to the point that the financial transmission right holder goes bankrupt.

23. Given the unique characteristics of and risks inherent in financial transmission rights markets, the Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff provisions that eliminate unsecured credit in financial transmission rights markets.

D. Ability To Offset Market Obligations

24. Organized wholesale electric markets typically arrange for settlement and netting of transactions entered into between market participants and the market administrator, but do not take title to the underlying contract position of a participant at the time of settlement. This practice became an issue during the Mirant bankruptcy and its resulting default in the CAISO market. Because CAISO had not "taken title" of the transactions, CAISO could not net payments owed to Mirant against payments owed by Mirant.[28] As a result, all of Mirant's creditors had a claim to revenues owed to Mirant by CAISO market participants, but CAISO market participants bore the loss for money owed and not paid by Mirant.

25. The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to clarify their status as a party to each transaction so as to eliminate any ambiguity or question as to their ability to manage defaults and to offset market obligations. The Commission seeks comment on whether this clarification of status would have ramifications beyond addressing the risk highlighted here.

E. Minimum Criteria for Market Participation

26. The Commission recognizes that trading helps provide market liquidity, but trading by undercapitalized entities without adequate risk management procedures in place poses an unwarranted risk to organized wholesale electric markets and to their market participants. Minimum criteria for market participation, such as the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification, are intended to make sure that each market participant has at its disposal adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole. Minimum criteria should not be onerous, however, and should allow most traditional market participants—including small load-serving entities, municipalities, cooperatives, and other similar participants in organized wholesale electric markets—to participate.

27. The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to specify minimum participation criteria for all market

[22] *See* Testimony in Technical Conference on Credit and Capital Issues, Docket No. AD09–2–000, Tr. 146:3–9 (Mr. Daniel Sarti, Credit Risk Manager, Arizona Public Service Company) (Jan. 13, 2009).

[23] *See California Independent System Operator Corp.,* 129 FERC ¶ 61,142 at P 14 (adopting limit of $50 million of unsecured credit per market participant); *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 5 (adopting limit of $50 million for a member company and $150 million for an affiliated group).

[24] For a financial transmission right, an unexpected outage can cause unforeseen congestion or movement in flows and the resulting charges or credits can swing very substantially either way.

[25] *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 36.

[26] *PJM Interconnection, LLC,* 122 FERC ¶ 61,279, at P 26 n.10 (2008) (citing defaults by Exel and Power Edge in PJM's financial transmission rights market).

[27] *PJM Interconnection, LLC,* 127 FERC ¶ 61,017 at P 8, 36.

[28] Memorandum by Wachtell, Lipton, Rosen & Katz to PJM regarding Setoffs and Credit Risk of PJM in Member Bankruptcies at 7, 10–11 (Mar. 17, 2008) (found on Dec. 31, 2009 at *http://www.pjm.com/~/media/committees-groups/committees/crmsc/20080423/20080423-wachtell-netting-memo.ashx*).

participants. The Commission requests comment on what the minimum criteria should be, as well as the process by which the organized wholesale electric markets adopt such criteria.

F. "Material Adverse Change"

28. Many wholesale market tariffs allow a market administrator to require additional collateral if there is a "material adverse change" in the market participant's credit status. However, this phrase is ambiguous and could lead to uncertainty as to when a market administrator can require the posting of additional collateral, at potentially great cost to the market participant. Additionally, this ambiguity may have the practical effect of delaying a market administrator's request for additional collateral until the last minute, by which time the market participant may find it difficult or impossible to obtain and provide such collateral. The mere request for collateral at such a late date could even lead to reactions from other market participants that result in defaults.

29. The Commission therefore proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to specify under what circumstances a market administrator may invoke a "material adverse change" as a justification for requiring additional collateral. The Commission requests comment as to specific language regarding the circumstances under which a market administrator may invoke the "material adverse change" provision and the process by which the organized wholesale electric markets would adopt such language.

G. Grace Period to "Cure" Collateral Posting

30. RTOs and ISOs have also adopted timeframes in which a party may "cure" its changed credit position by posting additional collateral. The standardized timeframe helps eliminate uncertainty for other market participants during periods of credit stress. PJM, for example, has adopted a period of two business days to cure.[29] The Commission understands that demanding additional collateral from a participant can complicate that participant's financial position and that the participant may need time to "cure," including consulting with potential lenders and others. On the other hand, the Commission is also aware that the time period to "cure" the position of the participant must be short enough to minimize uncertainty for other market participants and to stem accumulation of debt and potentially erratic market behavior.

31. For these reasons, the Commission proposes to revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff language to limit the time period allowed to post additional collateral when additional collateral is requested by the organized wholesale electric market. The Commission requests comment on the appropriate time period to post additional collateral, e.g., two business days, as PJM has adopted, and whether the time period should be standardized among organized wholesale electric markets.

IV. Environmental Analysis

32. 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.[30] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[31] The proposed regulations are categorically excluded as they address rate filings submitted under section 206 of the FPA and the establishment of just and reasonable rates, terms and conditions of jurisdictional service under this section of the FPA.[32] Accordingly, no environmental assessment is necessary and none has been prepared for this NOPR.

V. Information Collection Statement

33. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

34. This NOPR proposes to amend the Commission's regulations pursuant to section 206 of the Federal Power Act, to reform credit practices of organized wholesale electric markets to limit potential future market disruptions. To accomplish this, the Commission proposes to require RTOs and ISOs to adopt tariff revisions reflecting these credit reforms. Such filings would be made under Part 35 of the Commission's regulations. The information provided for under Part 35 is identified as FERC–516.

35. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimate: The Public Reporting burden for the requirements contained in the NOPR is as follows:

Data collection	Number of respondents	No. of responses	Hours per response	Total annual hours
FERC–516:				
Transmission Organizations with Organized Electricity Markets	6	1	60	360

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. The Commission has projected the average annualized cost of all respondents to be the following: 360 hours @ $300 per hour = $108,000 for respondents. No capital costs are estimated to be incurred by respondents.

Title: FERC–516 "Electric Rate Schedule Tariff Filings"

Action: Proposed Collections

OMB Control No: 1902–0096

[29] *PJM Interconnection, LLC,* 126 FERC ¶ 61,084 at P 12.

[30] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990, ¶ 30,783 (1987).

[31] 18 CFR 380.4.

[32] *See* 18 CFR 380.4(a)(15).

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One time to initially comply with the rule, and then on occasion as needed to revise or modify.

36. *Necessity of the Information:* The information from FERC–516 enables the Commission to exercise its wholesale electric power and transmission oversight responsibilities in accordance with the Federal Power Act. The Commission needs sufficient detail to make an informed and reasonable decision concerning the appropriate level of rates, and the appropriateness of non-rate terms and conditions, and to aid customers and other parties who may wish to challenge the rates, terms, and conditions proposed by the utility.

37. This proposed rule, if adopted, would amend the Commission's regulations to ensure that credit practices currently in place in markets reasonably protect consumers against the adverse effects of default. To promote confidence in the markets, the Commission believes it is appropriate to consider adoption of specific requirements regarding credit practices for organized wholesale electric markets. These requirements include shortening of settlement periods and reducing the amount of unsecured credit. The Commission believes these actions, if they are adopted, will enhance certainty and stability in the markets, and in turn, ensure that costs associated with market participant defaults do not result in unjust or unreasonable rates.

38. *Internal review:* The Commission has reviewed the requirements pertaining to organized wholesale electric markets and determined the proposed requirements are necessary to its responsibilities under section 206 of the Federal Power Act.

39. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

40. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], e-mail: *oira_submission@omb.eop.gov.*

VI. Regulatory Flexibility Act Certification

41. The Regulatory Flexibility Act of 1980 (RFA)[33] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities.[34] Agencies are not required to make such an analysis if a rule would not have such an effect.

42. The RTOs and ISOs regulated by the Commission do not fall within the RFA's definition of small entity.[35] In addition, the vast majority of market participants in RTOs and ISOs are, either alone or as part of larger corporate families, not small entities. And the protections proposed here will protect all market participants, including small market participants, by reducing the likelihood of defaults and minimizing the impact of any defaults.

43. California Independent Service Operator Corp. is a nonprofit organization comprised of more than 90 electric transmission companies and generators operating in its markets and serving more than 30 million customers.

44. New York Independent System Operator, Inc. (NYISO) is a nonprofit organization that oversees wholesale electricity markets serving 19.2 million customers. NYISO manages a 10,775-mile network of high-voltage lines.

45. PJM Interconnection, LLC is comprised of more than 450 members including power generators, transmission owners, electricity distributors, power marketers and large industrial customers and serving 13 states and the District of Columbia.

46. Southwest Power Pool, Inc. is comprised of 50 members serving 4.5 million customers in eight states and has 52,301 miles of transmission lines.

47. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a non-profit organization with over 131,000 megawatts of installed generation. Midwest ISO has 93,600 miles of transmission lines and serves 15 states and one Canadian province.

48. ISO New England Inc. (ISO–NE) is a regional transmission organization serving six states in New England. The system is comprised of more than 8,000 miles of high voltage transmission lines and several hundred generating facilities of which more than 350 are under ISO–NE's direct control.

49. Therefore, the Commission certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VII. Comment Procedures

50. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 29, 2010. Comments must refer to Docket No. RM10–13–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

51. 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, but requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able 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.

52. 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.

VIII. Document Availability

53. 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

[33] 5 U.S.C. 601–12.

[34] The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

[35] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

54. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary 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 the docket number), in the docket number field.

55. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at (202) 502–6652 (toll-free at 1–866–208–3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Norris voting present.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, Chapter J, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS.

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

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

2. Subpart J is added to read as follows:

Subpart J—Credit Practices In Organized Wholesale Electric Markets

Sec.
35.45 Applicability.
35.46 Definitions.
35.47 Tariff provisions governing credit practices in organized wholesale electric markets.

Subpart J—Credit Practices In Organized Wholesale Electric Markets

§ 35.45 Applicability.

This part establishes credit practices for organized wholesale electric markets for the purpose of minimizing risk to market participants.

§ 35.46 Definitions.

(a) *Market Participant* means an entity that qualifies as a Market Participant under 18 CFR 35.34.

(b) *Organized Wholesale Electric Market* includes an independent system operator and a regional transmission organization.

(c) *Regional Transmission Organization* means an entity that qualifies as a Regional Transmission Organization under 18 CFR 35.34.

(d) *Independent System Operator* means an entity operating a transmission system and found by the Commission to be an Independent System Operator.

§ 35.47 Tariff provisions regarding credit practices in organized wholesale electric markets.

Each organized wholesale electric market must have tariff provisions that:

(a) Limit the amount of unsecured credit extended to any market participant to no more than $50 million.

(b) Adopt a settlement period of no more than seven days and allow no more than an additional seven days to receive payment.

(c) Eliminate unsecured credit in the financial transmission rights market.

(d) Allow it to offset market obligations owed to market participants against market obligations owed by market participants.

(e) Limit to no more than two days the time period provided to post additional collateral when additional collateral is requested by the organized wholesale electric market.

(f) Provide minimum participation criteria required of market participants to be eligible to receive credit from the organized wholesale electric market.

(g) Specify when a market administrator may invoke the "material adverse change" as a justification for requiring additional collateral.

[FR Doc. 2010–1537 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM10–11–000]

Integration of Variable Energy Resources

Issued January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on the extent to which barriers may exist that impede the reliable and efficient integration of variable energy resources (VERs) into the electric grid, and whether reforms are needed to eliminate those barriers. In order to meet the challenges posed by the integration of increasing numbers of VERs, ensure that jurisdictional rates are just and reasonable, eliminate impediments to open access transmission service for all resources, facilitate the efficient development of infrastructure, and ensure that the reliability of the grid is maintained, the Commission seeks to explore whether reforms are necessary to ensure that wholesale electricity tariffs are just, reasonable and not unduly discriminatory. This Notice will enable the Commission to determine whether wholesale electricity tariff reforms are necessary.

DATES: Comments are due March 29, 2010.

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

- *Agency Web site: http://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:

Mk Shean (Technical Information), Office of Energy Policy and Innovations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6792, *Mk.Shean@ferc.gov.*

Timothy Duggan (Legal Information), Office of General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8326, *Timothy.Duggan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on the extent to which barriers exist that may impede the reliable and efficient integration of variable energy resources (VERs) [1] into the electric grid and

[1] For purposes of this proceeding, the term variable energy resource (VER) refers to renewable

whether reforms are needed to eliminate those barriers. VERs, such as resources powered by wind and solar energy, continue to make up an increasing percentage of the nation's energy supply portfolio; however, they present unique challenges (such as location constraints and limited dispatchability) that are not typically presented by conventional electricity generating resources. VERs also present benefits, such as low marginal energy costs and reduced greenhouse gas emissions, which have contributed to the accelerated development of these resources. In order to meet these challenges and fully realize these benefits of VERs in a reliable and efficient manner, the Commission seeks to explore whether reforms of existing policies are necessary to ensure that jurisdictional rates are just and reasonable and that the terms of jurisdictional service do not unduly discriminate against these resources.

I. Background

2. While the amount of VERs remains relatively small as a percentage of total generation, it is rapidly increasing, reaching a point where such resources are becoming a significant component of the nation's energy supply portfolio. In 2008, new wind generating capacity, totaling 8,376 MW, made up 42 percent of all newly installed generating capacity.[2] Moreover, in recent years, a number of state renewable portfolio standards and other incentives/mandates have been passed to encourage the development of renewable energy resources, in response to a growing concern about the environmental impacts and sustainability of the Nation's current electricity supply portfolio. As of December 2009, 30 states, including the District of Columbia, had a renewable portfolio standard.[3]

3. While VERs have many desirable characteristics, including low marginal energy costs and reduced greenhouse gas and other pollutant emissions, compared to conventional fossil-fueled generation, they also present unique challenges as public utilities work to integrate VERs in a way that ensures system reliability. For example, because VERs cannot control or store their fuel source, they have limited ability to control their production of electricity, and the weather-related phenomena that drive VER output levels can be difficult to forecast. Also, the output from some VERs can be negatively correlated with demand, such that a resource's greatest energy output often comes at a time of limited energy demand. Changes in the rate of output from VERs may also result in substantial ramps,[4] which can require additional resources to allow System Operators[5] to balance generation and demand while maintaining reliability in real time.

4. In this proceeding, the Commission seeks to explore whether existing rules, regulations, tariffs, or industry practices within the Commission's jurisdiction may hinder the reliable and efficient integration of VERs, resulting in rates that are unjust and unreasonable and/or terms of service that unduly discriminate against certain types of resources. The Commission seeks comment on how best to reform any such rules, regulations, tariffs, or industry practices.

5. Under sections 205 and 206 of the Federal Power Act, the Commission has a responsibility to remedy undue discrimination with respect to transmission of electric energy and sales of electric energy for resale in interstate commerce and to ensure that rates for these services are just and reasonable.[6] As the electric power industry has evolved, the Commission has discharged this responsibility in different ways. In Order No. 888, the Commission exercised its authority to remedy undue discrimination by requiring all public utilities to provide open access transmission service consistent with the terms of a *pro forma* open access transmission tariff (OATT).[7] The *pro forma* OATT addresses the terms of transmission service, including, among other things, the terms for scheduling transmission service, curtailments, and the provision of ancillary services. In Order No. 2003, the Commission acted to remove barriers in the generator interconnection process and adopted standard procedures (the Large Generation Interconnection Procedures or LGIP), and a standard agreement (the Large Generation Interconnection Agreement or LGIA) for the interconnection of generation resources larger than 20 MW.[8] More recently, in a further effort to remedy the potential for undue discrimination, the Commission revised and updated the *pro forma* OATT in Order No. 890.[9]

6. With limited exceptions,[10] these and other Commission efforts to remedy undue discrimination have not expressly accounted for the differences between VERs and more conventional generation resources. In large part this is due to the fact that the electric grid was developed during a time when electricity was almost exclusively generated from centralized, dispatchable resources that were powered by fuel sources that could be stored and used as needed. The Commission's policies and the concomitant implementation of its responsibility under sections 205 and 206 were premised on this underlying physical reality of the electric grid.

7. Where relevant, however, the Commission on several occasions has taken the operational characteristics of

energy resources that are characterized by variability in the fuel source that is beyond the control of the resource operator. This includes wind and solar generation facilities and certain hydroelectric resources.

[2] Div. of Market Oversight, Fed. Energy Regulatory Comm'n, *2008 State of the Markets Report* 19 (2009), *available at http://www.ferc.gov/market-oversight/st-mkt-ovr/2008-som-final.pdf.*

[3] Div. of Market Oversight, Fed. Energy Regulatory Comm'n, *Renewable Power and Energy Efficiency Market: Renewable Portfolio Standards* 1 (2009), *available at http://www.ferc.gov/market-oversight/othr-mkts/renew/othr-rnw-rps.pdf.*

[4] A ramp is the rate, expressed in megawatts per minute, that a generator changes its output.

[5] System Operator refers to the individual at a control center—balancing authority, transmission operator, generator operator (VERs as well as conventional resources), or reliability coordinator—whose responsibility it is to monitor and control the electric system in real time.

[6] 16 U.S.C. 824d, 824e.

[7] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[8] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007). Similarly, the Commission also adopted standard procedures for the interconnection of small generation resources. *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006).

[9] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[10] *See, e.g., Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005) (adopting reforms to the LGIA and LGIP to establish standard technical requirements for interconnection of wind plants); Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 665 (establishing a standard offer generation imbalance service, but exempting intermittent resources from the highest penalty band).

VERs into consideration in efforts to ensure just and reasonable rates and to remedy undue discrimination. In Order No. 661, the Commission required public utilities to revise their LGIAs and LGIPs to incorporate standard technical requirements for the interconnection of wind resources larger than 20 MW.[11] In Order No. 890, the Commission applied a reduced penalty amount to intermittent resources' imbalances that would otherwise be subject to the highest-tier generation imbalance penalties, recognizing "that intermittent generators cannot always accurately follow their schedules and that high penalties will not lessen the incentive to deviate from their schedules."[12] In addition, in Order No. 890 the Commission created conditional firm point-to-point transmission service, noting that conditional firm service can be particularly beneficial to renewable energy resources.[13] Shortly after the issuance of Order No. 890, the Commission accepted a unique cost allocation mechanism for interconnection facilities connecting renewable energy resources that are location-constrained, recognizing that the difficulties faced by these resources are different from those faced by other generation developers, and therefore support an appropriate variation of the interconnection pricing policy.[14]

8. Such actions are premised on the notion that targeted revisions to Commission policies are sometimes necessary to ensure that jurisdictional rates are just and reasonable and to prevent undue discrimination against any one type of customer or resource as the characteristics of the nation's generation portfolio change.

II. Subject of the Notice of Inquiry

9. In this proceeding, the Commission seeks to take a fresh look at existing policies and practices in light of the changing characteristics of the nation's generation portfolio with the aim of removing unnecessary barriers to transmission service and wholesale markets for VERs (and other technologies that may aid their integration) and promoting greater efficiencies that ultimately will reduce costs to consumers. While the Commission seeks comment on numerous challenges presented by the integration of VERs, this proceeding will not address issues related to transmission planning and cost allocation, as the Commission is considering those issues in another forum.[15]

10. Our goal is not to adopt rules that favor one type of supply source over another. Instead, the Commission's purpose in this proceeding is to investigate market and operational reforms necessary to achieve two goals: first, to ensure that rates for jurisdictional service are just and reasonable, reflecting the implementation of practices that increase the efficiency of providing service; and second, to prevent VERs from facing undue discrimination. These goals are consistent with the requirements of sections 205 and 206 of the FPA.

11. In addition, the Commission must ensure that any reforms are consistent with the need to maintain system reliability in accordance with Reliability Standards proposed by the North American Electric Reliability Corp. (NERC) and approved by the Commission pursuant to section 215 of the FPA.[16] Although the scope of this proceeding is directed to market and operational reforms, in certain instances where commenters believe existing NERC Reliability Standards should be modified or new standards developed in conjunction with the market reforms considered herein, they may indicate as much, if directly related to this proceeding. In responding to the following questions, commenters should indicate how the reforms that they propose ensure the reliable operation of the grid, or would impact the reliable operation of the grid, as required by the reliability standards.[17]

III. Questions for Response

12. To ensure that all generation resources are afforded non-discriminatory access to wholesale markets and the electric power grid and that wholesale market prices and the rates for transmission service are just and reasonable, the Commission seeks comment on the perceived barriers, and suggested solutions to removing those barriers, of integrating VERs into the electric grid in a reliable and efficient manner. The Commission's preliminary view is that one of the most important operational issues affecting the integration costs for VERs involves the reserves necessary to address variability in VER output. Addressing this issue means examining a number of operational practices and processes that affect both the determination of the amount of reserves needed as well as the cost of those reserves. The Commission seeks comment on the impact of integrating an increasing number of VERs in the following subject areas: (1) Data and reporting requirements, including the use of accurate forecasting tools; (2) scheduling practices, flexibility, and incentives for accurate scheduling of VERs; (3) forward market structure and reliability commitment processes; (4) balancing authority area coordination and/or consolidation; (5) suitability of reserve products and reforms necessary to encourage the efficient use of reserve products; (6) capacity market reforms; and, (7) redispatch and curtailment practices necessary to accommodate VERs in real time.

13. The Commission does not seek to limit its inquiry and encourages all comments regarding the topics broadly discussed herein. Commenters are invited to share with the Commission their overall thoughts, including technical, commercial, and legal observations, on the challenges posed by the increasing number of VERs, operational and technical barriers faced by VERs, and the extent to which Commission policies can and/or should be revisited in light of the increasing number of VERs. Where commenters believe specific revisions to Commission rules and/or *pro forma* OATT provisions are necessary to implement their proposed reforms, they are encouraged to cite those rules and/or provisions with specificity and suggest revised language as appropriate. In this Notice of Inquiry we seek information with regard to whether changes to rules or practices as applied to VERs will achieve the Commission's goals. However, there may be instances where a change to a rule or practice could also assure just and reasonable rates and address undue discrimination if applied to other resources. Therefore, we ask commenters to address whether any proposed changes to the Commission rules or OATT provisions should apply to all resources. In

[11] Order No. 661, FERC Stats. & Regs. ¶ 31,186 (adopting, among other things, a low voltage ride-through standard, a power factor range, dynamic reactive power capability, and supervisory control and data acquisition (SCADA) capability).

[12] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 664–65.

[13] *Id.* P 912.

[14] *Cal. Indep. Sys. Operator Corp.,* 119 FERC ¶ 61,061, at P 69–70 (2007). *See also Southwest Power Pool, Inc.,* 127 FERC ¶ 61,283, at P 29 (2009) (accepting a proposal to allocate network upgrade costs differently for wind resources being used to serve demand in a different zone than the methodology used for other resources).

[15] *Transmission Planning Processes Under Order No. 890,* Docket No. AD09–8–000 (Oct. 8, 2009) (notice of request for comments).

[16] 16 U.S.C. 824o.

[17] *See id.* at 824o(a)(3). We note that NERC has an ongoing stakeholder process to examine how to accommodate high levels of variable generation. *See* North American Elec. Reliability Corp., *Accommodating High Levels of Variable Generation* (2009).

addition, the Commission seeks responses to the specific questions listed below.

A. Data and Forecasting

14. The scheduling and operational practices of the bulk power system are predicated on the ability to predict, with relative precision, the output of generation resources and the ability of reserve products to accommodate fluctuations in demand and emergency conditions. The rapid increase in the development of VERs has presented the industry with a variety of challenges related to predicting the exact output of VERs at any point in time.

15. These challenges could become more manageable for System Operators through the development and use of state-of-the-art meteorological forecasts, which are supplied with data from multiple diverse locations. Specifically, the implementation of enhanced forecasting tools and procedures could assist in projecting the output of VERs with greater accuracy, thereby promoting the efficient scheduling of all generation resources to meet expected demand, especially during the morning increase and evening decrease in demand. Enhanced forecasting could also allow System Operators in all regions to anticipate system ramping events more effectively and respond to them in an economically efficient manner, thereby ensuring that jurisdictional rates are just and reasonable.

16. To assist in the development of state-of-the-art forecasting tools for VERs, the Commission seeks comment on whether and, if so, how the Commission should modify existing operational data reporting requirements. The Commission also aims to determine what data and what level of data-sharing is necessary, coupled with advanced communication and metering tools, to ensure that VERs are integrated in a reliable and efficient manner, particularly with respect to scheduling, ramping needs, and the procurement of reserve services.

17. To that end, the Commission seeks comment on the following questions:

1. What are the current practices used to forecast generation from VERs? Will current practices in forecasting VERs' electricity production be adequate as the number of VERs increases? If so, why?

2. What is necessary to transition from the existing power generation forecasting systems for wind and solar generation resources to a state-of-the-art forecasting system? What type of data (*e.g.,* meteorological, outage, etc.), sampling frequency, and sampling location requirements are necessary to develop and integrate state-of-the-art forecasts, and what technical or market barriers impede such development?

3. What data, forecasting tools and processes do System Operators need to more effectively address ramping events and other variations in VER output, and to validate enhanced forecasting tools and procedures?

4. What operational, outage and meteorological data should the Commission require VERs to provide to non-VER System Operators? To what size resources, in MWs, should any such data requirements apply, and what revisions to the *pro forma* OATT would be necessary to accommodate these requirements?

5. State-of-the-art forecasts may necessitate the sharing of meteorological data across regions to assure that the movement of weather patterns can be accurately predicted and analyzed. To what extent should meteorological data be made publically available to aid in the development of state-of-the-art forecasts? Should the Commission require public utilities to maintain a meteorological data reporting system? If so, should such a system be akin to or in collaboration with Open Access Same Time Information System (OASIS) postings? In order to retain the confidentiality of commercially sensitive data reported by VERs for the purpose of developing state-of-the-art forecasts, what limits and/or safeguards should be established to protect operational data and generator outage reports?

6. Should the Commission encourage both decentralized and centralized meteorological and VER energy production forecasting? For example, should transmission providers have independent forecasting obligations as part of their reliability commitment processes similar to what is done today for demand forecasting?

7. To what extent is a lack of data regarding the operational status and forecasted output of distributed, or behind-the-meter, VERs leading to a need for additional reserves? To what extent would the provision of such data reduce the need for System Operators to rely on reserves?

B. Scheduling Flexibility and Scheduling Incentives

1. Scheduling Flexibility

18. Existing scheduling practices were designed at a time when virtually all generation on the system could be scheduled with relative precision. With increasing numbers of VERs, System Operators appear to be relying more on expensive reserves, such as regulation reserves, to balance the variation in energy output from VERs. Improvements in scheduling procedures may offer the potential for greater efficiency in dispatching all energy resources if the degree of variability can be reduced, better anticipated, and/or planned for more precisely.

19. In regions outside of those run by regional transmission organizations (RTOs) or independent system operators (ISOs), resources typically schedule transmission service on an hourly basis and are only allowed to adjust their schedules during the hour for emergency situations that threaten reliability.[18] Because transmission schedules for VERs are typically set 20–30 minutes ahead of the hour, the forecast of output may be 90 minutes old by the end of the operating hour. Additionally, by limiting the ability of resources to adjust their schedules during the hour or to submit shorter scheduling timeframes, non-RTO/ISO System Operators may not be utilizing the full operational flexibility of the resources on their systems to change output levels to address the variable output of VERs.

20. In RTOs/ISOs, real-time markets are employed to address imbalance energy needs. Real-time markets utilize intra-hour economic dispatch of internal resources, which affords RTOs/ISOs the ability to respond quickly and economically to fluctuations in VER supply. However, RTOs/ISOs often schedule external resources on an hourly basis, consistent with non-RTO/ISO scheduling practices.

21. The Commission questions whether the retention of existing transmission scheduling practices as additional VERs come on-line is causing rates for reserves (as part of transmission service) to become unjust and unreasonable by inhibiting the ability of VERs to establish operationally-viable schedules and preventing System Operators from utilizing the full flexibility of their systems. Accordingly, the Commission seeks to explore whether greater scheduling flexibility, such as intra-hour scheduling, could provide benefits to the system and facilitate the reliable and efficient use of all resources.

22. To that end, the Commission seeks comment on the following questions:

1. Would shorter scheduling intervals allow System Operators to more

[18] Section 13.8 of the *pro forma* OATT requires transmission customers to schedule use of firm point-to-point transmission service by 10:00 a.m. the day prior to operation. However, section 13.8 of the *pro forma* OATT gives the transmission provider the discretion to accept schedule changes no later than 20 minutes prior to the operating hour.

efficiently manage the ramps of VERs and/or demand? To what extent would the availability of intra-hour scheduling decrease the overall reliance on regulation reserves to manage the variability of VERs?

2. What are the benefits and costs of allowing resources and transactions to schedule on an intra-hour basis, and what tariff and/or technical barriers exist to implementing intra-hour scheduling? Are there best practices that could be implemented to facilitate greater intra-hour scheduling?

3. Are there an optimum number of intervals within the hour for scheduling? What time increments would be necessary and/or desirable in order to achieve optimum flexibility while still meeting the relevant reliability requirements?

4. Identify any reliability issues that may result from changes to the scheduling rules. What changes, if any, to NERC Reliability Standards would be needed to fully implement additional scheduling flexibility while still ensuring reliability?

5. How would intra-hour scheduling affect the operation of other processes such as available transfer capability (ATC), the E-Tag system, issuance of dispatch instructions for generation and/or demand resources, transmission loading relief procedures, and/or dynamic schedules? What costs would be incurred as a result?

6. If intra-hour scheduling is implemented in non-RTO/ISO regions, how would RTO/ISO scheduling practices at interties be affected? Would intra-hour scheduling at interties present problems for RTO/ISO markets? If so, describe the problems and feasible solutions for intra-hour scheduling at interties.

2. Scheduling Incentives

23. Reforms to existing scheduling practices to promote intra-hour scheduling could enable VERs to more accurately meet their schedules, which in turn should help to ensure that rates for reserves are just and reasonable. In order to achieve overall improvements in scheduling accuracy, particularly with respect to VERs, it is also important to ensure that such resources have the appropriate incentives to meet their schedules with real-time output to the extent feasible.

24. In Order No. 890, the Commission adopted *pro forma* OATT imbalance provisions that implemented a graduated bandwidth approach to imbalance penalties that recognized the link between escalating deviations and potential reliability impacts on the system.[19] The Commission exempted intermittent resources from the third tier deviation band, which required imbalances of greater than 7.5 percent of scheduled amounts (or 10 MW) to be settled at 125 percent of the incremental cost or 75 percent of the decremental cost of providing the imbalance energy.[20] Instead, intermittent resources with such imbalances would only be subject to the second tier imbalance penalties, i.e., 110 percent of the incremental or 90 percent of the decremental cost.[21] The Commission is interested in examining the experience with this exemption to determine whether it has resulted in scheduling practices that may result in an overall rate for transmission service that is not just and reasonable.

25. To that end, the Commission seeks comment on the following questions:

1. Has the exemption from third-tier penalty imbalances worked as a targeted exemption that recognizes operational limitations of VERs,[22] or has it encouraged inefficient scheduling behaviors to develop? If the latter, what reforms to this exemption would encourage more accurate scheduling practices?

2. Assuming that efficient forecasting and scheduling practices help minimize deviations between scheduled and actual energy output of VERs, are additional incentives needed to encourage VERs to submit schedules that are informed by state-of-the-art forecasting? What would be the proper incentives?

3. Under an RTO/ISO market design, are there sufficient incentives to encourage VERs to submit accurate schedules? What costs and/or penalties should be assigned to VERs when their real-time output is not accurately scheduled on a forward basis? Should VERs be treated the same as conventional resources with respect to deviations from their production schedules?

C. Day-Ahead Market Participation and Reliability Commitments

1. Day-Ahead Market Participation

26. The presence of a day-ahead market is a key characteristic of most RTOs/ISOs. When resources are scheduled accurately in the day-ahead market, subsequent out-of-market commitments are minimized and market participants can manage their financial exposure more effectively. However, VERs appear to participate in the day-ahead market on a limited basis, choosing instead to self-schedule the majority of their supply in the real-time energy markets (*i.e.,* act as a price taker). Because day-ahead schedules are financially binding, there can be significant financial risk for VERs participating in the day-ahead market and not being able to meet these obligations in the real-time market. This may serve as a disincentive for VERs to participate in the day-ahead market.

27. In light of the increasing number of VERs, the Commission is interested in receiving comments on whether the lack of day-ahead market participation may be resulting in costly out-of-market commitments, thereby rendering rates unjust and unreasonable, as well as whether the financial risk associated with participating in the day-ahead market may unduly discriminate against VERs by inhibiting their ability to participate in such a market. Such comments should enable the Commission to determine whether reforms are necessary to facilitate VERs to participate more in the day ahead market rather than primarily in the real time market.

28. To that end, the Commission seeks comment on the following questions:

1. Does the lack of day-ahead market participation by VERs present operational challenges or reduce market transparency as the number of VERs increases? Will out-of-market commitments increase as the number of VERs increases? If so, why?

2. How can new or existing market design features assure that the day-ahead market will accurately represent real-time system conditions and that day-ahead and real-time energy prices will converge under the scenario of increasing numbers of VERs?

3. Do current RTO/ISO market designs place undue barriers to participation in forward markets by VERs? Could the timing of certain RTO/ISO market design elements, such as the day-ahead market, be modified in a manner that would facilitate VERs to participate more in the day ahead market rather than primarily in the real time market? If so, how?

4. Would the use of more accurate forecasting tools facilitate participation of VERs in the day-ahead market rather than primarily in the real time market? If so, how?

[19] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663–64.

[20] *Id.* P 664–65.

[21] In RTOs/ISOs, because real-time markets are used to address imbalance energy needs, VERs are typically exempt from some *pro forma* OATT deviation penalties.

[22] For the purposes of this section, the term "VERs" refers to the same resources that the Commission identified as "intermittent" in Order No. 890. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 666.

5. Should the financial risk of VERs' participating in the day-ahead market be different than the risk imposed on other resources in that market in recognition of their unique characteristics? Are there settlement practices, such as netting deviations, which could be employed to address VERs' participating in the day-ahead market? If so, what are they?

6. Will changes to the financial risk of participating in the day-ahead market encourage VERs to participate in day-ahead markets, and will this participation result in day-ahead market schedules that accurately reflect real-time market activity?

2. Reliability Commitments

29. Following the results of the day-ahead market, RTOs/ISOs conduct a reliability unit commitment process to ensure that sufficient generation will be available in the appropriate places to meet the RTO/ISO's estimate of the next day's forecasted demand. If the cleared resources are insufficient to meet that demand, the RTO/ISO commits additional units. Non-RTOs/ISOs conduct a similar assessment to evaluate the sufficiency of bilaterally scheduled resources.

30. Similar to the inefficiency associated with the lack of intra-hour transmission scheduling, the lack of a more frequent unit commitment process may result in unjust and unreasonable rates by causing System Operators to make inefficient reliability commitment decisions, which may cause unnecessary system uplift costs.

31. To that end, the Commission seeks comment on the following questions:

1. Would the implementation of a formalized and transparent intra-day reliability assessment and commitment process prior to each operating hour reduce the amount of reserves needed and/or reduce system uplift costs? What would be the optimal time (*e.g.,* 4 to 6 hours ahead of the operating hour) for such a process?

2. Would an additional market that coincides with the timing of an intra-day reliability commitment process be beneficial in the forward scheduling of VERs? If such a market is implemented, would an intra-day reliability commitment process be necessary? Should the frequency of scheduling intervals resulting from such a market coincide with intra-hour schedules discussed above?

3. What role should centralized forecasting of VERs' output play in reliability assessment and commitment processes?

D. Balancing Authority Coordination

32. Smaller balancing authorities may be unable to capture the benefits associated with VERs that are spread across a large and/or diverse geographical area. Accordingly, the Commission is interested in determining whether a limited ability of smaller balancing authorities to efficiently integrate VERs may result in rates that are unjust and unreasonable. Therefore, the Commission seeks to explore whether increased coordination among balancing authorities has the potential to enlarge the base of generation and demand available to customers, thereby making variability more manageable and ultimately reducing overall costs. In this proceeding, the Commission seeks comments on ways to increase customer access to energy, capacity, and reserve products through the use of pseudo-ties,[23] dynamic scheduling, and/or other tools and agreements.

33. To that end, the Commission seeks comment on the following questions:

1. Will smaller balancing authorities, when operated individually, have higher VER integration costs than geographically or electrically larger balancing authorities? If so, why?

2. Should the Commission encourage the consolidation of balancing authorities? If so, indicate the potential for and impediments to consolidation among balancing authorities and the means by which the Commission should encourage consolidation.

3. What tools or arrangements (*e.g.,* dynamic schedules, pseudo-ties, and virtual balancing authorities) are available and/or could be enhanced or created to reduce barriers to greater operational coordination among balancing authorities? What role should the Commission play in facilitating inter-balancing authority coordination?

4. What are the costs and benefits, if any, associated with the proliferation of small generation-only balancing authorities? How do NERC Certification and Reliability Standards encourage or discourage the creation of small generation-only balancing authorities?

5. The Commission is interested in receiving comments on whether the integration of VERs with small host balancing authorities may limit the benefits derived from geographical diversity and increase integration costs. Should the Commission encourage and/or facilitate the creation of a VER balancing authority, essentially a large area virtual balancing authority primarily designed to accommodate VERs across a broad geographic region? What would be the benefits and costs of creating such a large area entity?

6. Would a large area VER balancing authority be capable of capturing the reduced variability of VERs located across a broad and geographically diverse region? What tariff or technical limitations would prevent and/or inhibit the development of a large area VER balancing authority?

7. What reliability impacts may be associated with the creation of a large area VER balancing authority?

8. Should a large area VER balancing authority be limited only to VERs? Why or why not?

9. Should the Commission consider establishing specific policies that support the creation of a large area VER balancing authority? If so, why?

E. Reserve Products and Ancillary Services

34. During normal operations, System Operators maintain reserve products to ensure that demand and generation are kept in balance.[24] Reserve products are generally defined by the timeframes in which they are available. In the moments-to-seconds timeframe, Frequency Response services provide an immediate arresting of the frequency decline or increase due to any system imbalance. In the seconds-to-minutes timeframe, regulation services provide maneuverable capacity (typically through automatic generation control), and in the minutes-to-hours time frame, following services [25] allow for the rapid deployment of resources to maintain and/or restore system balance.

35. The Commission seeks to explore whether the variability associated with increased VER deployment may result in an over-reliance on expensive reserves, such as regulation reserves. The Commission seeks to ensure that reserves are being used efficiently such that the resulting rates are just, reasonable, and not unduly discriminatory. The Commission is also interested in ensuring that requirements for VERs to contribute to system reliability are not unduly discriminatory. Finally, the Commission seeks to ensure that changes to the rules or requirements do not hinder the

[23] Pseudo-ties are defined as telemetered readings or values that are used as "virtual" tie line flows between balancing authorities where no physical tie line exists.

[24] Contingency Reserves are used to recover from variations caused by a system disturbance but not for balancing normal variations.

[25] In RTO/ISO markets, following services are generally provided through real-time energy markets.

reliable operation of the grid under the reliability standards.[26]

36. To that end, the Commission seeks comment on the following questions:

1. To what extent do existing reserve products provide System Operators with the most cost-effective means of maintaining reliability during VER ramping events? To what extent would the other reforms discussed herein, if implemented, mitigate the need for additional reforms to existing reserve products without adversely impacting system reliability?

2. How could System Operators, managing the variability of VER resources, more fully utilize forecasting information and knowledge about existing system conditions to optimize reserve requirement levels?

3. Would a following or similar reserve product facilitate the reduction of costs associated with ensuring that sufficient reserve capacity is available to address the uncertainty and variability associated with VERs? If so, what are the ideal characteristics of such a product?

4. Existing contingency reserve products were designed to be utilized by System Operators to respond to disturbances (*i.e.,* contingency events) due to a loss of supply and to assure system reliability.[27] Does or should the definition of a contingency event include extreme VER ramping events? If so, would an additional level of contingency reserves be needed to achieve the same level of system reliability? In responding to this question, please include a proposed definition of "extreme ramping event."

5. Should a new category of reserves, that would be similar to contingency reserves, be developed to maintain reliability during VER ramping events in a cost effective manner? If so, what benefit would such reserves provide to System Operators and customers?

6. Could the expanded use of reserve-sharing programs between balancing authorities contribute to lowering the costs associated with integrating VERs? If so, how?

7. Should the ancillary services provisions of the *pro forma* OATT be revised or new provisions added to expressly address the added reserve capacity necessitated by increased number of VERs? If so, how?

8. Are there new sources and/or providers for reserve products (such as inter-balancing authority pooling arrangements, demand response aggregators and/or storage devices) that can be used to maintain reliability and lower reserve costs during VER ramping events? Based on experience, are there characteristics of these new sources of reserves that would positively or negatively impact their ability to match the reserve product needs presented by the variability of VERs?

9. To what extent are VERs capable of providing reserve services? Should VERs be expected to provide reserve services? What are the tariff and technical barriers that may impede VERs from providing these reserve products?

10. To what extent should all resources, and VERs in particular, be required to provide Frequency Response? How would such a requirement be implemented?

11. Should the Commission revisit the reactive power requirements set forth in Order No. 661?[28] What other requirements, if any, should apply to VERs to ensure that all resources contribute to grid reliability in a manner that is not unduly discriminatory?

F. Capacity Markets

37. The procurement of capacity services, either through resource adequacy bilateral programs or centralized capacity markets, is commonplace in RTO/ISO markets.[29] Typically, VERs are eligible to receive compensation for capacity services in most RTOs/ISOs. However, due to their operating characteristics and the capacity rating rules, which vary among RTOs/ISOs, VERs are eligible to offer only a portion of their nameplate capacity. The price paid for capacity services depends in part on the amount of available capacity. Additionally, resources that participate in capacity markets typically are required to offer capacity in the day-ahead market, which, as discussed above, VERs often do not do.

38. The Commission questions whether existing rules governing capacity markets may result in rates for capacity services that are not just and reasonable. Moreover, to the extent existing rules limit the ability of VERs to provide capacity services that they are capable of providing, the Commission seeks to explore whether such rules may be unduly discriminatory.

39. To that end, the Commission seeks comment on the following questions:

1. Should the Commission examine whether capacity rating rules as applied to VERs are unduly discriminatory and investigate whether standard rules may be appropriate?

2. Do obligations for capacity resources to offer into the day-ahead market unfairly discriminate against VERs? If so, how?

3. As more VERs choose to become capacity resources, will existing processes for compensating capacity services adequately compensate all generating resources that may be needed for reliability services? If not, what reforms may be necessary? For instance, should the Commission examine formation of forward ancillary services capacity markets?

4. Should capacity markets incorporate a goal of ensuring sufficient generation flexibility to accommodate ramping events in addition to the goal of ensuring sufficient generation to meet peak demand?

G. Real-Time Adjustments

40. Redispatch and curtailment protocols vary depending on the region of the country and scenario. The Commission is interested in receiving comments on whether VERs may be curtailed too frequently in response to transmission congestion, minimum generation events,[30] and ramping events, because of a lack of clarity in curtailment protocols. Accordingly, the Commission seeks to explore whether redispatch and curtailment practices and protocols, especially as they relate to VERs, are transparent, non-discriminatory and efficient. The Commission also seeks to determine whether redispatch and curtailment protocols may result in unnecessary costs, thereby rendering rates unjust and unreasonable.

41. To that end, the Commission seeks comment on the following questions:

1. How have redispatch and curtailment practices changed with increased numbers of VERs? Are there any shortcomings of current redispatch and curtailment practices?

2. Do existing redispatch and curtailment processes unduly discriminate against VERs? If so, how should they be modified?

3. Some RTOs/ISOs will redispatch VERs based on required economic bids. Should all RTOs/ISOs implement similar practices? Why or why not?

[26] *See* 16 U.S.C. 824o(a)(3).

[27] *Disturbance Control Performance,* Standard No. BAL–002–0 (Apr. 1, 2005).

[28] Order No. 661, FERC Stats. & Regs. ¶ 31,186 at P 50–51.

[29] Centralized capacity markets exist in ISO New England, Inc., New York Independent System Operator, Inc., and PJM Interconnection LLC. California Independent System Operator Corp. and Midwest Independent Transmission System Operator, Inc. rely primarily on bilateral resource adequacy programs to procure capacity services.

[30] During a minimum generation event, system demand is at its lowest and generation resources tend to operate at the minimum feasible output level.

4. Should transmission loading relief protocols be altered to allow reliability coordinators in non-RTO/ISO regions to consider economic merit when considering curtailing VERs? If so, how? Similarly, should redispatch and curtailment protocols in non-RTOs/ISOs be revised to consider economic merit for all resources? If so, how?

5. Is the increasing number of VERs affecting operational issues that arise during minimum generation events? Are there ways to minimize curtailments during a minimum generation event? Should conventional base-load resources be offered incentives to lower their minimum operating levels or even shut down during minimum generation events to reflect an economically efficient dispatch of resources? If so, what would be the benefits and costs of doing so?

6. To what extent do VERs have the capability to respond to specific dispatch instructions? Are there any advanced technologies that could be adopted by VERs to control output to match system needs more effectively? Should incentives be put into place for VERs that can respond to dispatch instructions? If so, what types of incentives would be appropriate?

IV. Comment Procedures

42. The Commission invites interested persons to submit comments, and other information on the matters, issues and specific questions identified in this notice.

43. Comments are due March 29, 2010. Comments must refer to Docket No. RM10–11–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

44. The Commission encourages comments to 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. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

45. Commenters that are not able 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.

46. 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.

V. Document Availability

47. 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.

48. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary 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.

49. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission. Commissioner Norris voting present.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1536 Filed 1–26–10; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0007]

RIN 1218–AC39

Additional Quantitative Fit-testing Protocols for the Respiratory Protection Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: After thoroughly reviewing the comments and other information available in the record for the proposed rulemaking, OSHA concludes that the revised PortaCount® quantitative fit-testing protocols are not sufficiently accurate or reliable to include among the quantitative fit tests listed in Part II of Appendix A of its Respiratory Protection Standard. Therefore, OSHA is withdrawing the proposed rule without prejudice, and is inviting resubmission of the revised protocols after developers of the protocols address the issues described in this notice.

DATES: The proposed rulemaking is withdrawn as of January 27, 2010.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:* Contact Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical inquiries: Contact Mr. John E. Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2289; facsimile: (202) 693–1678.

Copies of this notice: Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Appendix A of OSHA's Respiratory Protection Standard at 29 CFR 1010.134 currently includes three quantitative fit-testing protocols using the following challenge agents: a non-hazardous generated aerosol such as corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride; ambient aerosol; and controlled negative pressure. Appendix A of the Respiratory Protection Standard also specifies the procedure for adding new fit-testing protocols to the standard. The criteria for determining whether OSHA must publish a fit-testing protocol for notice-and-comment rulemaking under Section 6(b)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) include: (1) A test report prepared by an independent government research laboratory (*e.g.,* Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory tested the protocol and found it to be accurate and reliable; or (2) an article published in a peer-reviewed industrial-hygiene journal describing the protocol and explaining how the test data support the protocol's accuracy and reliability. Using this procedure, OSHA added one fit-testing protocol *(i.e.,* the controlled negative pressure REDON quantitative fit- testing protocol) to Appendix A of

its Respiratory Protection Standard (see 69 FR 46986). OSHA also published on December 26, 2007, a Notice of Proposed Rulemaking requesting public comment on an abbreviated Bitrex® qualitative fit-testing protocol (see 72 FR 72971). Subsequently, OSHA withdrew, without prejudice, this fit-testing protocol from the rulemaking process, and invited the developers of the protocol to conduct further research addressing issues described in the withdrawal notice (see 74 FR 30250).

II. Summary and Explanation of the Withdrawal Notice

A. Introduction

In a letter submitting two new quantitative fit-testing protocols for review under the provisions of Appendix A of OSHA's Respiratory Protection Standard (Ex. OSHA–2007–0007–0001), Mr. Jeff Weed of TSI, Inc., included a copy of a peer-reviewed article from an industrial-hygiene journal describing the accuracy and reliability of these proposed protocols (Ex. OSHA–2007–0007–0002).[1] The submission letter also included instructions that described in detail the equipment and procedures required to administer the proposed protocols. According to this description, the proposed protocols are variations of the existing ambient-aerosol condensation-nuclei-counter quantitative fit-testing protocol developed by TSI, Inc., in the 1980s, commonly referred to as the PortaCount® quantitative fit-testing protocol (hereafter, "the standard PortaCount® QNFT protocol"). OSHA included the standard PortaCount® QNFT protocol in Appendix A of its final Respiratory Protection Standard. (For consistency, OSHA will refer to the two proposed protocols as "revised PortaCount® quantitative fit-testing protocols 1 and 2" (*i.e.,* "revised PortaCount® QNFT protocols 1 and 2").

The proposed protocols use the same fit-testing requirements and instrumentation specified for the standard PortaCount® QNFT protocol in paragraphs (a) and (b) of Part I.C.3 of Appendix A of the Respiratory Protection Standard, with the following exceptions:

- Revised PortaCount® QNFT protocol 1 reduces the duration of the eight fit-testing exercises from 60 seconds to 30 seconds; and
- Revised PortaCount® QNFT protocol 2 eliminates two of the eight fit-testing exercises, with each of the remaining six exercises having a duration of 40 seconds; in addition, this proposed protocol increases the current minimum pass-fail fit-testing criterion (*i.e.*, reference fit factors) from a fit factor of 100 to 200 for half masks, and from 500 to 1000 for full facepieces.

Peer-reviewed industrial-hygiene journal article. The peer-reviewed article submitted by TSI, Inc., entitled ''Evaluation of Three New Fit Test Protocols for Use With the TSI PortaCount®," appeared in the Fall/Winter 2005 issue of the Journal of the International Society for Respiratory Protection (Ex. OSHA–2007–0007–0003). The article describes a study that determined whether performing the proposed protocols yields fit-testing results similar to results obtained with the standard PortaCount® QNFT protocol (hereafter referred to as "the Study").[2]

Test subjects and respirator selection. The Study involved 30 test subjects who performed 140 fit tests while wearing elastomeric half-mask and full-facepiece respirators equipped with P100 filters. The test subjects selected respirators from among 24 models, with some test subjects using more than one model during fit testing. Respirator fit varied across the test subjects, with 60 of 140 fit factors below 100, and 91 of 140 fit factors less than 500, as determined by the standard PortaCount® QNFT protocol. Poor respirator fit resulted from improper respirator selection by the test subjects themselves, or from assigning respirators to test subjects that were either too small or too large. Test subjects could adjust the respirator for comfort, but they did not perform user seal checks.

Procedures. In conducting the Study, the authors followed the recommendations for evaluating new fit-testing protocols specified by Annex A2 ("Criteria for Evaluating Fit Tests Methods") of ANSI Z88.10–2001 ("Respirator Fit-testing Methods"). Specially designed testing software allowed for the calculation of fit factors every 10 seconds during the in-mask sampling periods without disturbing the facepiece (*i.e.,* at 10-, 20-, and 30-second intervals for comparison with the 40-second in-mask sampling intervals determined using the standard PortaCount® QNFT protocol). The authors used a TSI PortaCount® Plus Model 8020® quantitative fit-test system to assess respirator fit; the system used a TSI-supplied sampling adaptor, or fixed probes provided by the respirator manufacturer, to collect samples inside the respirators. The sampling point inside the respirator was between the nose and the mouth. During sampling, the test subjects performed the exercises listed in Part I.A.14 of Appendix A of OSHA's Respiratory Protection Standard, which include: initial normal breathing, deep breathing, turning the head side to side, moving the head up and down, reading a passage, grimace, bending over, and final normal breathing. The TSI PortaCount® Plus fit-testing instrument performed particle counts on samples collected during the Study. Table 1 provides the exercise and sampling parameters for each of the protocols used in the Study.

TABLE 1

Protocol	Number of exercises	Duration of each exercise (seconds)	In-Mask sampling duration for each exercise (seconds) [1]
Standard PortaCount® QNFT Protocol	8	60	40
Revised PortaCount® QNFT Protocol 1	8	30	10
Revised PortaCount® QNFT Protocol 2	[2] 6	40	20

[1] Does not include 20 seconds for each exercise to collect ambient-air samples and to purge the in-mask and ambient-air sampling tubes.
[2] This protocol eliminated the initial normal-breathing exercise and the deep-breathing exercise.

[1] This letter and the accompanying article describe three fit-testing protocols, but Mr. Weed of TSI Inc., in a subsequent telephone call to OSHA staff, requested that the Agency include only two of them in the proposed rulemaking.

[2] The standard PortaCount® QNFT protocol was the criterion measure or "gold standard."

Results. The Study results describe the performance of the two revised PortaCount® QNFT protocols in relation to the reference fit factors (RFFs) that the proposed protocols designate as pass-fail criteria for half-mask respirators (100 and 200 for protocols 1 and 2, respectively) and full-facepiece respirators (500 and 1000 for protocols 1 and 2, respectively). However, OSHA could not evaluate the results for each type of respirator separately because the analyses performed in the Study grouped fit-testing results from half-mask respirators with fit-testing results from full-facepiece respirators. In this regard, Table III of the Study showed 69 fit tests for half-mask respirators and 71 fit tests for full-facepiece respirators, for a total of 140 fit tests. However, the results in Table III of the Study also list 140 fit tests for RFFs < 100 and > 100, and another 140 fit tests for RFFs < 500 or > 500, when the number of fit tests for each set of RFFs should be 69 and 71, respectively (*i.e.,* 69 fit tests for RFFs < 100 and > 100, with these RFFs to be applicable to half-mask respirators, and 71 fit tests for RFFs < 500 and > 500, with these RFFs to be applicable to full-facepiece respirators).[3]

Using the standard PortaCount® QNFT protocol as the criterion measure, the Study described the fit-testing results obtained with the revised PortaCount® QNFT protocols using the following statistics: test sensitivity; predictive value of a pass; test specificity; predictive value of a fail; and the kappa statistic. These statistics derive from the variables defined by ANSI Z88.10–2001, in which: A = false positives (passed the fit test with a fit factor < RFF); B = true positives (passed the fit test with a fit factor ≥ RFF); C = true negatives (failed the fit test with a fit factor < RFF); D = false negatives (failed the fit test with a fit factor ≥ RFF); Po = observed proportion of the two fit tests that are concordant; and Pe = expected proportion of the two fit tests expected to be concordant when the two tests are statistically independent. Using these variables, ANSI Z88.10–2001 specifies the formula and recommended value ("RV") for each statistic as follows: Test sensitivity = C/(A + C), RV ≥ 0.95; predictive value of a pass = B/(A + B), RV ≥ 0.95; test specificity = B/(B + D), RV > 0.50; predictive value of a fail = C/(C + D), RV > 0.50; and the kappa statistic = (Po − Pe)/(1 − Pe). The following tables list the values of these descriptive statistics for revised PortaCount® QNFT protocols 1 (at RFFs of 100 and 500) and 2 (at RFFs of 200 and 1000).

TABLE 2—DESCRIPTIVE STATISTICS FOR RFFS OF 100 AND 200

Statistics	ANSI Requirement	Revised PortaCount® QNFT Protocol 1 RFF = 100	Revised PortaCount® QNFT Protocol 2 RFF = 200
Sensitivity	≥0.95	[1] 0.91	1.00
Predictive Value of a Pass	≥0.95	[2] 0.94	1.00
Specificity	>0.50	0.99	0.81
Predictive Value of a Fail	>0.50	0.98	0.79
Kappa Statistic	>0.70	0.91	0.78

[1] = Fail; [2] = Borderline fail.

TABLE 3—DESCRIPTIVE STATISTICS FOR RFFS OF 500 AND 1000

Statistics	ANSI Requirement	Revised PortaCount® QNFT Protocol 1 RFF = 500	Revised PortaCount® QNFT Protocol 2 RFF = 1000
Sensitivity	≥0.95	0.97	1.00
Predictive Value of a Pass	≥0.95	[1] 0.94	1.00
Specificity	>0.5	0.98	0.84
Predictive Value of a Fail	>0.50	0.99	0.92
Kappa Statistic	>0.70	0.94	0.87

[1] = Borderline fail.

For a RFF of 100, revised PortaCount® QNFT protocol 1 failed to meet the sensitivity value specified by ANSI Z88.10–2001, and, consistent with this failure, the value for the predictive value-of-a-pass statistic was marginal. However, for a RFF of 500, the sensitivity value for this proposed protocol exceeded the ANSI requirement, although the predictive value-of-a-pass statistic was again slightly below the ANSI specification. The failure of protocol 1 to achieve the sensitivity value specified by ANSI Z88.10–2001 at a RFF of 100 indicates that the proposed protocol is susceptible to alpha, or false positive, error—i.e., it would pass some half masks that would function below a fit factor of 100 when tested with the protocol used as the criterion measure (i.e., the standard PortaCount® QNFT protocol). This failure to meet the sensitivity value specified by ANSI Z88.10–2001 raises a question of whether revised PortaCount® QNFT protocol 1 is as protective as the standard PortaCount® QNFT protocol. For protocol 1, the authors reported values well above the values established by the ANSI standard for the three remaining statistics, including specificity, predictive value of a fail, and the kappa statistic. However, the grouping of results for half-mask and full-facepiece respirators brings the applicability of these statistics into question.

For PortaCount® QNFT protocol 2, the sensitivity values for both RFFs were well in excess of the sensitivity value specified by the ANSI standard. The sensitivity values for this proposed protocol indicate that it identified 100% of the poorly fitting half-mask and full-facepiece respirators. In addition, this

[3] RFFs > 100 include RFFs > 200, which were to be applicable to half-mask respirators, while RFFs > 500 include RFFs > 1000, which were to be applicable to full-facepiece respirators.

proposed protocol performed well above the values listed in the ANSI standard for the four remaining variables, including predictive value of a pass, specificity, predictive value of a fail, and the kappa statistic. Consistent with the sensitivity values derived for this proposed protocol, these four values indicate that the proposed protocol accurately determined whether respirators achieved, or failed to achieve, RFFs of 200 and 1000. Nonetheless, as mentioned above, the grouping of results for half-mask and full-facepiece respirators brings the applicability of these statistics into question.

In discussing the results for revised PortaCount® QNFT protocol 2, the authors asserted that excluding the two least strenuous fit-testing exercises (*i.e.,* the initial normal-breathing exercise and the deep-breathing exercise) from this proposed protocol was a conservative approach in that the proposed protocol was more likely than protocols consisting of eight fit-testing exercises to detect respirator leakage *(i.e.,* using data from less strenuous fit-testing exercises inappropriately inflates the overall fit factor for respirators, thereby increasing alpha error). Another conservative approach used by this proposed protocol was raising the RFFs for half masks from a fit factor of 100 to 200, and, for full-facepiece respirators, from 500 to 1000. While this approach may have enhanced the sensitivity of the proposed protocol, it may also increase beta (false-negative) error; beta error would increase the number of repeated tests and, consequently, the total testing time required by some employees to identify a respirator having an acceptable fit.

B. Decision To Publish the Two Protocols for Notice-and-Comment Rulemaking

OSHA reviewed the information submitted by TSI, Inc., in support of these proposed protocols to determine whether the protocols met the criteria for determining whether OSHA must publish new fit-testing protocols for notice-and-comment rulemaking established by the Agency in Part II of Appendix A of its Respiratory Protection Standard. The Agency concluded that the proposed protocols warranted notice-and-comment rulemaking under Section 6(b)(7) of the Act (29 U.S.C. 655), and initiated rulemaking to determine whether to approve these proposed protocols for inclusion in Part I of Appendix A of its Respiratory Protection Standard. OSHA published the proposal in the **Federal Register** on January 21, 2009 (*see* 74 FR 3526).

C. Issues Raised for Public Comment

In the **Federal Register** notice announcing the proposal, OSHA invited comments, information, and data from the public regarding the accuracy and reliability of the proposed protocols, effectiveness of the protocols in detecting respirator leakage, and the usefulness of the protocols in selecting respirators that will protect employees from airborne contaminants in the workplace. Specifically, the Agency invited public comment on the following issues:

- Were the studies described in the peer-reviewed journal article well controlled, and conducted according to accepted experimental design practices and principles?
- Were the results of the studies described in this article properly, fully, and fairly presented and interpreted?
- Will the proposed protocols generate reproducible fit-testing results?
- Will the proposed protocols reliably identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols, including the standard PortaCount® QNFT protocol, already listed in Part I.C.3 of Appendix A of the Respiratory Protection Standard?
- Is the test-sensitivity value of 0.91 obtained for half masks by revised PortaCount® QNFT protocol 1 acceptable in view of the test-sensitivity value of 0.95 required by ANSI Z88.10–2001; if not, would it be appropriate for OSHA to limit application of revised PortaCount® QNFT protocol 1 to full-facepiece respirators?
- The Study evaluating the proposed protocols involved only elastomeric half-mask and full-facepiece respirators. Accordingly, is it appropriate to apply the results of the Study to other types of respirators (*e.g.,* filtering-facepiece respirators)?

D. Summary of the Public Comments Received

Twenty-six commenters submitted responses to the proposal. The following paragraphs in this section address the responses made to each of the six issues described previously.

1. Were the studies described in the peer-reviewed journal article well controlled, and conducted according to accepted experimental design practices and principles?

In addressing this issue, the National Institute of Occupational Safety and Health (NIOSH) stated:

> [The Study] does not provide sufficient detail about the study design and protocol to enable a complete assessment of how well it was controlled and conducted. The description in the article does indicate that design and principles met acceptable practices. However, the study design did not include filtering-facepiece respirators (FFR), nor sufficient fit test trials for half-mask respirators or full facepiece respirators to provide data that would allow independent assessment of the performance of the proposed revised protocols for either facepiece type. To fully assess the acceptability of the new protocols for applicability to half-mask respirators (including filtering-facepiece respirators) and full facepiece respirators, each facepiece type needs to be evaluated separately. The data analyses reported in the peer-reviewed journal article grouped fit test results for the half-mask and full facepiece respirators to obtain the minimum number for paired data sets required by ANSI Z88.10–2001, Annex A2. (See Ex. OSHA–2007–0007–0016.1.)

James S. Johnson (Ex. OSHA–2007–0007–0023.1) and Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) both disapproved of the Study's experimental design practices and principles, and specifically criticized the grouping of results for half-mask and full-facepiece respirators. OSHA agrees that grouping results for half-mask and full-facepiece respirators in analyzing RFFs is a major limitation of this study (see, also, the discussion of this issue in paragraph D.2 of this section).

Similar to NIOSH, Ching-tsen Bien questioned the number of fit-test trials performed in the Study. Mr. Bien stated: "The ANSI Z88.10–2001 requires a minimum of 100-paired tests. The proposed protocol only contains 69-paired tests for the half-mask, and 71-paired test sets for the full facepiece. It failed to meet this requirement." In addition, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) criticized the Study for using only 30 participants to generate fit-test data (Ex. OSHA–2007–0007–0015).

In response to the assertion that the Study did not consist of as many fit tests as required under ANSI Z88.10–2001, OSHA emphasizes that it has not adopted the criteria in ANSI Z88.10–2001 as absolute requirements for new fit-testing protocols. Nonetheless, as NIOSH and Mr. Bien note, it appears that the Study did not consist of a sufficient number of fit tests to establish the respirator-specific performance of the proposed protocols. In response to the AFL–CIO, OSHA notes that researchers should, ideally, validate fit-testing protocols on a large number of study participants to account for variability across the population of employees who use the respirators. However, OSHA believes the total number of study participants is less

important than the total number of fit tests the participants perform.

NIOSH also criticized the calculation of fit factors for the proposed protocols that used subsets of measurements taken during a standard PortaCount® fit-test (Ex. OSHA–2007–0007–0016.1). In its comment, NIOSH stated:

> For the results of the fit test using shortened exercises to be similar to the reference protocol, the fit of the respirator must not change significantly over time for each fit test exercise. The data are inadequate to demonstrate reproducible fit-testing results for either proposed protocol. Therefore, any subsequent assessment of conformance or non-conformance with the ANSI Z88.10–2001 acceptance criteria cannot be presumed to be valid. Further investigation is required to compare potential changes in fit across the proposed 30- and 40-second exercise intervals in the reference protocol * * *. No information is provided in either the peer-reviewed journal article or application to OSHA that demonstrates the proposed shortened exercise times would encompass the most challenging aspects of each exercise. At a minimum, the frequency and consistency of leaks during each exercise, as well as the magnitude and type of those leaks (e.g. start of exercise, end of exercise, throughout exercise period) need to be identified and analyzed.

Clifton D. Crutchfield (Ex. OSHA–2007–0007–0019.1) and NIOSH (Ex. OSHA–2007–0007–0016.1) also questioned the assertion by the Study's authors that removal of the initial normal-breathing exercise and the deep-breathing exercises from revised PortaCount® QNFT protocol 2 results in a conservative fit test. Dr. Crutchfield cited a number of studies to support the proposition that the normal-breathing exercise fit factor is among the lowest of the exercise fit factors, and that its elimination would produce a higher, less conservative, overall fit factor.

The Agency believes that researchers cannot evaluate validly the effects of shortened exercises on respirator fit using subsets of sampling data from a standard, full-length respirator fit test because respirator fit may vary during an exercise. Additionally, OSHA believes that Dr. Crutchfield raised important questions about the removal of the normal-breathing and deep-breathing exercises that the Study's limited data presentation does not fully rebut (see item D.2 of this section).

The Department of Defense (DOD) commented that the Study design was appropriate, but deviated from the ANSI protocol in that user seal checks were not conducted (Ex. OSHA–2007–0007–0021.1). DOD stated:

> The DOD views user seal checks to be a necessary element in any respirator program and user seal checks should have been conducted even if the test subject was identified as testing a poorly fitting facepiece. User seal checks are required for performing fit-testing by the OSHA Respirator Standard and by ANSI Z88.10–2001.

In response to this comment, OSHA notes that some study participants used respirators that were too small or too large to ensure that a number of poor respirator fits occurred. This procedure induced poor facepiece-to-face seals, which caused the respirators to leak. These leaks, in turn, provided data for use in determining how effectively the revised PortaCount® QNFT protocols detected such leaks. Therefore, although the Study did not present a rationale for excluding seal checks, OSHA concludes that the Study needed leakage data to determine the efficacy of the revised PortaCount® QNFT protocols, which justified the omission.

Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) and Larry Janssen (Ex. OSHA–2007–0007–0018.1) recommended that the authors of the Study validate the revised PortaCount® QNFT protocols using a generated-aerosol procedure in a test chamber. In this regard, Mr. Bien commented:

> The PortaCount® is a field instrument but not a research instrument. For a validation study, the testing should be performed inside a test chamber with a uniform and constant stable concentration. The fit test results should be reported continuously, rather than at selected time intervals. The PortaCount® utilizes the ambient air as a test agent and the test results may be affected by a change in air particle concentration.

Similarly, Clifton D. Crutchfield wrote (Ex. OSHA–2007–0007–0019.1) that the use of the standard OSHA PortaCount® protocol as a reference measure for new protocols "presents a real quandary because the sensitivity of the standard PortaCount protocol has itself not been established."

In response to these criticisms regarding the use of the standard PortaCount® protocol as a reference measure, OSHA notes that none of the existing fit-testing procedures, including generated-aerosol methods, has been validated as a reference tool. In the absence of a fully validated reference test, OSHA requires that new QNFT protocols be evaluated against accepted QNFT methods. Thus, the Agency allows QNFT protocols to be tested against ambient-aerosol protocols, and ANSI Z88.10–2001 provides guidelines for evaluating new QNFT protocols against any of the currently accepted QNFT procedures.

In summary, the commenters raised a number of valid concerns regarding the methodology used in the Study. The Agency concludes that the Study did not implement accepted experimental design practices to the extent necessary to include the revised PortaCount® QNFT protocols to Appendix A of the Respiratory Protection Standard.

2. Were the results of the studies described in this article properly, fully, and fairly presented and interpreted?

NIOSH (Ex. OSHA–2007–0007–0016.1), James S. Johnson (Ex. OSHA–2007–0007–0023.1), and Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) criticized the failure to differentiate clearly the results for half-mask and full-facepiece respirators. Mr. Bien stated:

> The purpose of this study should be the comparison between the revised PortaCount and the regular PortaCount methods. Both half-mask and full-facepiece elastomeric respirators were selected for this study. There should be two sets of data, one for each type of mask, since the passing criterion is different for each type of respirator. For each type of respirator, there should be two sets of data; one set for the 60-second exercise, and one set for shorter time or less exercises. Only one set of data is presented in the paper and it combines the half-mask and full-facepiece data.

Similarly, James S. Johnson commented:

> Half-mask and full face piece respirators are normally considered two different types of air purifying respirators with different fitting, design and performance properties. The combination of these types of respirators into one set of data for analysis and conclusions doesn't appropriately recognize their performance differences.

OSHA believes that the Study failed to properly differentiate the fit-testing results for half-mask and full-facepiece respirators. Although OSHA previously approved the controlled negative pressure (CNP) REDON fit-testing protocol based in part on a study that mixed fit-testing results for half-mask and full-facepiece respirators (Ex. 2–2, Docket No. H–049C), the Agency finds the largely undifferentiated results from the revised PortaCount® QNFT protocols to be more problematic than the CNP REDON results. In the final rule on the CNP REDON protocol, OSHA explained that "[w]hile the Agency agrees that * * * combining results for different respirator types may lead to inconsistent results with large statistical variations, the peer-reviewed studies showed that large statistical variations did not occur." In contrast to the studies submitted for the CNP REDON protocol, the study for the revised PortaCount® QNFT protocols does not present results in sufficient detail to allow OSHA to examine the variation in fit-testing results. Moreover, while two peer-

reviewed journal articles supported the CNP REDON protocol, the article describing the Study is the sole publication supporting the revised PortaCount® QNFT protocols. Therefore, OSHA believes that the failure to differentiate fit-testing results for half-mask and full-facepiece respirators obscures interpretation of the Study's statistics because (1) evaluating the variability of the test results for this study is impossible, and (2) the limited data presentation does not support the revised PortaCount® QNFT protocols.

NIOSH (Ex. OSHA–2007–0007–0016.1) and Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) noted that the Study failed to present clearly a number of important data. For both protocols, NIOSH noted that the Study provided "[i]nsufficient detail and data concerning application of the recommended ANSI acceptance criteria for the number of tests performed and the distribution of good and poor fitting respirators in the test population." With regard to revised PortaCount® protocol 2, NIOSH cited a "lack of detail, data and discussion of performance in relation to the unique acceptable fit factors of 200 for a half-mask and 1000 for a full facepiece respirator." Mr. Bien noted that the Study did not follow the ANSI Z88.10–2001 recommendation that investigators present a table containing information on respirator make, model, size, individuals tested, and the results of the new test and fit factors for the reference test. Mr. Bien also observed that "except for Figure 1 in the paper, the test data is not presented."

OSHA agrees that the Study did not present a sufficient level of detail regarding individual fit-testing results, the types of respirators selected, and the distribution of respirator fits in the test population. Although the Study provided a histogram showing the distribution of RFFs, these data are difficult to interpret in the absence of information about which fit factors derive from half-mask versus full-facepiece respirators.

3. Will the proposed protocols generate reproducible fit-testing results?

Several commenters, including Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1), Clifton D. Crutchfield (Ex. OSHA–2007–0007–0019.1), and NIOSH (Ex. OSHA–2007–0007–0016.1) noted that the data presented in the Study do not facilitate an evaluation of reproducibility. Mr. Bien stated, "[s]ince the individual test data is not presented in the paper, there is no information to determine the data reproducibility." While similarly noting the absence of data describing the variability of fit-testing results in the Study, Dr. Crutchfield drew OSHA's attention to the results of a study by Sreenath *et al.* (2001). Examining the results of this study, Dr. Crutchfield noted that data from 10-second mask samples had a larger standard deviation than the data from 60-second mask samples.

NIOSH (Ex. OSHA–2007–0007–0016.1) also questioned the reproducibility of the fit-testing results from the revised PortaCount® QNFT protocols. Because revised PortaCount® QNFT protocol 1 did not meet the ANSI Z88.10–2001 acceptance criteria for sensitivity and predictive value of a pass, NIOSH concluded that protocol 1 would have "a diminished likelihood of achieving reproducible fit-testing results when compared to the established method." With regard to revised PortaCount® QNFT protocol 2, NIOSH stated:

> The results of the Protocol 2 evaluation are insufficient to conclude that reproducible fit-testing results could be achieved using this protocol. The article does not describe whether each paired set represents the fit factors for a half mask or full facepiece respirator. It appears that some full facepiece respirator paired sets failed to meet the acceptable fit factor at 500. Thus, they were grouped with paired sets of data and treated as meeting the acceptable fit factor of 100, normally used for half mask respirators. These paired sets were also included in the data for failing to meet the required fit factor of 500, normally used for full facepiece respirators.

OSHA believes that NIOSH's comments regarding test sensitivity and the predictive value of a pass address the accuracy, rather than the reproducibility, of the fit-test results. An evaluation of reproducibility would require information concerning the variability of the fit-testing results, which, as noted above, the Study did not provide. However, OSHA agrees that the reproducibility of the data is further obscured by the failure to differentiate clearly the fit-testing results for both half-mask and full-facepiece respirators.

James S. Johnson wrote (Ex. OSHA–2007–0007–0023.1) that "additional experimental work is needed to determine if the reported results are reproducible when obtained from a representative set of workers following the required manufacturer user instructions and using a user seal check." While additional information about the characteristics of the Study participants would allow OSHA to evaluate whether these participants were representative of employees who use the respirators, the Agency finds no evidence that the participants were unrepresentative of the employee population. In addition, while strict compliance with manufacturer instructions may improve fit-test performance, the commenter provided no data indicating that poor compliance with these instructions biased the Study results. Finally, as discussed above (see item D.1 of this section), OSHA determined that omitting seal checks was necessary to determine the efficacy of the revised PortaCount® QNFT protocols.

Jeff Weed (Ex. OSHA–2007–0007–0014.1) expressed confidence in the reproducibility of the test results from revised PortaCount® QNFT protocols 1 and 2, and described the revised exercises as "long enough to ensure that face leaks are accurately detected." Mr. Weed also asserted that the Study "proved that shortened measurement yields the same result as the longer measurement." However, OSHA believes that Mr. Weed failed to address the issue of the reproducibility of the fit-testing results because he did not adequately explain the deficiencies in the data presentation identified elsewhere in this section.

Several commenters, including DOD (Ex. OSHA 2007–0007–0021.1) and James Johnson (Ex. OSHA–2007–0007–0023.1) recommended that OSHA require additional validation testing before accepting revised PortaCount® QNFT protocol 1 or 2, implying that the results were not reproducible.

In summary, the Study did not establish the reproducibility of test results for the revised PortaCount® QNFT protocols. The Study did not present test results or statistics describing the variability of the results of protocols 1 and 2. Moreover, because of the previously discussed flaws in the data analysis, a meaningful evaluation of the reproducibility of the results is not possible.

4. Will the proposed protocols reliably identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols, including the standard PortaCount® QNFT protocol, already listed in Part I.C.3 of Appendix A of the Respiratory Protection Standard?

Jeff Weed (Ex. OSHA–2007–0007–0014.1) asserted that the revised PortaCount® QNFT protocols would perform as well as any of the QNFT methods, and that the differences between the reference methods and the proposed protocols "can be easily explained in terms of the limited number of test subjects and instrument variability." OSHA believes that any fit-testing protocol based on a study that involved significant instrument

variability and small sample size, as well as a flawed data analysis and an inadequate data presentation, is of questionable validity and utility.

In the view of NIOSH (Ex. OSHA–2007–0007–0016.1), DOD (Ex. OSHA–2007–0007–0021.1), and Clifton D. Crutchfield (Ex. OSHA–2007–0007–0019.1), the failure of revised PortaCount® QNFT protocol 1 to meet the ANSI Z88.10–2001 criteria demonstrates that this protocol will not identify respirators with unacceptable fit as effectively as the accepted QNFT protocols. Because revised PortaCount® QNFT protocol 2 met the ANSI Z88.10–2001 criteria, DOD concluded that protocol 2 would identify respirators with unacceptable fit as reliably as accepted QNFT methods. In contrast to this view, NIOSH found that "[u]ncertain data treatment * * * prevent[s] answering the question of whether revised PortaCount® QNFT protocol 2 will reliably identify respirators with unacceptable fit as effectively as [accepted QNFT] protocols," and "[t]he report of the test-sensitivity [of this protocol] having surpassed ANSI criteria does not resolve uncertainty." Similarly, Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) wrote that "[s]ince the individual test data is not available, it is not possible to determine whether the proposed test protocols would reliably identify respirators with unacceptable fit as effectively as the regular quantitative fit-testing protocols."

OSHA agrees with NIOSH and Mr. Bien that the flawed data analysis and inadequate presentation of fit-testing results (see item D.2 of this section) prevents the Agency from thoroughly evaluating whether either of the proposed protocols would reliably identify respirators with unacceptable fit as effectively as accepted quantitative fit-testing protocols. However, the test-sensitivity value reported for revised PortaCount® QNFT protocol 1 indicates that this protocol would not identify respirators with unacceptable fit as reliably as accepted quantitative fit-testing protocols.

Clifton D. Crutchfield questioned whether doubling the RFFs for revised PortaCount® QNFT protocol 2 is sufficient to compensate for the protocol's potential deficiency of test sensitivity, and asserted that Sreenath *et al.* (2001) multiplied the conventional RFFs by fourteen to ensure the sensitivity of a new protocol that relied on a 20-second in-mask sampling period (Ex. OSHA–2007–0007–0019.1). OSHA agrees that the Study did not discuss adequately the implications of doubling the RFFs. As noted in section A above, increasing the sensitivity of a protocol by raising the RFFs may increase beta (false-negative) error, which would increase the number of repeated tests and, consequently, total testing time. Although the Study reported sensitivity and specificity values for revised PortaCount® QNFT protocol 2 that exceeded the ANSI criteria, the Study's flawed data analysis and inadequate data presentation bring into question the validity of these values.

In conclusion, OSHA believes that the Study did not analyze or present the fit-testing results in a manner that demonstrates that the proposed protocols would reliably identify respirators with unacceptable fit as effectively as accepted quantitative fit-testing protocols.

5. Is the test-sensitivity value of 0.91 obtained for half masks by revised PortaCount® QNFT protocol 1 acceptable in view of the test-sensitivity value of 0.95 required by ANSI Z88.10–2001; if not, would it be appropriate for OSHA to limit application of revised PortaCount® QNFT protocol 1 to full-facepiece respirators? [4]

Many commenters, including Clifton D. Crutchfield (Ex. OSHA–2007–0007–0019.1), David Spelce (Ex. OSHA–2007–0007–0013.1), NIOSH (Ex. OSHA–2007–0007–0016.1), James Johnson (Ex. OSHA–2007–0007–0023.1), DOD (Ex. OSHA–2007–0007–0021.1), AFL–CIO (Ex. OSHA–2007–0007–0015), and Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) expressed the opinion that the test-sensitivity value of 0.91 is unacceptable, and that it would be inappropriate to accept revised PortaCount® QNFT protocol 1 for use with half-mask or full-facepiece respirators. Dr. Crutchfield noted that "[t]he test-sensitivity value of 0.95 was the only test statistic designated by ANSI in its Fit Test Methods standard as a criterion value that 'shall' be met when accepting new fit test methods." NIOSH stated:

> The results reported in the peer-reviewed journal article for either reference fit factor (RFF) of protocol 1 do not meet the full criteria of the Annex A2 evaluation standard against which they are to be judged. As such, it would not be appropriate to accept the application of revised PortaCount® QNFT protocol 1 to either half-mask or full-facepiece respirators.

Larry Janssen (Ex. OSHA–2007–0007–0018.1) and Jeff Weed (Ex. OSHA–2007–0007–0014.1) commented that the test-sensitivity value of 0.91 is acceptable despite the ANSI criterion sensitivity value of 0.95. In explaining this position, Mr. Janssen stated that instrument variability is approximately ±5% of the true value, and asserted that the variability of facepiece-to-face seal leakage in the Study would increase this variability by at least another 5%. Assuming an overall variability of at least 10%, he questioned whether it is meaningful to calculate sensitivity values to two decimal places. In addition, Mr. Janssen cited a study (Janssen, L.L., *et al.,* 2002) that found that none of the three currently accepted quantitative fit-testing protocols met the ANSI sensitivity criterion of 0.95, noting that "it would be inappropriate for OSHA to hold new fit tests to a higher standard than the currently accepted fit tests can meet." Recognizing that the variability described by Mr. Janssen introduces error into fit-testing measurement, OSHA does not believe that increasing this error further by adopting a sensitivity value of 0.91 would improve employee protection.

OSHA believes that the ANSI Z88.10–2001 standard represents the consensus of the industrial-hygiene community regarding the criteria to use in assessing fit-testing protocols. The majority of the comments to the proposal indicated that the industrial-hygiene community generally supports using the ANSI standard for this purpose. Thus, despite Mr. Janssen's assertion of an inevitable 10% variability in any fit-testing protocol, and regardless of whether the accepted fit-testing protocols achieve the ANSI criteria, OSHA believes that the ANSI criteria are meaningful measures of performance for new fit-testing protocols, although it does not treat the ANSI criterion for test sensitivity as an absolute requirement for new fit-testing protocols. In considering the test-sensitivity value for the Abbreviated Bitrex Qualitative Fit-Testing (ABQLFT) protocol, OSHA projected the annual number of employees with improperly fitting respirators who would pass the proposed ABQLFT protocol, which achieved a test-sensitivity value of 0.92, and compared this estimate with the projected number of false-positives expected if the ABQLT protocol achieved the ANSI sensitivity criterion of 0.95. OSHA deemed the excess number of false positives at the test-sensitivity of 0.92 to be unacceptable. (See 74 FR 30250, 30254.) However, OSHA could not make this

[4] See discussion of grouping fit-testing results for half-mask and full-facepiece respirators under section II.A ("Introduction") of this notice. Accordingly, commenters generally responded to this issue as though the fit tests comprising RFFs < 100 and > 100 consisted of fit tests for both half-mask and full-facepiece respirators, not just fit tests for half-mask respirators.

determination for revised PortaCount® QNFT Protocol 1 because the Study did not present adequate fit-testing results to do so. Nonetheless, the frequency of ambient-aerosol fit testing (see NIOSH–BLS survey, Ex. 6–3, Docket No. H–049C) indicates that, compared to a fit-testing protocol having a test sensitivity at the ANSI criterion of 0.95, substantially more employees would receive false-positive fit-testing results using revised PortaCount® QNFT protocol 1. Thus, OSHA concludes that the test-sensitivity value of 0.91 achieved by revised PortaCount® QNFT protocol 1 is too low to include this protocol in Appendix A of its final Respiratory Protection Standard.

Jeff Weed recommended that the high test-sensitivity value obtained by revised PortaCount® QNFT protocol 1 at the RFF of 500 justifies the protocol's acceptance at the RFF of 100 (Ex. OSHA–2007–0007–0014.1). In this regard, Mr. Weed commented, "The fact that the testing near 500 had better results than the near 100 results is indicative of the inherent limitations of this type of study including variability of face seal leaks, the instrumentation, and the statistical sample size (number of people)." Mr. Weed also compared revised PortaCount® QNFT protocol 1 to the previously proposed ABQLFT protocol, which also failed to meet the ANSI criterion for test specificity. Mr. Weed stated, "Any decision by OSHA to reject a protocol based on the ANSI criteria must be applied equally."

OSHA does not believe that the test-sensitivity value that the Study reported at the RFF of 500 justifies acceptance of revised PortaCount® QNFT protocol 1. Mr. Weed cites variability due to face leaks, instrumentation, and small sample size as possible explanations for an erroneous test-sensitivity result at the RFF of 100. However, OSHA believes that the inconsistency of the test-sensitivity values at RFFs of 100 and 500 raises doubt about both of these values. In addition, as discussed above (see item D.4 of this section), OSHA concluded that instrument variability or a small sample size does not justify acceptance of a protocol with flawed data analyses and inadequate data presentation, particularly when OSHA determined that the ANSI criterion for test sensitivity, although not an absolute requirement for new fit-testing protocols, is reasonable. Finally, OSHA does not treat the ANSI criteria for test sensitivity as absolute requirements for new fit-testing protocols. Therefore, OSHA would not base a decision to reject a protocol with inadequate test-sensitivity solely on the ANSI criteria. In conclusion, OSHA finds that including revised PortaCount® QNFT protocol 1 in Appendix A of its final Respiratory Protection Standard is unwarranted because this protocol would allow a substantially larger number of employees to use improperly fitting respirators than would be the case for a protocol that achieves the 0.95 test-sensitivity criterion specified by ANSI Z88.10–2001.

6. The Study evaluating the proposed protocols involved only elastomeric half-mask and full-facepiece respirators. Accordingly, is it appropriate to apply the results of the Study to other types of respirators (*e.g.,* filtering-facepiece respirators)?

Jeff Weed (Ex. OSHA–2007–0007–0014.1) and Larry Janssen (Ex. OSHA–2007–0007–0018.1) provided comments in favor of applying the Study results to untested respirator types. In support of this view, Mr. Janssen wrote, "There are no data that suggest a measured amount of faceseal leakage for a Class 100 FFR would be somehow different that the same amount of leakage measured on elastomeric facepieces with Class 100 filters." Elaborating on this point, Mr. Weed stated:

> Leaks are leaks. An instrument used for QNFT does not "know" what type of respirator is attached to the end of the sample tube. The instrument cannot know the path taken by a particle found in the breathing zone of a respirator. Particles are either present, or not present. As far as the instrument is concerned, there is no difference between leaks in an elastomeric face seal vs. the seal of a filtering-facepiece. The McKay study was conducted with a target fit factors of 100 and 500, which qualifies the application of the resulting protocols for fit-testing any respirator at those values.

NIOSH (Ex. OSHA–2007–0007–0016.1), DOD (Ex. OSHA–2007–0007–0021.1), AFL–CIO (Ex. OSHA–2007–0007–0015), and Ching-tsen Bien (Ex. OSHA–2007–0007–0017.1) discouraged application of the Study results to respirator types not tested in the Study. NIOSH stated that it is "unaware of any studies or data demonstrating that all respirator types perform similarly when being subjected to a fit test," and, "It is inappropriate to conclude that a test result applies to more than just those types of respirators that were tested." Similarly, DOD stated:

> [I]t is not appropriate to apply the study results to other types of respirators. * * * There are many types and styles of NIOSH approved filtering-facepiece respirators. There is also ongoing controversy about fit testing, efficacy and actual protection afforded by filtering facepiece respirators given the variation in styles within the class. * * * Any change to current QNFT protocols that allow filtering facepiece respirators (as a class) to be included should be based on actual fit testing data per ANSI Z88.10–2001 or the current edition.

Larry Janssen asserted that Class 100 filtering-facepiece respirators are the only filtering-facepiece respirators that would be appropriate for fit-testing using the revised PortaCount® QNFT protocols (Ex. OSHA–2007–0007–0018.1). Clifton D. Crutchfield questioned whether any filtering-facepiece respirators can be effectively fit tested with the PortaCount® N–95 Companion using the proposed protocols (Ex. OSHA–2007–0007–0019.1). Dr. Crutchfield stated, "The [N–95] Companion can * * * report fit factors only up to 200. This obviously precludes the use of Revised PortaCount® Protocol 2." Dr. Crutchfield also noted that revised PortaCount® QNFT protocol 1 has an in-mask sampling time of 10 seconds, which "allows sampling only about 2 breaths per exercise in order to determine an in-mask concentration for that exercise." In the absence of data demonstrating that the PortaCount® N–95 Companion can effectively measure respirator leakage in ten seconds, Dr. Crutchfield remarked that "allowing such fit-testing to occur would be neither justified nor prudent."

OSHA does not believe that it is appropriate to apply the fit-testing results to types of respirators not tested in the Study. While Mr. Janssen emphasizes the absence of data demonstrating that fit-testing protocols perform differently on different respirator types, OSHA views this lack of information on the consistency of fit-test performance as a reason to avoid generalizing from the results of the Study. Accordingly, OSHA believes that it would be prudent to validate new fit-test protocols using filtering-facepiece respirators because filtering-facepiece respirators are the most commonly used respirator. (See Table 30, NIOSH–BLS survey, Ex. 6–3, Docket No. H–049C.)

However, as Dr. Crutchfield and Mr. Janssen note, a question remains as to whether filtering-facepiece respirators can be effectively fit tested using the revised PortaCount® QNFT protocols. In view of the considerable uncertainty as to the consistency of fit-test protocol performance on different respirator types, OSHA concludes that the Study did not establish that the revised PortaCount® QNFT protocols will accurately determine fit for N95 filtering-facepiece respirators.

E. Conclusions

Based on a complete and thorough review of the rulemaking record, OSHA concludes that:

1. The Study was not conducted according to accepted experimental design practices and principles.

2. The Study did not properly or fully describe the fit-testing results.

3. The Study did not establish the reproducibility of the results generated by the revised PortaCount® QNFT protocols.

4. The Study did not demonstrate that the revised PortaCount® QNFT protocols will identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols already listed in Part I.C.3 of Appendix A of OSHA's Respiratory Protection Standard.

5. The reported test-sensitivity value of 0.91 indicates that revised PortaCount® QNFT protocol 1 would allow a substantial number of employees to pass fit tests with improperly fitting respirators compared to a protocol that achieves the 0.95 sensitivity value that ANSI Z88.10–2001 lists as a criterion measure for new fit-testing protocols.

6. The Study did not demonstrate that the revised PortaCount® QNFT protocols will accurately determine fit for filtering-facepiece respirators.

Additional validation testing of, or revisions to, the revised PortaCount® QNFT protocols may provide new data that demonstrate the accuracy and reproducibility of the fit-testing results generated by these protocols. OSHA would evaluate any new data and supporting documentation received, and, if appropriate, would submit it to the public for notice and comment. If the revised protocols are to apply to filtering-facepiece respirators, then the resubmission must include appropriate fit-testing results for these respirators.

List of Subjects in 29 CFR Part 1910

Fit testing, Hazardous substances, Health, Occupational safety and health, Respirators, Toxic substances.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues this notice under the following authorities: Section 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2007 (72 FR 31160); and 29 CFR part 1911.

Signed at Washington, DC, on January 22, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–1656 Filed 1–26–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC–2010–0001]

RIN 2135–AA30

Seaway Regulations and Rules: Periodic Update, Various Categories

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The proposed changes will update the following sections of the Regulation and Rules: Condition of Vessels; Seaway Navigation; Radio Communications; and General. These proposed amendments are necessary to take account of updated procedures and will enhance the safety of transits through the Seaway. Several of the proposed amendments are merely editorial or for clarification of existing requirements.

DATES: Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before February 26, 2010.

ADDRESSES: You may submit comments [identified by Docket Number SLSDC 2010–0001] by any of the following methods:

- *Web site: http://www.Regulations.gov*. Follow the online instructions for submitting comments/submissions.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–001.
- *Hand Delivery:* Documents may be submitted by hand delivery or courier to West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change at *http://www.Regulations.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov*; or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by updating the Regulations and Rules in various categories. The proposed changes would update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; Radio Communications; and General. These updates are necessary to take account of updated procedures which will enhance the safety of transits through the Seaway. Many of these proposed changes are to clarify existing requirements in the regulations. Where new requirements or regulations are being proposed, an explanation for such a change is provided below.

Regulatory Notices: 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) or you may visit *http://www.Regulations.gov*.

The SLSDC is proposing to amend two sections of the Condition of Vessels portion of the joint Seaway regulations. Under section 401.10, "Mooring lines", the SLSDC is proposing to permit vessels with synthetic lines to transit the Seaway with a spliced eye of 1.8 m instead of the current 2.4 m. The SLSMC has conducted tests regarding the effectiveness of the smaller spliced eye and has determined that a spliced eye of 1.8 m for synthetic lines is sufficient for safety purposes. In addition, two changes are proposed for section 401.12, "Minimum requirements—mooring lines and fairleads". These proposed amendments would set specific requirements for each mooring line to ensure that safety is maintained through proper use of appropriate strength wire specific to vessel size. These changes are being proposed based on tests conducted by the SLSMC in conjunction with relevant stakeholders.

One change is proposed for the Seaway Navigation section. In section 401.52, "Limit of Approach to a Bridge", vessels are required to proceed at a safe speed between whistle posts at bridges in order to come to a controlled stop before the limit of an approach sign. This proposed amendment is due to recent incidents involving vessels proceeding at a speed which did not permit a controlled stop, resulting in damage to the vessel.

In the Radio Communications section, two changes are proposed. The changes to section 401.61, "Assigned frequencies", and section 401.63, "Radio procedure", reflect the requirement that channel 12 is to be used in lieu of channel 13 in the Seaway Sodus sector. This change is based on two years of testing and troubeshooting radio problems on Lake Ontario that determined that channel 12 would provide a more effective communication medium than does channel 13. Corresponding edits have been proposed for Schedule III to reflect the channel change.

Two changes are proposed to the "General" section. In section 401.90, "Boarding for inspection", vessels will be required to provide a safe and approved means of boarding for inspectors. Currently the pigeon holes used by inspectors to board vessels typically fill with ice and snow making access between the tug and barge a safety hazard. In section 401.94, "Keeping copies of documents", a vessel will be required to keep, in either electronic or paper form: A copy of the vessel's valid inspection report; the rules and procedures; and, Seaway Notices for the current navigation year. The other changes to the joint regulations are merely editorial or to clarify existing requirements.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major Federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR Part 401, Regulations and Rules, as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

1. The authority citation for subpart A of part 401 continues to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a) (4), as amended; 49 CFR 1.52, unless otherwise noted.

2. In § 401.10 revise paragraph (a)(3) and (b) to read as follows:

§ 401.10 Mooring lines.

(a) * * *

(3) Be fitted with a hand spliced eye or Flemish type mechanical spliced eye of not less than 2.4 m long for wire lines and 1.8 m long spliced eye for approved synthetic lines;

* * * * *

(b) Unless otherwise permitted by an officer, vessels greater than 150 m shall only use wire mooring lines with a breaking strength that complies with the minimum specifications set out in the table to this section shall be used for securing a vessel in lock chambers.

* * * * *

3. In § 401.12 redesignate paragraph (a)(4) as (a)(3)(iii) and revise paragraphs (a)(1) introductory text, (a)(2), (a)(3) introductory text, and (b) introductory text to read as follows:

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) * * *

(1) Vessels of 100 m or less in overall length shall have at least three mooring lines—wires or synthetic hawsers, two of which shall be independently power operated and one if synthetic may be hand held.

* * * * *

(2) Vessels of more than 100 m but not more than 150 m in overall length shall have three mooring lines—wires or synthetic hawsers, which shall be independently power operated by winches, capstans or windlasses. All lines shall be led through closed chocks or fairleads acceptable to the Manager and the Corporation.

(3) Vessels of more than 150 m in overall length shall have four mooring lines—wires, independently power

operated by the main drums of adequate power operated winches as follows:

* * * * *

(b) Unless otherwise permitted by the officer, the following table sets out the requirements for the location of fairleads or closed chocks for vessels of 100 m or more in overall length.

* * * * *

4. In § 401.52, add a new paragraph (c) to read as follows:

§ 401.52 Limit of approach to a bridge.

* * * * *

(c) All vessels are to proceed at a safe speed between the whistle signs at bridges so that a controlled stop, if necessary, can be achieved before the limit of approach sign at bridges.

5. Revise § 401.61 to read as follows:

§ 401.61 Assigned frequencies.

The Seaway stations operate on the following assigned VHF frequencies:

156.8 MHz—(channel 16)—Distress and Calling.

156.7 MHz—(channel 14)—Working (Canadian Stations in Sector 1 and the Welland Canal).

156.6 MHz—(channel 12)—Working (U.S. Station in Lake Ontario)

156.6 MHz—(channel 12)—Working (U.S. Stations in Sector 2 of the River).

156.55 MHz—(channel 11)—Working (Canadian Stations in Sector 3, Lake Ontario and Lake Erie).

6. Revise § 401.63 to read as follows:

§ 401.63 Radio procedure.

Every vessel shall use the channels of communication in each control sector as listed in the table to this section.

CHANNELS OF COMMUNICATION

Station	Control sector No.	Sector limits	Call in	Work	Listening watch
Seaway Beauharnois	1	C.I.P No. 2 to C.I.P No. 6–7	Ch. 14	Ch. 14	Ch. 14.
Seaway Eisenhower	2	C.I.P. No. 6–7 to C.I.P. No. 10–11.	Ch. 12	Ch. 12	Ch. 12.
Seaway Iroquois	3	C.I.P. No. 10–11 to Crossover Island.	Ch. 11	Ch. 11	Ch. 11.
Seaway Clayton	4	Crossover Island to Cape Vincent.	Ch. 13	Ch. 13	Ch. 13.
Seaway Sodus	4	Cape Vincent to Mid Lake Ontario.	Ch. 12	Ch. 12	Ch. 16.
Seaway Newcastle	5	Mid Lake Ontario to C.I.P. No. 15	Ch. 11	Ch. 11	Ch. 16.
Seaway Welland	6	C.I.P. No. 15 to C.I.P. No. 16	Ch. 14	Ch. 14	Ch. 14.
Seaway Long Point	7	C.I.P. No. 16 to Long Point	Ch. 11	Ch. 11	Ch. 16.

7. In § 401.90, add a new paragraph (d) to read as follows:

§ 401.90 Boarding for inspections.

* * * * *

(d) Vessels shall provide a safe and approved means of boarding. Pigeon holes are not accepted as a means of boarding and an alternate safe means of access between a tug and a barge shall be provided.

8. In § 401.94, revise paragraph (a) to read as follows:

§ 401.94 Keeping copies of regulations.

(a) A copy of these Regulations (subpart A of part 401), a copy of the vessel's valid Vessel Inspection Report and Seaway Notices for the current navigation year shall be kept on board every vessel in transit. For the purposes of this section, a copy may be kept in either paper or electronic format.

* * * * *

9. In the appendix, Schedule III to Subpart A of Part 401—Calling-in Table, revise entries 18, 35, and 36 to read as follows:

SCHEDULE III TO SUBPART A OF PART 401—CALLNG-IN TABLE

C.I.P. and checkpoint	Station to call	Message content
* *	*	* * * *
18. Sodus Point	Seaway Sodus Channel 12	1. Name of Vessel. 2. Location. 3. ETA Mid-Lake Ontario.
* *	*	* * * *
35. Mid-Lake Ontario-Entering Sector 4	Seaway Sodus Channel 12	1. Name of Vessel. 2. Location.
36. Sodus Point	Seaway Sodus Channel 12	1. Name of Vessel. 2. Location. 3. Updated ETA Cape Vincent or Lake Ontario Port. 4. Confirm River Pilot Requirement. 5. Pilot requirement—Snell Lock and/or Upper Beauharnois Lock (inland vessels only).

* * * * *

Issued at Washington, DC on January 21, 2010.

Saint Lawrence Seaway Development Corporation.

Collister Johnson, Jr.,

Administrator.

[FR Doc. 2010–1608 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 388

[Docket No. MARAD 2010 0012]

RIN 2133–AB76

Administrative Waivers of the Coastwise Trade Laws: New Definition of Eligible Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD, or we, our, or us) is publishing this proposed rule to change the definition of vessels eligible for a waiver of the coastwise laws under special provisions of the Coast Guard Authorization Act of 1998. Under this measure, and taking into account several factors, MARAD may waive the U.S.-build requirement allowing vessels to operate as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. The new definition of "eligible vessel" deletes the requirement that the vessel be five net tons or more. That requirement is not in the enabling statute and, therefore, does not need to be in the regulations.

DATES: Comments on the proposed rule are due March 29, 2010.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2010–0012] via any of the following methods:

Web site/Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments on the electronic docket site.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL–401, Washington, DC 20590–0001.

Hand Delivery: Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking. 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 under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, Office of Cargo Preference and Domestic Trade, Maritime Administration, MAR–730, Room W21–203, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5979 or 800–9US–FLAG; e-mail: *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: Public Law 105–383, which authorized the Secretary of Transportation to grant waivers of the U.S.-build requirement for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade, contained a provision that the Secretary of [Homeland Security] may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel in the case of an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect—(1) United States vessel builders; or (2) the coastwise trade business of any person that employs vessels built in the United States in that business.

Until now, the term "eligible vessel" was understood to mean a vessel eligible for U.S. Coast Guard documentation; therefore our regulation contained a five net ton minimum vessel size limit. However, under 46 U.S.C. 12102(b), a vessel of less than five net tons may engage in the coastwise trade without documentation, if the vessel otherwise satisfies the requirements to engage in the trade.

An unintended consequence of the present small passenger waiver regulations is that the Maritime Administration is unable to grant waivers to vessels of less than five net tons, the owners of which may desire to operate them in coastwise trade. There is no indication that the statute intended this result, because the statute does not prohibit the granting of waivers to vessels of under five net tons. Accordingly, in this proposed rule, the Maritime Administration will be increasing the number of eligible vessels by removing the 5 net ton minimum requirement for its Small Passenger Vessel Waiver Program.

Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This proposed rulemaking is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further regulatory impact analysis is necessary. Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign re-built small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than three years old. We will not grant waivers in instances where such waivers will have an unduly adverse effect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances in which a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, is deemed to have obtained such endorsement through fraud.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations herein have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small

entities. After analysis of this proposed rule, MARAD certifies that this will not have a significant economic impact on a substantial number of small businesses. Although we expect many applicants for vessel waivers to be small businesses, we do not believe that the economic impact will be significant. This regulation allows MARAD to waive the U.S.-build and other requirements for eligible vessels and provides a small economic benefit to successful applicants. This regulation will only allow vessels to carry the statutory maximum of 12 passengers. As a consequence, MARAD estimates that a vessel owner who receives a waiver may earn a few hundred dollars per year for localized operations (geographic restrictions apply) such as whale watching and personalized fishing expeditions. Also, the economic impact of this rule is limited because it precludes vessel owners from participating in other economic activities such as carrying cargo and commercial fishing.

Environmental Assessment

This proposed rule would not significantly affect the environment because the small number and small size of vessels admitted to U.S. registry under this waiver program would have little or no effect on the environment. Accordingly, an Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) The OMB approval number is 2133–0529.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Consultation and Coordination with Indian Tribal Governments

MARAD believes that regulations evolving from this proposed rule would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 3084 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned 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. The RIN number contained in the heading of this document can be used to cross-reference this action with 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 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 46 CFR Part 388

Administrative practice and procedure, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the Maritime Administration proposes to amend part 388, 46 CFR chapter II, subchapter J, as follows:

PART 388—ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

1. The authority citation for part 388 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b); Pub. L. 105–383, 112 Stat. 3445 (46 U.S.C. 12121): 49 CFR 1.66.

2. In § 388.2, revise paragraph (c) to read as follows:

§ 388.2 Definitions.

* * * * *

(c) *Eligible Vessel* means a vessel that—is either a small passenger vessel or an uninspected passenger vessel that—

(1) Was not built in the United States and is at least 3 years of age; or

(2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement if granted, would become effective.

* * * * *

By Order of the Maritime Administrator
Dated: January 21, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–1589 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register

Vol. 75, No. 17

Wednesday, January 27, 2010

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Rural Utilities Service

Title: Broadband Initiatives Program.

OMB Control Number: 0572–0142.

Summary of Collection: The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated $2.5 billion of budget authority for establishing the Broadband Initiatives Program (BIP). The Rural Utilities Service (RUS) is establishing the BIP which may extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas.

Need and Use of the Information: Each applicant for a loan, grant, or loan/grant combination will complete one application form. The information in the application will be used to determine: applicant eligibility, availability of broadband service, technical and economic feasibility of the proposed project (that the funds requested are adequate to complete the project taking into consideration any additional funding provided by the applicant and that the loan can be repaid within the allowable time frame), and applicant compliance with certain Federal regulations and requirements. Without the requested information, RUS could not make awards consistent with the purposes of the Recovery Act. RUS also could not determine whether applicants meet the requirements that the Recovery Act establishes for BIP financing.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,800.

Frequency of Responses: Reporting: Quarterly; Annually; On occasion.

Total Burden Hours: 631,272.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–1542 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Food and Nutrition Service

Title: 7 CFR part 245 Determining Eligibility for Free and Reduced Price Meals.

OMB Control Number: 0584–0026.

Summary of Collection: The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP). 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, sets forth policies and procedures for implementing these provisions. Part 245 requires schools operating the NSLP to determine children's eligibility for free and reduced-price lunches on the basis of each child's household income and size,

and to establish operating procedures that will prevent physical segregation, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk.

Need and Use of The Information: FNS will collect information to determine eligibility of children for free and reduced price meals and for free milk using form FNS–742. Without the information, inaccurate eligibility information could lead to over and/or under payments to State and local agencies.

Description of Respondents: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 9,507,375.

Frequency of Responses: Recordkeeping; Reporting: Monthly; Annually.

Total Burden Hours: 1,073,432.

Food and Nutrition Service

Title: Quality Control Review Schedule.

OMb Control Number: 0584–0299.

Summary of Collection: States agencies are required to perform Quality Control (QC) review for the Supplemental Nutrition Assistance Program (SNAP). The FNS–380–1, Quality Control Review Schedule is for State use to collect both QC data and case characteristics for SNAP and to serve as the comprehensive data entry form for SNAP QC reviews. The legislative basis for the operation of the QC system is provided by Section 16 of the Food and Nutrition Act of 2008.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. In addition, FNS will use the data to determine sanctions and bonus payments based on error rate performance, and to estimate the impact of some program changes to SNAP participation and costs by analyzing the available household characteristic data.

Description of Respondents: State, Local, Or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly.

Total Burden Hours: 60,191.

Food and Nutrition Service

Title: Senior Farmers' Market Nutrition Program.

OMB Control Number: 0584–0541.

Summary of Collection: The Senior Farmers' Market Nutrition Program (SFMNP) authorized by Section 4402 of Public Law 107–711, the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 3007, the Food Conservation and Energy Act of 2008, Public Law 110–246, reauthorized the SFMNP through Fiscal Year 2012. The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared locally grown fruits, vegetables, honey and herbs from farmer's markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors; to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSA programs. The SFMNP is designed to be administered in a manner consistent with the administration of the WIC Farmers Market Nutrition Program whenever possible.

Need and Use of the Information: The financial information is collected on the FNS–683–A, "Senior Farmers' Market Nutrition Program Annual Financial and Program Data Report" and is submitted annually to the Food and Nutrition Service (FNS) by participating SFMNP State agencies. The information is used to reconcile and close out grants in accordance with the requirements of § 3016.23(b) and § 3016.41(a)(1). FNS will also collect information to assess how each State agency operates and to ensure the accountability of State agencies, local agencies, and authorized farmers/farmers' markets, roadside stands, and CSA programs in administering the SFMNP.

Description of Respondents: State, Local, or Tribal Government; Farms; Individuals or households; Business or other for-profit; Not for-profit institutions.

Number of Respondents: 970,142.

Frequency of Responses: Recordkeeping; Report: Annually.

Total Burden Hours: 497,778.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–1543 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Forest Service

Title: Agreement to Initiate (ATI) and Exchange Agreement (EA).

OMB Control Number: 0596–0105.

Summary of Collection: Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Land exchanges can be initiated by a non-Federal party (or parties), and agent of a landowners, a broker, a third party, or a non-Federal public agency. Each land exchange requires preparation of an *Agreement to Initiate*, as required by Title 36 Code of Federal Regulations (CFR), part 254, subpart C, section 254.4—Agreement to Initiate and Exchange. As the exchange proposal develops, the exchange parties may enter into a binding Exchange Agreement, pursuant to Title 36 CFR part 254, subpart A, section 254.14—Exchange Agreement.

Need and Use of the Information: The *Agreement to Initiate* document

specifies the preliminary and on-biding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. The *Agreement to Initiate* contains information such as the description of properties considered for exchange, an implementation schedule of action items, identification of the party responsible for each action item, and target dates for completion of action items.

The Exchange Agreement documents the conditions necessary to complete the exchange. It contains information identifying parties, description of lands and interests to be exchanged, identification of all reserved and outstanding interests, and all other terms and conditions that are necessary to complete the exchange.

Description of Respondents: Business or other for-profit; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 120.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–1557 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Rural Business-Cooperative Service

Title: Business and Industry Guaranteed Loan Making and Loan Servicing—ARRA Funding.

OMB Control Number: 0570–0060.

Summary of Collection: Business and Industry (B&I) Guaranteed Loan Program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended (Act). The purpose of the B&I program, as authorized by the Act, is to improve, develop, or finance businesses, industries, employment and improve the economic and environmental climate in rural communities including pollution abatement and control by bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by Rural Business Service (RBS) through Rural Development State and sub-State Offices serving each State. The American Recovery and Reinvestment Act 2009 (Pub. L. 111–5) (Recovery Act) provided approximately $126,100,000 in supplemental budget authority for the B&I Program.

Need and Use of The Information: To appropriately use these additional Recovery Act funds for guaranteeing B&I loans, necessary information is obtain on rural areas experiencing persistent poverty, outmigration, high unemployment, and under-served and under-represented groups and areas, which are among those areas hardest hit by the current economic crisis. The information is used by RBS loan officers and approval officials to determine program eligibility and to monitor the guaranteed loan portfolio to ensure that the lenders are servicing the loans adequately.

Description of Respondents: Business or other for-profit;

Number of Respondents: 700.

Frequency of Responses: Reporting: Annually and On occasion.

Total Burden Hours: 15,915.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–1556 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Office of Procurement and Property Management

Title: Procurement: Brand Name or Equal Provision and Clause.

OMB Control Number: 0505–0014.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) and the (48 CFR 411.171), provision (48 CFR 452.211–70), and a clause (48 452.211–71) permits the use of "brand name or equal" purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the "equal" item being offered and to indicate how that item meets the salient characteristics stated in the purchase description. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine from the descriptive information furnished whether the offered "equal" item meets the salient characteristics of the Government's requirements. If information were not collected, OPPM would spend more time developing purchase descriptions and offerors would spend more time reading and interpreting the purchase descriptions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 9,300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 930.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–1559 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Foreign Agricultural Service

Title: Food for Peace, Title I Financing and Record Keeping.

OMB Control Number: 0551–0005.

Summary of Collection: Title I of the Food for Peace Act (7 U.S.C. 1691) provides for U.S. government financing of sales of U.S. agricultural commodities to recipients (foreign countries or private entities). The Foreign Agricultural Service (FAS) is responsible for administering Food for Peace, Title 1 agreements. In accordance with the law, an agreement providing for long-term credit financing is first negotiated with the recipient through diplomatic channels. After an agreement has been signed, the recipient applies to FAS for authorization to purchase each commodity provided in the agreement. A purchase authorization is issued which provides for financing of commodity sales by the Commodity Credit Corporation (CCC), the USDA agency authorized by law to provide financing for Title 1. At least 75 percent of the gross tonnage of commodities purchased under Title I must be shipped on privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates. If ocean transportation is required to a country where there is no U.S. flag vessel coverage, a foreign vessel will be used at its prevailing rate. The recipient must send the pertinent terms of all proposed ocean freight contracts, regardless of whether any portion of the ocean freight is financed by CCC, to FAS for review and approval before the vessel is contracted.

Need and Use of the Information: FAS will collect information to insure that (1) suppliers keep accurate records on Title 1 transactions; (2) suppliers permit access to authorized USDA representatives (such as auditors and investigators); and (3) suppliers retain records for three years after final payment. FAS will review the information to ensure that there are no potential conflicts of interest. FAS also evaluates the sales price to ensure that it is within the prevailing range of export market prices. Without the information, FAS could not ensure program compliance.

Description of Respondents: Business or other for-profit.

Number of Respondents: 9.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 11.

Foreign Agricultural Service

Title: CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Control Number: 0551–0028.

Summary of Collection: The major objective of the Dairy Export Incentive Program (DEIP) is to expand U.S. dairy product exports by paying cash to exporters as bonuses, allowing them to sell U.S. dairy products in targeted countries at competitive prices. Currently 102 countries and 3 country regions are targeted export destinations and 650 exporters are eligible to participate under the DEIP. Under 7 CFR part 1494, exporters are required to submit the following: (1) Information required for program participation, (2) performance security, (3) export sales information in connection with applying for a CCC bonus, and (4) evidence of export and related information. In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the DEIP, as outlined in section 1494.1001.

Need and Use of the Information: The Foreign Agricultural Service (FAS) collects information from U.S. exporters in order to determine the exporters'

eligibility for the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). Program applicants can fax a letter in or applicants may register over the Internet. Information collected from U.S. Exporters is used by CCC to manage, plan for and evaluate the use of, and account for Government resources. Without the application and related information, FAS would be unable to properly qualify U.S. Exporters for EEP and DEIP.

Description of Respondents: Business or other for-profit.

Number of Respondents: 9.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 47.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–1558 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Caribou-Targhee National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Caribou-Targhee National Forest is proposing to charge a $35 fee for the overnight (summer use only) rental of Diamond Creek Guard Station. The guard station is used in the winter time as a warming hut but is currently unused during the summer season. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, market assessment and public comment. The fee is proposed and will be determined upon further analysis and public comment. To date, an analysis of the cabin shows that the proposed fees are reasonable and typical of similar sites in the area. Rentals of other cabins on the Caribou-Targhee National Forest have shown that publics appreciate and enjoy the availability of historic and other type rental cabins. Funds from fees will be used for the continued operation and maintenance of the Diamond Creek Guard Station.

DATES: Comments will be accepted through June 15, 2010. Diamond Creek Guard Station will become available for rent beginning May 1 through Oct 30 of each summer season. The cabin will not be available for rent during the winter season.

ADDRESSES: Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Jared Mattson on the Montpelier RD at 208–847–8946.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Caribou-Targhee National Forest currently has nine other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of Diamond Creek Guard Station has shown that people desire having this sort of recreation experience on the Caribou-Targhee National Forest. A market analysis indicates that the $35/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Diamond Creek Guard Station will need to do so through the National Recreation Reservation Service, at *http://www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: January 13, 2009.

Brent L. Larson,

Caribou-Targhee National Forest Supervisor.

[FR Doc. 2010–1218 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plan Revision for the Coronado National Forest, Cochise, Graham, Pima, Pinal, and Santa Cruz Counties, AZ; and Hidalgo County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the forest plan.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is preparing the Coronado National Forest revised land management plan (Forest Plan) and will also prepare an environmental impact statement (EIS) for this revised Forest Plan. This notice briefly describes the nature of the decision to be made, the proposed action and need for change, and information concerning public participation. It also provides estimated dates for filing the EIS and the names and addresses of the responsible agency official and the individuals who can provide additional information. Finally, this notice briefly describes the applicable planning rule and how work done on the plan revision under the 2008 planning rule will be used or modified for completing this plan revision.

The revised Forest Plan will supersede the current Forest Plan previously approved by the Regional Forester on August 4, 1986. The current Forest Plan has been modified through eleven amendments and three change notices since its approval. Amendments included: Establishing new management areas, adding and modifying management direction for fire, caves, cultural resources, roads, and trails, and adding direction for the Mexican spotted owl, the northern goshawk, and old growth. This current amended Forest Plan will remain in effect until the revised Forest Plan takes effect.

DATES: Comments concerning the need for change provided in this notice will be most useful in the development of the draft revised Forest Plan and draft environmental impact statement if received by February 19, 2010. The agency expects to release a draft revised Forest Plan and draft environmental impact statement for formal comment by fall, 2010 and a final revised Plan and final environmental impact statement by fall, 2011.

ADDRESSES: Send written comments to: Coronado National Forest, Forest Plan Revision Team, 300 W. Congress, Tucson, Arizona 85701. Comments may also be sent via e-mail to: *coronado-plan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jennifer Ruyle, Forest Planner, Coronado National Forest, 300 W. Congress, Tucson, AZ 85701, (520) 388–8351, *coronado-plan@fs.fed.us.* Information on this revision is also available at Coronado National Forest revision Web site, *http://www.fs.fed.us/r3/coronado/plan-revision/index.shtmi.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Name and Address of the Responsible Official

Corbin Newman, Regional Forester, Southwestern Region, 333 Broadway, SE., Albuquerque, NM 87102.

Nature of the Decision To Be Made

The Coronado National Forest (Forest) is preparing an ETS to revise the current Forest Plan. The EIS process is meant to inform the Regional Forester so that he can decide which alternative best meets the need to achieve quality land and resource management under a sustainable multiple-use management concept to meet the diverse needs of people while protecting the Forests' resources, as required by the National Forest Management Act (NFMA) and the Multiple Use Sustained Yield Act (MUYSA).

The revised Forest Plan will describe the strategic intent of managing the Forest into the next 10 to 15 years, and will address the need for change described below. The revised Forest Plan will provide management direction in the form of goals (desired conditions), objectives, suitability determinations, standards, guidelines, and a monitoring plan. It may also make new special area recommendations for wilderness, wild and scenic rivers, research natural areas, and other special areas.

For clarification of the decisions to be made in a Forest Plan, it is useful to identify of the types of decisions that will not be made within it. Authorizations of project level activities are not decisions that are made in the Forest Plan. Project level activities are approved through subsequent project specific decisionmaking.

Need for Change and Proposed Action

The needs for change and proposed actions are organized into five revision topics: 1. Ecosystem Restoration, 2. Safety and Information, 3. Public Access and Travel Patterns, 4. Preservation of Open Space, and 5. Collaboration and Partnerships. For each of the revision topics, there are proposals for the revised Forest Plan to make changes in plan components, as described below:

Revision Topic 1. Ecosystem Restoration

Need for Change

Current Forest Plan direction recognizes and supports the need for species diversity, ecosystem sustainability, and restoration of desired ecosystem characteristics. However, rates and effectiveness of treatments will need to increase if vegetation communities and species diversity are to be sustained. Management direction is needed that integrates restoration of degraded ecosystems, wildlife habitat conservation, fire ecology, hazardous fuels reduction, and current ecological threats, including invasive species and climate change.

Proposed Action

- Develop goal (desired condition) statements that provide adequate guidance for sustaining and restoring ecosystems using new scientific knowledge and updated language.
- Provide direction to guide future vegetation management activities, including burning and mechanical treatments, to move towards or maintain desired conditions.
- Include appropriate standards and guidelines to provide direction to ensure species diversity and viability across the planning area.
- Integrate plan components, where possible, to reflect the interconnectedness between physical and biological resources.
- Include objectives and guidelines that reflect systematic observation and analysis of treatment results, and adaptation of treatment methods based on those results.
- Address the emerging issue of climate change by incorporating adaptive management strategies and describing ecological conditions that are resilient to change.
- Develop Forest Plan components for sustaining aquatic habitats that are at risk.
- Facilitate the understanding of management needs for each mountain range by developing place-based geographic area Forest Plan components.
- Reevaluate and update the list of Management Indicator Species (MIS). MIS are species whose population changes are believed to indicate the effects of management activities.

Revision Topic 2. Safety and Information

Need for Change

The social environment surrounding the Forest has changed significantly since the 1986 Forest Plan was completed. Although the current Forest Plan anticipates negative impacts associated with regional population growth and increased urbanization, it does not identify strategies for sustaining forest resources and experiences affected by these pressures. Impacts from illegal activity associated with the international border region are not addressed at all. Improved management direction is needed that leads to increased public awareness about the impacts of recreational activities, and of the hazards associated with the border region.

Proposed Action

- Develop Land Use Zones based on the suitability of various recreational uses to guide management that will sustain the Forest resources and experiences in the face of changes in population, behavior, and increased development.
- Develop place-based geographic area plan components to guide management to address the unique challenges in the international border region.

Revision Topic 3. Public Access and Travel Patterns

Need for Change

Rapid growth of populations in Arizona and New Mexico has led to a much greater demand for public access to National Forest System lands. The need for additional permanent legal access to the Forest is identified as an issue in the current Forest Plan. Although progress has been made toward the goal of increasing the number of permanent legal access points, the issue has become more complicated. Updated management direction is needed that emphasizes a coordinated, collaborative approach to establishing adequate and appropriate permanent legal access for public and administrative use.

Proposed Action

- Update goals (desired conditions) and objectives to emphasize and prioritize the establishment of permanent legal access for public and administrative use.

Revision Topic 4. Preservation of Open Space

Need for Change

Preservation of open space is a particularly important land use issue given both the public's desire to maintain the "rural character" of southern Arizona and New Mexico lands and the need to accommodate rapidly growing populations and municipalities. This issue is not addressed in the current Forest Plan. Management direction is needed that addresses the sustainability of undeveloped landscapes within the Forest boundary and emphasizes coordination with adjacent landowners to protect open space.

Proposed Action

- Develop desired condition statements that reflect the role of Forest management in preserving open space.
- Develop guidelines, based on the Scenery Management System, to protect scenic natural landscapes.
- Develop plan components that are reflective of county and community land use planning efforts.

Revision Topic 5. Collaboration and Partnerships

Need for Change

In recent years the Forest Service has placed increasing priority on the social relationships between National Forest personnel and members of surrounding communities. The current Forest Plan does not reflect this priority. Management direction is needed that recognizes the importance of collaboration and partnerships as tools for achieving both Forest Plan and community goals.

Proposed Action

- Develop desired conditions that reflect outcomes defined through collaborative processes.
- Integrate management direction for traditional uses and cultural resources throughout the revised Forest Plan. Reference: Comprehensive Evaluation Report (*http://www.fs.fed.us/r3/coronado/plan-revision/plan-revision-documents.shtml)*

Public Involvement

Public involvement with the Plan revision process began in spring of 2005, when focus groups were conducted in locations across southeastern Arizona to quantify attitudes, values and beliefs toward Coronado NF lands. In April of 2006, Regional Forester hosted a question and answer session for the public in Tucson to initiate the plan revision process for the National Forests in Arizona. Then, in June 2006, six public workshops were held in communities around the Forest with the purpose of establishing relationships and determining the needs for changing the current Forest Plan. These were followed by workshops in September 2006, with the purpose of prioritizing the previously identified needs for change. In September and October 2007, seven workshops, again geographically distributed, were held to begin developing "Desired Condition Statements" based on the previously identified priority needs for change. Most recently, in November 2008, seven open house events were held in geographic locations across the Forest with the purpose of presenting initial draft Forest Plan products to the public, including draft Desired Condition Statements and draft Land Use Zone maps. Future public meetings are anticipated to provide a discussion forum for the draft revised Plan as it is developed. Future formal public comment opportunities will occur when a draft revised Plan is available for review (anticipated to be in the spring of 2010), and when a proposed Plan and Draft Environmental Impact Statement are available for review (anticipated to be in the fall of 2010).

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised plan and the EIS. Therefore, comments on the proposed action and need for change described in this notice will be most valuable if received by February 19, 2010, and they should clearly articulate the reviewers' concerns. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative or judicial review. At this time, we anticipate using the 2000 planning rule pre-decisional objection process (36 CFR 219.32) for administrative review. Comments received in response to this solicitation, including the names and addresses of those who comment will be part of the public record. Comments submitted anonymously will be accepted and considered.

Applicable Planning Rule

Preparation of the revised plan was underway when the 2008 National Forest System land management planning rule was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry* v. *United States Department of Agriculture,* 632 F. Supp. 2d 968 (N.D. Cal. June 30, 2009)). On December 18, 2009, the Department reinstated the previous planning rule, commonly known as the 2000 planning rule in the **Federal Register** (**Federal Register**, Volume 74, No. 242, Friday, December 18, 2009, pages 67059 through 67075). The transition provisions of the reinstated rule (36 CFR 219.35 and appendices A and B) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 rule (November 9, 2000), commonly known as the 1982 planning rule, to amend or revise Forest Plans. The Coronado National Forest has elected to use the provisions of the 1982 planning rule, including the requirement to prepare an EIS, to complete its plan revision.

The Coronado National Forest commenced activities preparing for revising the Plan in the spring of 2005. Plan revision was formally initiated under the 2008 planning rule on June 22, 2009, with publication of a Notice of Initiation to Revise the Coronado National Forest's Land and Resource Management Plan (74 FR 29467, June 22, 2009). Although the 2008 planning rule is no longer in effect, information gathered prior to the court's injunction is useful for completing the plan revision using the provisions of the 1982 planning rule. The Coronado National Forest has concluded that the following material developed during the plan revision process to date is appropriate for continued use in the revision process:

- The inventory and evaluation of potential wilderness areas that were previously underway, are consistent with appropriate provisions of the 1982 planning rule, and will be brought forward into this plan revision process.
- The Comprehensive Evaluation Report (CER) that was published in April of 2009 after substantial public collaboration forms the basis for need to change the existing Forest Plan and the proposed action for the plan revision.
- The CER Supplementary document, which augmented the CER with additional information to conform with the Analysis of Management Situation need for change provisions of the 1982 planning rule.
- The Ecological Sustainability Report that was completed in February 2009 and will continue to be used as a reference in the planning process as appropriate to those items in conformance with the 2000 planning rule transition language and 1982 planning rule provisions. This is scientific information and is not affected by the change of planning rule. This information will be updated with any new available information.
- The Social and Economic Sustainability Report that was completed in November 2008 is not affected by the change in planning rule and will continue to be used as a reference in the planning process. This information will be updated with any new available information.

All of these background documents, and more, can be found at *http://www.fs.fed.us/r3/coronado/plan-revision/plan-revision-documents.shtml.* These documents are not affected by the change of planning rule. As necessary or appropriate, the above listed material will be further adjusted as part of the planning process using the provisions of the 1982 planning rule.

(Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 (74 FR 67073–67074))

Dated: January 11, 2010.

Jeanine Derby,

Forest Supervisor.

[FR Doc. 2010–1162 Filed 1–26–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 2009

AGENCY: Office of the Secretary, Commerce.

ACTION: General Notice Announcing Population Estimates.

SUMMARY: This notice announces the voting age population estimates as of July 1, 2009, for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

FOR FURTHER INFORMATION CONTACT: Enrique Lamas, Chief, Population Division, U.S. Census Bureau, Room HQ–5H174, Washington, DC 20233, at 301–763–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 2009, for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2009

Area	Population 18 and over	Area	Population 18 and over
United States	232,458,335		
Alabama	3,579,844	Missouri	4,556,242
Alaska	514,927	Montana	755,161
Arizona	4,863,759	Nebraska	1,344,978
Arkansas	2,179,482	Nevada	1,962,052
California	27,525,982	New Hampshire	1,035,504
Colorado	3,796,985	New Jersey	6,661,891
Connecticut	2,710,303	New Mexico	1,499,433
Delaware	678,129	New York	15,117,370
District of Columbia	485,621	North Carolina	7,102,917
Florida	14,480,196	North Dakota	502,873
Georgia	7,245,419	Ohio	8,828,304
Hawaii	1,004,817	Oklahoma	2,768,201
Idaho	1,126,611	Oregon	2,952,846
Illinois	9,733,032	Pennsylvania	9,829,635
Indiana	4,833,748	Rhode Island	826,384
Iowa	2,294,701	South Carolina	3,480,510
Kansas	2,113,796	South Dakota	612,767
Kentucky	3,299,790	Tennessee	4,803,002
Louisiana	3,368,690	Texas	17,886,333
Maine	1,047,125	Utah	1,915,748
Maryland	4,347,543	Vermont	495,485
Massachusetts	5,160,585	Virginia	6,035,408
Michigan	7,619,835	Washington	5,094,603
Minnesota	4,005,417	West Virginia	1,433,328
Mississippi	2,184,254	Wisconsin	4,344,524
		Wyoming	412,245

Source: U.S. Census Bureau, Population Division.

I have certified these counts to the Federal Election Commission.

Dated: January 19, 2010.

Gary Locke,

Secretary, U.S. Department of Commerce.

[FR Doc. 2010–1522 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2010]

Foreign-Trade Zone 22—Chicago, IL; Application for Manufacturing Authority; LG Electronics MobileComm USA, Inc. (Cell Phone Kitting and Distribution); Bolingbrook, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting manufacturing authority on behalf of LG Electronics MobileComm USA, Inc. (LGEMU), located in Bolingbrook, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 14, 2010.

The LGEMU facility (20 employees, 17 acres, 38.9 million unit capacity) is located within Site 12 of FTZ 22. The facility is used for the cell phone kitting and distribution. Components and materials sourced from abroad (representing 90–95% of the value of the finished product) include: Cell phone batteries; cell phone chargers and adaptors; headphones; earphones; microphones; battery doors; cables; film packing materials; poly bags; blister packaging; master cartons; gift boxes; labels; bound instruction manuals; CD–ROM user guides; blue tooth units; paper inner trays; holsters; corrugated paper; and vinyl protective packaging sheets (duty rate ranges from duty free to 5.8%).

Under FTZ procedures, LGEMU would be able to choose the duty rates during customs entry procedures that apply to cell phone mobile handsets (duty free) for the foreign inputs noted above for its shipments to the U.S. market. LGEMU could also realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Maureen Hinman of the

FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 29, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 12, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: January 14, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1622 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–1–2010]

Foreign-Trade Zone 22—Chicago, IL Application for Temporary/Interim Manufacturing Authority LG Electronics MobileComm USA, Inc. (Cell Phone Kitting and Distribution) Bolingbrook, IL

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting temporary/interim manufacturing (T/IM) authority within FTZ 22 at the LG Electronics MobileComm USA, Inc. (LGEMU) facility, located in Bolingbrook, Illinois. The application was filed on January 13, 2010.

The LGEMU facility (20 employees, 17 acres, 38.9 million unit capacity is located at 1251 115th St., Bolingbrook (Site 12). Under T/IM procedures, the LGEMU has requested authority to conduct kitting activity for cell phone handsets (HTSUS 8517.12 and 8517.62). Foreign components that would be used in production (representing 90–95% of the value of the finished product) include: Cell phone batteries; cell phone chargers and adaptors; headphones; earphones; microphones; battery doors; cables; film packing materials; poly bags; blister packaging; master cartons; gift boxes; labels; bound instruction manuals; CD–ROM user guides; blue tooth units; paper inner trays; holsters; and, vinyl protective packaging sheets (duty rate ranges from duty free to 5.8%). T/IM authority could be granted for a period of up to two years.

Under FTZ procedures, LGEMU would be able to choose the duty rates during customs entry procedures that apply to cell phone mobile handsets (duty free) for the foreign inputs noted above for its shipments to the U.S. market. LGEMU could also realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Maureen Hinman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230. The closing period for their receipt is February 26, 2010.

LGEMU has also submitted a request for permanent FTZ manufacturing authority, which may include additional products and components. It should be noted that the request for permanent authority would be docketed separately and would be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for permanent authority would need to submit such comments pursuant to the separate notice that would be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: January 13, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1628 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2010]

Foreign-Trade Zone 50—Long Beach, California Application for Subzone Allegro Mfg. Inc. (Cosmetic, Organizer and Electronic Bags and Accessories) Commerce, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Long Beach, grantee of FTZ 50, requesting special-purpose subzone status for the warehousing and distribution facility of Allegro Mfg. Inc. (Allegro), located in Commerce, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 15, 2010.

The Allegro facility (83 employees, 5.8 acres, 14.4 million unit annual capacity) is located at 7230, 7250 and 7265 Oxford Way, Commerce, California. The facility is used for the storage and distribution of cosmetic, organizer and electronic bags and accessories (duty rate ranges from duty-free to 20%).

FTZ procedures could exempt Allegro from customs duty payments on foreign products that are re-exported (approximately two percent of shipments). On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Allegro to realize logistical benefits through the use of weekly customs entry procedures. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original

and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 29, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 12, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: January 15, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1632 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–966]

Drill Pipe from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 27, 2010.

FOR FURTHER INFORMATION CONTACT: John Conniff and Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4014, Washington, DC 20230; telephone: (202) 482–1009, (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On December 31, 2009,[1] the Department of Commerce (the Department) received a petition concerning imports of drill pipe from the People's Republic of China (PRC) filed in proper form by VAM Drilling USA, Inc., Texas Steel Conversions, Inc., Rotary Drilling Tools, TMK IPSCO, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO-CLC (collectively, the petitioners). *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the People's Republic of China, dated December 31, 2009 (Petition). On January 6, 2010, the Department issued additional requests for information and clarification of certain areas of the Petition. Petitioners filed timely additional information pertaining to general issues on January 11, 2010. *See* Petition for the Imposition of Antidumping Duties on Drill Pipe from the PRC: Response to Department's Letter of January 6, 2010 (Supplement to the AD/CVD Petitions). On January 8, 2010, the Department issued a request for additional information pertaining to countervailing duty (CVD) issues. Petitioners filed timely information regarding countervailing issues on January 13, 2010. *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the PRC: Response to Pre–initiation CVD questions (Supplement to the CVD Petition). On January 14, 2010, the Department issued an additional request for information and clarification regarding general issues and dumping. Petitioners filed a response containing additional information related to both general issues and dumping on January 15, 2010. *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the PRC: Response to the Department's Letter of January 14, 2010 (Second Supplement to the AD/CVD Petitions). Petitioners also filed additional information pertaining to general issues on January 15, 2010. *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the PRC: Response to Department's Letter of January 14, 2010: Additional Affidavit (Third Supplement to the AD/CVD Petitions). On January 19, 2010, petitioners filed further clarifications related to general issues. *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Drill Pipe from the PRC: Response to Department's Letter of January 14, 2010: Additional Affidavit: (Fourth Supplement to the AD/CVD Petitions). In addition, on both January 15, and January 19, 2010, we received comments filed by Lehnardt & Lehnardt, LLC, on behalf of Downhole Pipe & Equipment, LP (Downhole Pipe) and Command Energy Services International (Command Energy), U.S. importers of drill pipe from China. Downhole Pipe and Command Energy are interested parties per section 771(9)(A) of the Act.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of drill pipe in the PRC receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act, and petitioners have demonstrated sufficient industry support with respect to the CVD investigation (*see* "Determination of Industry Support for the Petition" section below).

Period of Investigation

The proposed period of investigation (POI) is January 1, 2009, through December 31, 2009.

Scope of Investigation

The products covered by this investigation are drill pipe from the PRC. For a full description of the scope of the investigation, *see* the "Scope of the Investigation" in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by Wednesday, February 10, 2010, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope consultations is intended to provide the Department with ample

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[1] Petitioners filed the Petition at the International Trade Commission (ITC) after 12:00 noon on December 30, 2009, therefore, pursuant to 19 CFR 207.10(a), the ITC deemed the Petition to have been filed on the next business day, December 31, 2009. Section 702(b)(2) of the Tariff Act of 1930, as amended (the Act) requires simultaneous filings of countervailing duty petitions with the Department of Commerce and the ITC, therefore, we deem the Petition to have been filed with Commerce on December 31, 2009. This file date will change the initiation date from January 19, 2009, to January 20, 2009. *See* Memorandum to Ronald K. Lorentzen, entitled "Decision Memorandum Concerning Petitions Filing Date," dated concurrently with this checklist.

opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on January 8, 2010, the Department invited representatives of the Government of the PRC (GOC) for consultations with respect to the CVD petition. On January 15, 2010, the Department held consultations with representatives of the GOC in Beijing.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The ITC, which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), *citing Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that drill pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* "Countervailing Duty Investigation Initiation Checklist: Drill Pipe from the People's Republic of China" (Initiation Checklist), at Attachment II, Analysis of Industry Support for the Petitions Covering Drill Pipe from the People's Republic of China, on file in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

In determining whether petitioners have standing under section 702(C)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product. To establish industry support, petitioners provided their production of the domestic like product in 2008, and compared this to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petition, at 2–3; *see also* Supplement to the AD/CVD Petitions at 6–13 and Exhibit 3; Second Supplement to the AD/CVD Petitions at 1–4 and Exhibits 1–3; Third Supplement to the AD/CVD Petitions at Exhibit 1, and Fourth Supplement to the AD/CVD Petitions at Exhibit I. To estimate 2008 production of the domestic like product, petitioners used their own data and industry specific knowledge. *See* Second Supplement to the AD/CVD Petitions at 1–4 and Exhibits 1–3; *see also* Initiation Checklist at Attachment II. We have relied upon data petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Because the Petition and supplemental submissions did not establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department was required to take further action in order to evaluate industry support. See section 702(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 702(c)(4)(D)(i) of the Act, to determine industry support. *See* Initiation Checklist at Attachment II. Based on information provided in the Petition and other submissions, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that petitioners filed the Petition on behalf of the domestic industry because they are an interested party as defined in sections 771(9)(C) and 771(9)(D) of the Act and has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate. *See* Initiation Checklist at Attachment II.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of drill pipe from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing drill pipe. In addition, petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, reduced production, reduced shipments, reduced capacity and capacity utilization, underselling and price depression or suppression, reduced employment, hours worked, and wages paid, decline in financial performance, lost sales and revenue, and increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations.

The Department has examined the CVD Petition on drill pipe from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of drill pipe in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Preferential Loans and Interest Rates

1. Policy Loans To The Drill Pipe (DP) Industry
2. Export Loans from Policy Banks and State–Owned Commercial Banks (SOCBs)
3. Treasury Bond Loans
4. Preferential Loans for State–Owned Enterprises (SOEs)
5. Preferential Loans for Key Projects and Technologies
6. Preferential Lending to DP Producers and Exporters Classified as "Honorable Enterprises"

B. Debt-To-Equity Swaps and Loan Forgiveness

1. Debt–to-Equity Swaps
2. Loan and Interest Forgiveness for SOEs

C. Income Tax and Other Direct Tax Benefit Programs

1. Income Tax Credits for Domestically–Owned Companies Purchasing Domestically Produced Equipment
2. Reduction In Or Exemption From Fixed Assets Investment Orientation Regulatory Tax

D. Subsidies for Foreign Invested Enterprises (FIES)

1. "Two Free, Three Half" Program
2. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
3. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
4. Income Tax Reductions For Export–Oriented FIEs

B. Indirect Tax and Tariff Exemption Programs

1. Indirect Tax And Tariff And Vat Exemptions For FIEs And Certain Domestic Enterprises Using Imported Equipment In Encourage Industries
2. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
3. Export Subsidies Characterized as "VAT Rebates"

F. Government Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)

1. Provision of Land to SOEs for LTAR
2. Provision of Land Use Rights Within Designated Geographical Areas for LTAR
3. Provision of Steel Rounds for LTAR
4. Provision of Hot–Rolled Steel (HRS) for LTAR
5. Provision of Green Tube for LTAR
6. Provision of Electricity for LTAR
7. Provision of Electricity and Water at LTAR to DP Producers Located in Jiangsu Province
8. Provision of Coking Coal for LTAR

G. Grant Programs

1. State Key Technology Project Fund
2. Export Assistance Grants
3. Programs to Rebate Antidumping Legal Fees
4. GOC and Sub–Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands
5. Grants and Tax Benefits to Loss–Making SOEs at National and Local Level

H. Subsidies To DP Producers Located in Economic Development Zones

1. Economic and Technological Development Zones (ETDZ) Located in Tianjin Binhai New Area (TBNA)
2. ETDZs Located in Tianjin Economic and Technological Development Area (TEDA)
3. ETDZs Located in Yangtze Riverside Economic Development Zone (YREDZ)
4. High–Tech Industrial Development Zones (HTDZ)

For further information explaining why the Department is investigating these programs, *see* the Initiation Checklist.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's website at http://ia.ita.doc.gov/apo.

Distribution of Copies of the Petition

In accordance with section 702(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the GOC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the

foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized drill pipe from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The products covered by this investigation are steel drill pipe, and steel drill collars, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes suitable for drill pipe), without regard to the specific chemistry of the steel (i.e., carbon, stainless steel, or other alloy steel), and without regard to length or outer diameter. The scope does not include tool joints not attached to the drill pipe, nor does it include unfinished tubes for casing or tubing covered by any other antidumping or countervailing duty order.

The subject products are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) categories: 7304.22.0030, 7304.22.0045, 7304.22.0060, 7304.23.3000, 7304.23.6030, 7304.23.6045, 7304.23.6060, 8431.43.8040 and may also enter under 8431.43.8060, 8431.43.4000, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.49.0015, 7304.49.0060, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, and 7304.59.8055.[2]

While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2010–1629 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–DS–S

[2] Prior to February 2, 2007, these imports entered under different tariff classifications, including 7304.21.3000, 7304.21.6030, 7304.21.6045, and 7304.21.6060.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU04

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a joint meeting of the Ecosystem Plan Development Team (EPDT) and Ecosystem Advisory Subpanel (EAS) which is open to the public.

DATES: The meeting will be held on Wednesday, February 10, 2010 and Thursday, February 11, 2010 from 8:30 a.m. to 5 p.m. or until business for each day is completed.

ADDRESSES: The EPDT/EAS meeting will be held at the Sheraton Portland Airport Hotel, Mt. Hood C Room, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mike Burner, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of this initial meeting of these advisory bodies is to review Pacific Council guidance and make recommendations on implementing an ecosystem-based management plan that is envisioned to complement, but not replace the Pacific Council's four existing Fishery Management Plans (FMP). The EDPT and the EAS are scheduled to review the Pacific Council record and existing FMPs, inventory ecosystem-related management tools for their applicability to the Council's ecosystem based FMP (E-FMP) process, and review existing ecosystem-based management efforts of other regional fishery management councils. The EPDT/EAS will also begin developing recommendations on the E-FMP's purpose and need, its goals and objectives, its geographic and regulatory scope, and the species that may be included in the E-FMP. The findings and recommendations of the EPDT and the EAS will be summarized and reported to the Pacific Council, tentatively at the April 2010 Pacific Council meeting in Portland, OR.

Although non-emergency issues not contained in the meeting agenda may come before the EPDT and the EAS for discussion, those issues may not be the subject of formal action during this meeting. EPDT and EAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 21, 2010.

William D. Chappell,

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

[FR Doc. 2010–1539 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU05

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) will hold public hearings in February 2010 to allow for input on Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). See **SUPPLEMENTARY INFORMATION** below for times and locations.

DATES: Send written comments will be accepted until March 1, 2010.

ADDRESSES: Send comments to: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New St., Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331 ext. 19.

SUPPLEMENTARY INFORMATION: There are 7 proposed management actions in this Amendment. The proposed management actions could:

1–4: Create a tiered limited access system in the Atlantic mackerel fishery;

5: Update Essential Fish Habitat (EFH) designations for all species in the MSB FMP;

6: Establish a percentage allocation between the recreational and commercial mackerel sectors; and

7: Establish limitations on at-sea processing via at-sea transfers (i.e. processing by motherships) in the mackerel fishery.

Summaries of the proposed actions will be available and presented at the hearings.

The full draft Environmental Impact Statement that analyzes the proposed actions may be downloaded at: *http://www.nero.noaa.gov/nero/regs/com.html*.

The scheduled public hearings are as follows:

(The February 9 hearing notice was already published in the **Federal Register** as part of the MAFMC's February Council meeting but is included in this list for completeness.)

February 9; 7–9 p.m.; Hyatt Regency Chesapeake Bay Resort, Cambridge, MD

February 16; 5–7 p.m.; Annisquam River Marine Fisheries Station, Gloucester, MA

February 17; 5–7 p.m.; Radisson Hotel Providence Airport, Providence, RI

February 18; 5–7 p.m.; Congress Hall Hotel, Cape May, NJ

February 24; 5–7 p.m.; Virginia Marine Resources Commission, Newport News, VA

All hearings will be digitally recorded and saved as transcripts of the hearing.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674–2331 ext 18, at least 5 days prior to the hearing date.

Dated: January 21, 2010.

William D. Chappell,

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

[FR Doc. 2010–1526 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Announcement to re-open solicitation period for the National Estuarine research Reserve Land Acquisition and Construction Program FY10.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, publishes this notice to re-open the solicitation period for the National Estuarine Research Reserve Land Acquisition and Construction Program FY10 to provide National Estuarine Research Reserve lead State agencies or designated universities in coastal States the opportunity to submit proposals for funds.

DATES: The deadline for the receipt of proposals is 11:59 p.m. Eastern Standard Time on February 19, 2010 for both electronic and paper applications.

Addresses for Submitting Proposals: Applications must be submitted through *http://www.grants.gov*, unless an applicant does not have Internet access. In that case, hard copies with original signatures may be sent to Nina Garfield, 1305 East West Highway, N/ORM5, SSMC4, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Nina Garfield, 1305 East West Highway, N/ORM5, SSMC4, 10500, Silver Spring, MD 20910; or by phone at (301) 713–3155 ext. 171, or via e-mail at *nina.garfield@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Number: NOAA–NOS–OCRM–2010–2001856.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.420, Coastal Zone Management Estuarine Research Reserves.

The National Estuarine Research Reserve Land Acquisition and Construction Program publishes this notice to re-open the application solicitation period to provide National Estuarine Research Reserve lead state agencies or designated universities in coastal states the opportunity to submit proposals for FY 2010 grant funds. The mission of the National Estuarine Research Reserve Land Acquisition and Construction Program is to provide funding to the designated reserves for acquiring additional property interests and for construction projects within these reserves to strengthen protection of key land and water areas; to enhance long-term protection of the areas for research and education; and provide for facility and exhibit construction and enhancement.

This program originally solicited proposals in the **Federal Register** on July 16, 2009 (74 FR 34674) as part of the June 2009 NOAA Omnibus solicitation. The original deadline for receipt of proposals was 11:59 p.m., EST, on November 30, 2009. Due to State fiscal constraints and uncertainties at the time of the original solicitation, some applicants may not have been able to submit proposals, and therefore the applications received totaled less than the funds available. Therefore, NOAA re-opens the solicitation period to provide applicants the opportunity to submit proposals. The deadline for the receipt of proposals is 11:59 p.m. EST on February 19, 2010 for both electronic and paper applications.

Applicants are directed to the July 16, 2009 **Federal Register** notice and Federal Funding Opportunity announcement for information on the program's priorities, application requirements, evaluation criteria, and selection process for this solicitation. The program will evaluate applications received during both the original solicitation period and the re-opened period, at the same time using the evaluation and selection processes outlined in the July 16, 2009 notice and FFO announcement.

Classification:

Limitation of Liability: Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2010 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the competition listed in this notice. 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.

Universal Identifier: Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register** (67 FR 66177–66178), for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711

or via the Internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (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 following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.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 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 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, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

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 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

FOR FURTHER INFORMATION CONTACT: Nina Garfield at (301) 713–3155 Extension 171 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: January 14, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–1500 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003) ("*Order*"). The Department is conducting a new shipper review ("NSR") of the *Order,* covering the period of review ("POR") of August 1, 2008, through January 31, 2009. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* January 27, 2010.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

General Background

On February 6, 2009, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(c), the Department received an NSR request from NTSF Seafoods Joint Stock Company ("NTSF"). NTSF certified that it is the producer and exporter of the subject merchandise upon which the request was based.

On March 24, 2009, the Department initiated a NSR on frozen fish fillets from Vietnam covering NTSF. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 74 FR 13415 (March 27, 2009).

On March 31, 2009, the Department issued its original antidumping duty questionnaire to NTSF. Between April 27, 2009, and October 28, 2009, NTSF submitted responses to the original and

supplemental sections A, C, and D antidumping duty questionnaires.

Extension of Time Limits

On September 25, 2009, the Department extended the deadline for the preliminary results of this review by 120 days, to January 18, 2010. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the New Shipper Review,* 74 FR 48905 (September 25, 2009) [1] ("*Extension*").

Surrogate Country and Surrogate Values

On December 18, 2009, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production ("FOP"). On December 30, 2009, NTSF and Petitioners [2] submitted surrogate country comments and surrogate value data. On January 11, 2010, NTSF and Petitioners submitted rebuttal comments to the December 30, 2009, surrogate country and surrogate value submissions.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production ("FOP") for NTSF between November 16, 2009, and November 23, 2009. *See* Verification of the Sales and Factors of Production Responses of NTSF Seafoods Joint Stock Company, in the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Verification Report"), issued concurrently with these preliminary results.

Scope of the Order

The product covered by this *Order* is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species Pangasius Bocourti, Pangasius Hypophthalmus (also known as Pangasius Pangasius), and Pangasius Micronemus. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species Pangasius including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").[3] This *Order* covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act"), provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act* (URAA), H.R. Rep. No. 103–316, Vol. 1 at 870 (1994).

For these preliminary results, in accordance with sections 776(a)(2)(A) through (D) of the Act, we have determined that the use of adverse facts available ("AFA") is warranted for NTSF because of an unreported labor amounts found at verification. *See* Verification Report at 21. As partial AFA, we are we are adding the unreported labor amounts from November 2008 (the highest usage month for these unreported categories of labor) to NTSF's labor factor. *See* Analysis of the Preliminary Results of the Antidumping

[1] Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching our determination on the next business day. In this instance, the preliminary results will be released no later than January 19, 2010.

[2] The Catfish Farmers of America and individual U.S. Catfish Processors: America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (collectively, "Petitioners").

[3] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species Pangasius including basa and tra) of the HTSUS.

Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): NTSF Seafoods Joint Stock Company ("NTSF"), dated January 19, 2010.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009) ("*4th AR Final Results*"). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determinations

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this review, NTSF submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by NTSF includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the company's operations and selection of management. The evidence provided by NTSF supports a finding of a *de jure* absence of government control over its export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the Respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, NTSF submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) NTSF sets its own export prices independent of the government and without the approval of a government authority; (2) NTSF retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) NTSF has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the company's use of export revenues. Therefore, the Department preliminarily finds that NTSF has established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by NTSF in this new shipper review. We found that the new shipper sales by NTSF were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by NTSF, and our verification, as well the company's eligibility for separate rates (*see* Separate Rates Determination section above), we preliminarily determine that NTSF has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating NTSF's sales of subject merchandise to the United States as appropriate transactions for this new shipper review.[4]

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, Philippines and Indonesia are countries comparable to Vietnam in terms of economic development.[5] Moreover, it is the Department's practice to select an

[4] For more detailed discussion of this issue, please *see* Memorandum from Javier Barrientos, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: NTSF Seafoods Joint Stock Co., dated January 19, 2009.

[5] *See* Memorandum from Kelley Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets ("Fish Fillets") from the Socialist Republic of Vietnam, dated December 18, 2009.

appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Surrogate Country Policy Bulletin"). Since the less-than-fair–value investigation, we have determined that Bangladesh is comparable to Vietnam in terms of economic development and has surrogate value data that is available and reliable. In this proceeding, we received comments regarding surrogate country selection. However, parties did not provide information in this review that would warrant a change in the Department's selection of Bangladesh from the prior segments. *See* Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Javier Barrientos, Senior Case Analyst, Subject: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country (January 19, 2009). Thus, we continue to find that Bangladesh is the appropriate surrogate country here because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad-market average.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Affiliation

Section 771(33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person."

We preliminarily find Nha Trang Seafoods Inc. ("NTSI") and NTSF to be affiliated parties within the meaning of section 771(33)(E) of the Act, based on ownership. NTSF wholly owns NTSI. *See* Verification Report at 3. In addition, the director of NTSF is the director of NTSI. *Id.* at 6 and verification exhibit NTST–1. Therefore, for these preliminary results we will use the constructed export price ("CEP") price paid, through NTSI, the U.S. importer, by its first unaffiliated U.S. customer of subject merchandise during the POR.

U.S. Price

Constructed Export Price

For NTSF, we based the U.S. price on CEP in accordance with section 772(b) of the Act, for sales made on behalf of NTSF by its U.S. affiliate, NTSI, to an unaffiliated purchaser. We based CEP on packed and delivered prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses.

We reviewed the movement expenses incurred in Vietnam by NTSF and find that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on surrogate values. *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Javier Barrientos, Case Analyst, Office 9: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated January 19, 2009 ("Surrogate Values Memo") for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from a non-market economy country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

NTSF reported the inputs beginning with the food-size fish because it is only a processor of fish fillets and had no hatchery or farming FOPs during the POR. Therefore, it only reported FOPs associated with the processing and packing stages of production. As such, the Department will account for all of NTSF's reported inputs in the normal value calculation.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by NTSF during the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost, and in the case of import statistics surrogate values, using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with court decision in *Sigma Corp.* v. *United States,* 24 C.I.T. 97, 86 F.Supp 2d 1344 (CIT 2000). Where we did not use import statistics, we calculated freight based on the reported distance from the supplier to the factory.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index ("WPI") for the subject country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China,* 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index rate for Bangladesh, or the WPI for India (for certain surrogate values where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's Web site.

For further details regarding the surrogate values used for these preliminary results, *see* the Surrogate Values Memo.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period August 1, 2008, through January 31, 2009:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted-Average Margin (Percent)
NTSF/NTSI	0.00

Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within ten days of the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[6]

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of this new shipper review, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis.[7] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this is above *de minimis.*

Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from NTSF entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by NTSF, the cash deposit rate will be $0.00/Kg.; (2) for subject merchandise exported by NTSF but not manufactured by NTSF, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* 63.88 percent); and (3) for subject merchandise manufactured by NTSF, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of its responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[6] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[7] We divided the total dumping margins (calculated as the difference between NV and CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 19, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–1625 Filed 1–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1659]

Reorganization of Foreign-Trade Zone 234 Under Alternative Site Framework, Gregg County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, Gregg County, Texas, grantee of Foreign-Trade Zone 234, submitted an application to the Board (FTZ Docket 27–2009, filed 7/7/2009) for authority to reorganize under the ASF with a service area of Gregg County, Texas, adjacent to the Shreveport-Bossier City Customs and Border Protection port of entry, and FTZ 234's existing Sites 1 through 3 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 34714–34715, 7/17/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 234 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 3 if not activated by January 31, 2015.

Signed at Washington, DC, this 15th day of January 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1631 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1660]

Reorganization of Foreign-Trade Zone 39 Under Alternative Site Framework Dallas/Fort Worth, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, submitted an application to the Board (FTZ Docket 29–2009, filed 7/17/2009) for authority to reorganize under the ASF with a service area of Dallas, Tarrant, Kaufman, Collin, Grayson, and Denton Counties, Texas, in and adjacent to the Dallas/Fort Worth Customs and Border Protection port of entry, and FTZ 39's existing Sites 1 through 12 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 36165–36166, 7/22/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 39 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 3, 4, 5, 6 and 10 if not activated by January 31, 2015 and for Sites 2, 7, 8, 9, 11 and 12 if not activated by March 31, 2015.

Signed at Washington, DC, this 15th day of January 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–1627 Filed 1–26–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, February 26, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–1784 Filed 1–25–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., February 19, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–1787 Filed 1–25–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Wednesday, February 17, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–1785 Filed 1–25–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 12, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–1793 Filed 1–25–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, February 5, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–1791 Filed 1–25–10; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, January 27, 2010, 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Weekly Report—Commission Briefing.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: January 19, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–1336 Filed 1–26–10; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information: Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Program for North American Mobility in Higher Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116N.

Dates:

Applications Available: January 27, 2010.

Deadline for Transmittal of Applications: March 24, 2010.

Deadline for Intergovernmental Review: May 23, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide grants for or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Priorities: This competition includes one absolute priority and one invitational priority.

Absolute Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764). For FY 2010 this priority is an absolute priority. Under 34 CFR 75.105 (c)(3) we consider only applications that meet this priority.

This priority is:

Program for North American Mobility in Higher Education (84.116N).

This priority supports the formation of educational consortia of United States (U.S.), Canadian, and Mexican institutions. To meet this priority, the applicant must propose a project that supports cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities among the U.S., Canada, and Mexico. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution, the applicant in Mexico must be a Mexican institution, and the applicant in Canada must be a Canadian institution.

Canadian and Mexican institutions participating in any consortium proposal under this priority may apply, respectively, to Human Resources and Social Development Canada (HRSDC) or the Mexican Secretariat for Public Education (SEP), for additional funding under separate but parallel Canadian and Mexican competitions.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

This priority supports exchanges between Mexican, Canadian, and U.S. minority-serving institutions to increase the participation of underrepresented minorities in the program.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $300,000.

Estimated Range of Awards: $30,000 for the first year; $185,000–$195,000 for the entire four-year grant.

Estimated Average Size of Awards: Any 2010 application that is funded

will be awarded $30,000 for the first year and $185,000–$195,000 for a four-year grant.

Estimated Number of Awards: 9–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116N.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Word Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to 5000 words, using the following standards:

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 5000-word limit does not apply to the cover sheet; the budget section, including the budget narrative; the assurances and certifications; the one-page abstract; the resumes; the bibliography; or the letters of support.

We will reject your application if you exceed the word limit.

3. *Submission Dates and Times:*

Applications Available: January 27, 2010.

Deadline for Transmittal of Applications: March 24, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 23, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Program for North American Mobility in Higher Education—CFDA Number 84.116N must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any word limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., Room 6152, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116N) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116N) 550 12th Street, SW., Room 7041, Potomac Center Plaza. Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is demonstration of a tri-lateral, innovative North American approach to training and education.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two performance measures will be used by the Department in assessing the success of the FIPSE—Special Focus Competition: Program for North American Mobility in Higher Education:

(1) The extent to which funded projects are being replicated (*i.e.,* adopted or adapted by others).

(2) The manner in which projects are being institutionalized and continued after funding.

If funded, you will be asked to collect and report data from your project on steps taken toward achieving the outcomes evaluated by these performance measures (*i.e.,* institutionalization and replication). Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Institutionalization and replication are important outcomes that ensure the ultimate success of international consortia funded through this program.

VII. Agency Contact

For Further Information Contact: Frank Frankfort, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, Program for North American Mobility in Higher Education, 1990 K Street, NW., Room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7513.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: January 22, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–1617 Filed 1–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its "Annual Alternative Fuel Vehicle Acquisition Report for State and Alternative Fuel Provider Fleets," OMB Control Number 1910–5101. This information collection package covers information necessary to ensure the compliance of regulated fleets with the alternative fueled vehicle acquisition requirements imposed by the Energy Policy Act of 1992, as amended, (EPACT).

DATES: Comments regarding this collection must be received on or before February 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to:

John E. Davenport, Director, M–11/Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, and to:

Mr. Dana O'Hara, Regulatory Manager, Vehicle Technologies Program, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Dana O'Hara at the addresses listed above in **ADDRESSES** or by e-mail at *dana.o'hara.ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No. 1910–5101; (2) Information Collection Request Title: Annual Alternative Fuel Vehicle Acquisition Report for State Government and Alternative Fuel

Provider Fleets; (3) Type of Review: renewal; (4) Purpose: the information is required so that DOE can determine whether alternative fuel provider and State government fleets are in compliance with the alternative fueled vehicle acquisition mandates of sections 501 and 507(o) of the EPACT, whether such fleets should be allocated credits under section 508 of EPACT, and whether fleets that opted into the alternative compliance program under section 514 of EPACT are in compliance with the applicable requirements; (5) Annual Estimated Number of Respondents: Approximately 300; (6) Annual Estimated Number of Burden Hours: 1,651.

Statutory Authority: 42 U.S.C. 13251 *et seq.*

Issued in Washington, DC, on January 15, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–1687 Filed 1–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Request for Comments and Recommendations

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Request for General Comments.

SUMMARY: EIA is seeking general comments on matters described below in support of the Energy and Financial Markets Initiative announced on September 9, 2009.

DATES: Comments from interested parties are requested to be received by close of business on March 29, 2010.

ADDRESSES: Send comments to ensure receipt of the comments by the due date, submission, preferably as a Word attachment to an e-mail to (*karen.robinson@eia.doe.gov*), or by FAX (202–586–3873). The mailing address is Office of Oil and Gas, EI–40, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, Karen R. Robinson may be contacted by telephone at (202) 586–2585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Karen Robinson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The U.S. Energy Information Administration (EIA) is the statistical and analytical agency within the U.S. Department of Energy. EIA collects, analyzes, and disseminates independent and impartial energy information to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment. EIA is the Nation's premier source of energy information and, by law, its data, analyses, and forecasts are independent of approval by any other officer or employee of the United States Government.

The Federal Energy Administration Act of 1974 as amended, specifically 15 U.S.C. 790a, and the DOE Organization Act, specifically 42 U.S.C. 7135, require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The present notice focuses on information needed to support analysis and increased understanding of energy markets and does not itself propose any new information collection by EIA. The general comments received in response to this notice will be considered by the agency as it develops a plan of action to fill key information gaps.

EIA evaluates its activities on an ongoing basis through a variety of formal and informal methods. EIA provides opportunities for interested parties to shape its functions and practices through its annual conference, joint meetings with the American Statistical Association, meetings with experts, and other outreach opportunities. EIA also tracks its website metrics and formal citations of its data and analyses to measure interest in the information it provides.

The EIA Web site at *http://www.eia.gov* is the principal method for dissemination of its energy industry information. One of the Web site pages, *http://www.eia.doe.gov/bookshelf.html,* provides a list of weekly, monthly and annual reports and special analyses, and another page, *http://www.eia.doe.gov/oss/forms.html,* lists over 64 active data surveys and forms used to collect these data. During fiscal year 2009, EIA Web pages were viewed over 10 million times per month, reflecting both searches for information and cataloging of sites by search engines. A recent survey indicated that about half of EIA visitors are commercial, and many indicate that they use information from EIA and other Web sites to meet their needs. Many customers are regular users of EIA data; nearly half of the respondents to the survey indicated that they visited the Web site weekly or more frequently.

In recent years, energy markets have developed in ways that were not anticipated in the original planning and evolution of EIA's information program. In addition to the factors EIA has historically tracked, such as production, consumption, inventories, and spare capacity, moving forward, EIA is interested in assessing other market influences, such as speculation, hedging, investment, interest rates and exchange rates. On September 9, 2009, EIA announced an Energy and Financial Markets Initiative to improve EIA's responsiveness, in particular, to energy market developments (*http://www.eia.doe.gov/neic/press/press325.html*). Proposed actions were announced in four main areas, including identification of critical information on factors affecting energy prices and analysis through in-depth studies of energy market behavior. Other efforts included coordination with other Federal agencies engaged in energy market information collection and analysis and outreach to solicit feedback from a broad range of experts on the interrelationship of energy and financial markets.

In its September 2009 announcement, EIA pointed out that it already collects significant energy information, but that additional data would further improve market transparency. EIA has already proposed to expand its collection of commercial oil and refined products storage capacity data beginning in early 2010. The **Federal Register** notice for this collection can be found at *http://edocket.access.gpo.gov/2009/pdf/E9–26319.pdf.* EIA has moved toward a broader analysis of market factors through a characterization of oil and natural gas market volatility in the *Short-Term Energy Outlook* (STEO). EIA now calculates an "implied volatility" for oil and natural gas futures prices using a generally accepted mathematical model, as described in the technical report accompanying the STEO entitled *Energy Price Volatility and Forecast Uncertainty* (at *http://www.eia.doe.gov/*

emeu/steo/pub/special/2009_sp_05.html). This implied volatility is used to generate confidence intervals around futures prices, allowing readers to understand the degree of uncertainty surrounding current and future expected prices.

II. Current Actions

EIA is currently considering the state of its statistical data collecting and analysis activities, which include:

- Identifying the best data for understanding relationships among physical inventories, energy prices, and market activity, as well as identifying what other data is important to better understand energy price movements.
- Identifying what market data EIA might seek from other Federal agencies, including from the Commodity Futures Trading Commission (CFTC), and from other sources to analyze the influence of futures and related financial market activity on energy prices in the context of other energy market factors.
- Providing a comprehensive assessment, over the next year, of remaining energy information gaps in physical and financial markets, and developing a strategy to fill them.

EIA is not proposing specific changes in its data collection program in this notice.

A. Energy Market Data Needs

Recent energy price volatility and the international economic issues posed by recent financial institution distress have focused interest on the interrelations between physical energy markets and activities in futures and financial markets. Growth in trade of energy commodities has occurred not only on exchanges overseen by the CFTC, but increasingly in derivatives traded over-the-counter (OTC) and in energy-backed securities, neither of which have been historically overseen by the CFTC. During 2009, the CFTC held hearings on the effects of OTC trade in energy and other commodities, and Congress has considered proposals to change the organization and authorities for oversight of such markets. On January 14, 2010, the CFTC approved a notice of proposed rulemaking that would establish additional position limits on certain energy markets.

Unlike other Federal entities that currently collect market data, including the CFTC, the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC), EIA is not a regulatory agency. EIA uses the energy information it collects exclusively for statistical purposes to understand and assess energy market conditions. EIA's role in informing decision makers and the broader public regarding energy market developments could be strengthened by the availability of current and historical information about these related financial market practices.

In support of the above, EIA is considering the following topics:

- Identifying information associated with energy market behavior that is most needed to support analysis and increased understanding of energy markets; This might include:
  - Identifying all oil inventories and other physical oil assets, including all petroleum-based products and the storage of such products in offshore tankers, that are owned by the 50 largest traders of oil contracts including derivatives contracts;
  - Other physical market data;
  - Identifying information on energy-related futures and options traded on exchanges;
  - Identifying information on behavior in the OTC market for physical delivery of energy commodities in spot and term markets;
  - Identifying information on behavior in the OTC market for financially-settled swaps, options and other energy derivatives; or
  - Other financial market data.
- Determining the appropriate level of aggregation (ranging from transaction-level data to highly aggregated data) and the appropriate data frequency.
- To the extent historical information might be important for interpreting current market dynamics information, determining the historical time period EIA should consider in acquiring additional information.
- Determining what would be a useful series of recurring data and analysis reports that EIA could produce.

B. Energy Market Data Sources

Given the public interest in assuring that EIA's information collection activities do not impose an undue burden, EIA is presently considering whether and to what extent it can obtain data from other sources, including:

- Other Federal entities that EIA should incorporate into its analyses of energy prices;
- Non-governmental sources that could help EIA and its customers better understand, analyze and explain the effects of market behavior on energy prices without requiring additional survey data collection efforts;
- Other Federal entities or other sources that EIA should collect to inform policymakers, market participants, and the public about energy market behavior and prices; and
- Information-gathering methods that EIA should use to become informed of participants entering or leaving the market(s), in order to manage its survey samples.

C. Timing and Frequency of Existing EIA Energy Data Releases

EIA produces many weekly, monthly, and annual reports on energy marketing and operations. In each case, there are time lags between the "as of" date of the information and the publication of the reports. The delay arises from the time needed for data collection, verification of collected data, follow-up with respondents to make clarifications, imputation of missing data, generation of aggregate values from the survey sample, and analysis of aggregate data. The total time for any given report depends on the effort required to perform these tasks and to achieve data quality standards.

EIA monitors and publishes information regarding adherence to its schedules, and has typically achieved a 95 percent or better success rate against its schedule. However, a recent EIA customer survey indicated that some customers would appreciate acceleration of some releases. EIA is considering:

- For energy information already being collected and disseminated, an acceleration or increased frequency of existing schedules;
- Any consequences to changing time lags in the EIA dissemination process given the availability of information from other sources, some of which require paid subscriptions; and
- Priorities for EIA in allocating limited resources among additional information, more frequent information, and more timely information.

D. Specific Types of Crude Oil

Recently, discussion of energy price behavior has raised several specific issues regarding the non-homogeneous nature of oil as a commodity. Different types of crude oil are produced in different geographical areas, have variations in chemical content, and are therefore sold at different prices. For example, the relative supply of crudes of different qualities can interact with existing refinery capacity, environmental regulations and refinery investment patterns to influence prices. When prices of major benchmark crude types, such as West Texas Intermediate (WTI), change, prices also change for other crudes and, in some cases, financial instruments linked to such benchmarks.

EIA collects crude quality data in regard to import quantities and prices, but does not collect or analyze other aspects of the crude oil market in terms

of crude oil quality. Regarding acquisitions, Form EIA–856, "Monthly Foreign Crude Oil Acquisition Report," seeks the FOB, landed costs and other features of crude oil acquisition, including crude oil type and quality. Firms importing 500,000 barrels or more in a reporting month are asked to identify the generic crude oil quality stream for each purchase, selecting from a list of several hundred options. (*See* Appendix A at *http://www.eia.doe.gov/pub/oil_gas/petroleum/survey_forms/eia856i.pdf.*) In addition, importers are asked to provide the API gravity of specific shipments. Current EIA reports derived from this information are typically limited to aggregations by country of origin and average prices for different levels of API gravity.

Customers of EIA analyses might benefit from a more detailed treatment of crude quality differentials as a factor affecting market dynamics. EIA is therefore considering what, if any, additional types of information it should collect, analyze, and disseminate on the pricing, landed costs, inventory, and supply levels of different types of crude oil.

III. Request for General Comments

General comments submitted in response to this notice will be considered and utilized to develop a plan of action.

Statutory Authority: Section 52(a) of the Federal Energy Administration Act of 1974 as amended, Public Law 94–385, codified at 15 U.S.C. 790a.

Issued in Washington, DC, January 20, 2010.

Howard K. Gruenspecht,

Deputy Administrator, Energy Information Administration.

[FR Doc. 2010–1663 Filed 1–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13–023]

Green Island Power Authority; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

January 20, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 13–023.

c. *Date Filed:* March 2, 2009.

d. *Applicant:* Green Island Power Authority.

e. *Name of Project:* Green Island Hydroelectric Project.

f. *Location:* The existing project is located on the Hudson River in Albany County, New York. The project would occupy Federal land managed by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Agent Contact:* James A. Besha, President, Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205; (518) 456–7712.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. The deadline for filing comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link. For a simpler method of submitting text-only comments, click on "Quick Comment."

k. This application has been accepted for filing and is ready for environmental analysis.

l. *Project Description:* The existing Green Island Project utilizes the U.S. Army Corps of Engineers (Corps) Green Island-Troy lock and dam that consists of: (1) A dam with a main spillway with a fixed crest elevation of 14.33 feet mean sea level (msl); (2) an auxiliary spillway with a crest elevation of 16.33 feet msl; and (3) a 520-foot-long, 45-foot-wide lock.

The Green Island Project consists of: (1) 2-foot-high pneumatic flashboards along the top of the main spillway with a crest elevation of 16.33 feet msl; (2) a 700-acre impoundment with a normal water surface elevation of 16.33 feet msl; (3) a bulkhead and forebay structure located downstream and at the west end of the Corps dam; (4) a powerhouse containing four 1.5 megawatt (MW) generating units with a total installed capacity of 6.0 MW; (5) a 34.5-kilovolt (kV) underground transmission cable; and (6) appurtenant facilities.

Green Island Power Authority proposes to: (1) Lower the existing main spillway to a crest elevation of 12.5 feet msl, and install new hydraulically operated crest gates with a maximum crest gate elevation of 18.5 feet msl; (2) increase the auxiliary spillway elevation to 18.4 feet msl; (3) raise the impoundment elevation to 18.4 feet msl and increase the impoundment size to 708 acres; (4) install a new trash boom extending across and upstream of the forebay; (5) expand the existing powerhouse to the east and west and install four new 6.0 MW generating units, and replace the four existing generating units with four new 6.0 MW generating units with a total installed capacity of 48 MW; and (6) install a new 13.8-kV, 70-foot-long transmission line.

On January 15, 2010, Green Island Power Authority filed a resource-specific settlement agreement signed by it and the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation. Under the settlement agreement, Green Island Power Authority would: (1) Construct two new Denil fish ladders for upstream passage; (2) construct a new fish exclusion screen and downstream fish passage facility; (3) construct three new eel ladders for upstream passage; and (4) develop plans for fishway effectiveness testing and monitoring, shortnose sturgeon monitoring and mitigation, and water quality and streamflow monitoring.

m. A copy of the application and settlement agreement are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available

for inspection and reproduction at the address in item (h) above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of availability of the EA.	July 29, 2010
Filing comments on EA ..	August 30, 2010
Filing modified terms and conditions.	October 29, 2010

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

q. A license applicant must file no later than 60 days following the date of issuance of the notice ready for environmental analysis provided for in sections 5.22 and 5.23: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1531 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183–072]

Grand River Dam Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 20, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No.:* 2183–072.

c. *Date Filed:* August 4, 2009.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* The project is located on the Grand River in Mayes County, OK. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* D. Casey Davis, Grand River Dam Authority, P.O. Box 409, 226 West Dwain Willis Avenue, Vinita, Oklahoma 74301–0409, (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Hillary Berlin at (202) 502–8915 or by e-mail: *Hillary.Berlin@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, and/or comments:* February 22, 2010.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2183–072) on any comments or motions filed.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of the Application:* The Grand River Dam Authority, licensee for the Markham Ferry Hydroelectric Project, filed a Shoreline Management Plan (SMP) for the project. The SMP is a comprehensive plan to manage the multiple resources and uses of the project's shoreline in a manner that is consistent with license requirements and project purposes, and to address the needs and interests of stakeholders.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies or directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1533 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13356–000]

Slatersville Hydro, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions and Waiving Scoping

January 20, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–13356–000.

c. *Date Filed:* January 15, 2009.

d. *Applicant:* Slatersville Hydro, LLC.

e. *Name of Project:* Slatersville Hydroelectric Project.

f. *Location:* On the Branch River in Providence County, Rhode Island. The project would not occupy any land of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Michael P. DeFrancesco, 87 Hall Road, Exeter, RI 02822, (401) 742–1968.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. A notice of intent to waive scoping was issued on October 22, 2009, establishing November 23, 2009 as the deadline for filing comments. No comments were filed. With this notice we are waiving scoping for the proposed Slatersville Project.

l. This application has been accepted for filing and is now ready for environmental analysis at this time.

m. *Description of Project:* The Slatersville Project would consist of: (1) The existing 13-foot-high RI Dam No. 43 consisting of: (a) a 175-foot-long spillway with a spillway elevation of 250.7 feet National Geodetic Vertical Datum 1988 (NGVD); and (b) a westerly abutment equipped with two 3.5-foot-wide, 5.7-foot-high sluice gates impounding; (2) the existing 172-acre Upper Slatersville reservoir leading to; (3) two new 150-foot-long, 4.5-foot-diameter penstocks connecting to; (4) a new powerhouse containing two generating units with a total installed capacity of 360 kilowatts; (5) a new 25-foot-long tailrace discharging water into the Lower Slatersville reservoir; (6) a new 200-foot-long, 13.8 kilovolt transmission line; (7) new eel and fish passage facilities; and (8) appurtenant facilities. The project would have an average annual generation of about 1,250 megawatt-hours.

Project facilities would also include: (1) The existing 6-foot-high RI Dam No. 45 with a 105-foot-long spillway; and (2) the existing 0.3-acre reservoir with a normal water surface elevation of 231.9 feet NGVD located in the bypassed reach between RI Dam No. 43 and the new tailrace.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

p. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Notice of the availability of the EA: June 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance

date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1532 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12599–016]

Turnbull Hydro, LLC; Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

January 20, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* 12599–016.

c. *Date Filed:* December 17, 2009.

d. *Applicant:* Turnbull Hydro, LLC.

e. *Name of Project:* Mill Coulee Drops Hydroelectric Project.

f. *Location:* The unconstructed project was to be located on the Mill Coulee Canal in Cascade County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Ted S. Sorensen, 5203 South 11th Street, Idaho Falls, ID 83404, (208) 522–8069 and Mr. Nicholas E. Josten, Project Engineer, GeoSense, 2742 Saint Charles Avenue, Idaho Falls, ID 83404, (208) 528–6152.

i. *FERC Contact:* Patricia W. Gillis, Telephone (202) 502–8735.

j. *Deadline for filing comments, motions to intervene, and protests:* February 18, 2010. Comments, motions to intervene, and protests 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 "eFiling" 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.*

k. *Description of Request:* The licensee filed an application to surrender its license for the unconstructed Mill Coulee Drops Hydroelectric Project. The Licensee has not commenced construction of the project. No ground disturbing activities have occurred.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1530 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

January 14, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–301–000.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits a Second Revised Sheet 4F *et al.*

Filed Date: 01/08/2010.

Accession Number: 20100111–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

Docket Numbers: RP10–302–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits a Fifth Revised Volume 1 of 15 Revised Sheet 66B.35.

Filed Date: 01/08/2010.

Accession Number: 20100111–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

Docket Numbers: RP10–303–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits a report which compares cash out revenues with cash out costs incurred for the annual billing period of 11/1/08 thru 10/31/09.

Filed Date: 01/11/2010.

Accession Number: 20100111–0202.

Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–304–000.

Applicants: Southern LNG, Inc.

Description: Southern LNG submits Second Revised Sheet 43 to its FERC Gas Tariff, Original Volume 1 to be effective 3/1/10.

Filed Date: 01/11/2010.

Accession Number: 20100111–0201.

Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–305–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits a capacity release agreement containing negotiated rate provisions executed by Gulf South and Texla Energy Management, Inc.

Filed Date: 01/11/2010.
Accession Number: 20100111–0440.
Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–306–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits Original Sheet No 11H.
Filed Date: 01/12/2010.
Accession Number: 20100113–0203.
Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–307–000.
Applicants: High Island Offshore System, LLC.
Description: High Island Offshore System, LLC Clarification of Characterization of Service Agreements.
Filed Date: 01/12/2010.
Accession Number: 20100112–5140.
Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–308–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits First Revised Sheet No 1 *et al.* to FERC Gas Tariff, Fifth Revised Volume No 1.
Filed Date: 01/13/2010.
Accession Number: 20100113–0210.
Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–309–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits FERC Gas Tariff, First Revised Volume 2 and First Revised Sheet 108, to be effective 2/13/10.
Filed Date: 01/13/2010.
Accession Number: 20100113–0208.
Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

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. 2010–1553 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

January 5, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–286–000.
Applicants: Midcontinent Express Pipeline, LLC.
Description: Midcontinent Express Pipeline LLC submits Original Sheet 14S, First Revised Sheet 283 to its FERC Gas Tariff, Original Volume 1, to be effective 1/1/10.
Filed Date: 12/31/2009.
Accession Number: 20091231–0239.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: RP10–287–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Co, Ltd submits Twenty-Sixth Revised Sheet No. 4C *et al.* to FERC Gas Tariff, Second Revised Volume No. 2.
Filed Date: 12/31/2009.
Accession Number: 20100104–0146.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: RP10–289–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits an amendment to an existing Transportation Rate Schedule FTS Agreement.
Filed Date: 12/31/2009.
Accession Number: 20100104–0144.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: RP10–290–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits First Revised Sheet No. 11D to FERC Gas Tariff, Second Revised Volume No. 1.
Filed Date: 12/31/2009.
Accession Number: 20100104–0145.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–1555 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

January 14, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP92–132–065. RP91–203–077.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits Thirteenth Revised Sheet No. 407 *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1.

Filed Date: 12/31/2009.

Accession Number: 20100106–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: RP10–206–001.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Substitute Original Sheet 739c to FERC Gas Tariff, Sixth Revised Volume 1 to be effective 1/1/10.

Filed Date: 01/06/2010.

Accession Number: 20100107–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP10–233–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Second Revised Sheet 4000 to FERC Gas Tariff, Third Revised Volume 1 to be effective 1/11/10.

Filed Date: 01/06/2010.

Accession Number: 20100107–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP09–762–002.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Fifth Revised Sheet 322 *et al.* to its FERC Gas Tariff, Second Revised Volume 1A.

Filed Date: 01/11/2010.

Accession Number: 20100111–0203.

Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–282–001.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission, LLC submits the Firm Transportation Service Agreement with Koch Supply and Trading, LP.

Filed Date: 01/13/2010.

Accession Number: 20100113–0209.

Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–1554 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 11, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–263–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits Original Sheet 35C.08 to its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 1/1/2010.

Filed Date: 12/22/2009.

Accession Number: 20091224–0006.

Comment Date: 5 p.m. Eastern Time on Friday, January 15, 2010.

Docket Numbers: RP10–295–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits the Non-confirming Transportation Service Agreement.

Filed Date: 01/07/2010.

Accession Number: 20100108–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP10–296–000.

Applicants: Central Kentucky Transmission Company.

Description: Central Kentucky Transmission Company submits First Revised Sheet No. 350 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 2/18/2010.

Filed Date: 01/08/2010.

Accession Number: 20100108–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

Docket Numbers: RP10–297–000.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company submits First Revised Sheet No. 550 *et al.* to FERC Gas Tariff, First Revised Volume No. 1, to be effective 2/18/2010.

Filed Date: 01/08/2010.

Accession Number: 20100108–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

Docket Numbers: RP10–298–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits First Revised Sheet No. 500 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 2/18/2010.

Filed Date: 01/08/2010.

Accession Number: 20100108–0214.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

Docket Numbers: RP10–299–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Co submits Eighth Revised Sheet No. 317 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 2/18/2010.
Filed Date: 01/08/2010.
Accession Number: 20100108–0215.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

Docket Numbers: RP10–300–000.
Applicants: Carolina Gas Transmission Corporation.
Description: Carolina Gas Transmission Corporation's 2009 Interruptible Transportation Revenue Sharing Report.
Filed Date: 01/08/2010.
Accession Number: 20100108–5099.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 20, 2010.

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.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–1552 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 8, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–288–000.
Applicants: Equitrans, L.P.
Description: Equitrans, LP submits First Revised Tariff Sheet 318 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 1/1/10.
Filed Date: 12/31/2009.
Accession Number: 20100104–0147.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

Docket Numbers: RP10–291–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline, LLC submits Original Sheet 11E to its FERC Gas Tariff, Second Revised Volume 1 to be effective 1/6/10.
Filed Date: 01/05/2010.
Accession Number: 20100105–0207.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP10–292–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline, LLC submits Original Sheet 11F to FERC Gas Tariff, Second Revised Volume 1 to be effective 1/7/10.
Filed Date: 01/06/2010.
Accession Number: 20100107–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP10–293–000.
Applicants: Northern Natural Gas Company.
Description: Petition of Northern Natural Gas Company for limited waiver of tariff provisions.
Filed Date: 01/07/2010.
Accession Number: 20100107–0209.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP10–294–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits FERC Gas Tariff, Fifth Revised Volume 1 of 34 Revised Sheet 54 *et al.,* to be effective 2/1/10.
Filed Date: 01/07/2010.
Accession Number: 20100107–0210.
Comment Date: 5 p.m. Eastern Time on Thursday, January 14, 2010.

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.

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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. 2010–1551 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 7, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–143–002.

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 Monday, January 11, 2010.

Docket Numbers: RP09–431–001.

Applicants: Vector Pipeline LP.

Description: Vector Pipeline, LP submits Eleventh Revised Sheet No. 20 *et al.* to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 01/05/2010.

Accession Number: 20100105–0215.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 19, 2010.

Docket Numbers: RP92–132–065, RP91–203–077.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co submits Thirteenth Revised Sheet No. 407 *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1.

Filed Date: 12/31/2009.

Accession Number: 20100106–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–1550 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

January 5, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95–408–074.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Eighth Revised Sheet 25 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 2/1/10.

Filed Date: 12/30/2009.

Accession Number: 20091231–0033.

Comment Date: 5 p.m. Eastern Time on Monday, January 11, 2010.

Docket Numbers: RP95–408–075.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Eleventh Revised Sheet 28, to be effective 2/1/10.

Filed Date: 12/31/2009.

Accession Number: 20100104–0073.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 12, 2010.

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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–1549 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings. #1

January 20, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–38–000.

Applicants: Tucson Electric Power Company.

Description: Application Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration of Tucson Electric Power Company.

Filed Date: 01/15/2010.

Accession Number: 20100115–5041.

Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: EC10–39–000.

Applicants: American Transmission Company LLC.

Description: Application for Authority to Acquire Transmission Facilities Under Section 203 of the

Federal Power Act and Request for Expedited Action of American Transmission Company LLC.

Filed Date: 01/19/2010.

Accession Number: 20100119–5112.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–027; ER00–3240–017; ER01–1633–014.

Applicants: Southern Company Services, Inc., Southern Power Company, Oleander Power Project, L.P., Southern Company—Florida LLC.

Description: Southern Company Services, Inc., *et al.* Notice of Non-Material Change in Status.

Filed Date: 01/19/2010.

Accession Number: 20100119–5118.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER97–324–017; ER97–3834–023.

Applicants: DTE Energy Trading, Inc., The Detroit Edison Company.

Description: Application of The Detroit Edison Company and DTE Energy Trading, Inc. for Continued Waiver of Affiliate Restrictions.

Filed Date: 01/19/2010.

Accession Number: 20100119–5205.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER98–564–012; ER09–328–002.

Applicants: TransCanada Power Marketing Ltd.; TransCanada Energy Sales Ltd.

Description: Amendment to Request for Category 1 Seller Status of TransCanada Power Marketing Ltd. and TransCanada Energy Sales Ltd.

Filed Date: 01/19/2010.

Accession Number: 20100119–5202.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER99–2311–014; ER97–2846–017.

Applicants: Florida Power Corporation, Carolina Power & Light Company.

Description: Response of Carolina Power & Light Company and Florida Power Corporation to Change in Status Letter Order dated December 30, 2009.

Filed Date: 01/14/2010.

Accession Number: 20100114–5052.

Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER99–2948–019; ER00–2918–018; ER10–346–004; ER05–261–011; ER01–556–017; ER01–1654–021; ER02–2567–018; ER05–728–011; ER04–485–016; ER07–244–010; ER07–245–010; ER07–247–010.

Applicants: R.E. Ginna Nuclear Power Plant, LLC, Baltimore Gas and Electric Company, Constellation Energy Commodities Group, Constellation Power Source Generation LLC, Constellation NewEnergy, Inc., Nine Mile Point Nuclear Station, LLC, Handsome Lake Energy, LLC, Constellation Energy Commodities Group M, Calvert Cliffs Nuclear Power Plant LLC, Raven One, LLC, Raven Three, LLC, Raven Two, LLC.

Description: Baltimore Gas and Electric Company, *et al.* Notice of Change in Status.

Filed Date: 01/15/2010.

Accession Number: 20100115–5119.

Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER01–390–008; ER00–2706–008; ER08–1255–002; ER99–2769–011; ER99–3450–010; ER01–2760–007.

Applicants: Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC, Oak Creek Wind Power, LLC, Foote Creek III, LLC.

Description: Notice of Non-Material Change in Status of Chandler Wind Partners, LLC, *et al.*

Filed Date: 01/19/2010.

Accession Number: 20100119–5203.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER01–2398–017.

Applicants: Liberty Electric Power, LLC.

Description: Notice of Non-material Change in Status of Liberty Electric Power, LLC.

Filed Date: 01/15/2010.

Accession Number: 20100115–5126.

Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER09–1273–000.

Applicants: Westar Energy, Inc.

Description: Response to Deficiency Letter and Supplemental Filing of Westar Energy, Inc.

Filed Date: 01/20/2010.

Accession Number: 20100120–5009.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 10, 2010.

Docket Numbers: ER09–1589–002.

Applicants: American Transmission Systems, Inc.

Description: FirstEnergy Service Company's Filing in Compliance with the Commission's December 17, 2009 Order.

Filed Date: 01/15/2010.

Accession Number: 20100115–5128.

Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER10–537–001.

Applicants: Palmco Power MD, LLC.

Description: Amendment for the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority submitted by Palmco Power MD, LLC *etc.*

Filed Date: 01/19/2010.

Accession Number: 20100119–0221.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–539–001.

Applicants: Palmco Power OH, LLC.

Description: Amendment for the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority re Palmco Power OH, LLC *etc.*

Filed Date: 01/19/2010.

Accession Number: 20100119–0222.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–73–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff in Compliance with FERC's 12/15/09 Order.

Filed Date: 01/14/2010.

Accession Number: 20100119–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–74–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Substitute First Revised Sheet 2763 *et al* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 6/1/10.

Filed Date: 01/14/2010.

Accession Number: 20100119–0206.

Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–301–002.

Applicants: Black Hills Power, Inc. & Black Hills Wy.

Description: Black Hills Power, Inc *et al.* submits a substitute page to the Agreement to correct an error in Schedule A to the Agreement.

Filed Date: 01/14/2010.

Accession Number: 20100119–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–308–001.

Applicants: Kleen Energy Systems, LLC.

Description: Kleen Energy Systems, LLC submits Original Sheet 1 *et al.* to Rate Schedule FERC No 1 *et al.*

Filed Date: 01/15/2010.

Accession Number: 20100119–0204.

Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER10–420–001.

Applicants: Crystal Lake Wind II, LLC.

Description: Crystal Lake Wind II, LLC submits amendment to filing of jurisdictional agreement.
Filed Date: 01/14/2010.
Accession Number: 20100114–0210.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–559–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits an executed Amended and Restated Interconnection and Operating Agreement with Crownbutte Wind Power, Inc *et al*.
Filed Date: 01/06/2010.
Accession Number: 20100107–0206.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

Docket Numbers: ER10–583–000.
Applicants: Monarch Global Energy, Inc.
Description: Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority, submitted by Monarch Global Energy, Inc.
Filed Date: 01/19/2010.
Accession Number: 20100119–0223.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–593–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits Wholesale Market Participation Agreement.
Filed Date: 01/14/2010.
Accession Number: 20100114–0209.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–594–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits notice of cancellation of a Firm Transmission Service Agreement, Service Agreement No 1.
Filed Date: 01/14/2010.
Accession Number: 20100114–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–595–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy submits Notice of Cancellation of a Non-Firm Transmission Service Agreement, dated 4/23/93 *etc.*
Filed Date: 01/14/2010.
Accession Number: 20100114–0207.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–596–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy submits Notice of Cancellation of a Second Firm Transmission Service Agreement, dated 11/30/95 *etc.*
Filed Date: 01/14/2010.
Accession Number: 20100114–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–597–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy submits First Revised Sheets 3 *et al* of its Rate Schedule 262 Westar's Second Coal Participation Power Agreement *etc.*
Filed Date: 01/14/2010.
Accession Number: 20100114–0205.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–598–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy submits First Revised Sheets 3 *et al* of its rate Schedule 275 Westar's Second Coal Participation Power Agreement *etc.*
Filed Date: 01/14/2010.
Accession Number: 20100114–0204.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–599–000.
Applicants: Liberty Power Maine LLC, Liberty Power New Jersey LLC, Liberty Power Rhode Island LLC, Liberty Power Massachusetts LLC, Liberty Power Illinois LLC, Liberty Power Montana LLC, Liberty Power Michigan LLC, Liberty Power Virginia LLC, Liberty Power Arizona LLC, Liberty Power Oregon LLC, Liberty Power Nevada LLC, Liberty Power New Hampshire LLC, Liberty Power Pennsylvania LLC, Liberty Power Ohio LLC, Liberty Power California LLP, Liberty Power Connecticut LLP
Description: Liberty Power Maine, LLC *et al* submits notice of cancellation.
Filed Date: 01/14/2010.
Accession Number: 20100114–0214.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–600–000.
Applicants: Ampersand Energy Partners, LLC
Description: Motion for Limited Waiver of Ampersand Energy Partners, LLC.
Filed Date: 01/14/2010.
Accession Number: 20100114–5099.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–602–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits proposed revisions to its Second Revised Volume 6 Open access Transmission Tariff.
Filed Date: 01/14/2010.
Accession Number: 20100114–0217.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–603–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits purposed revisions to its Market Administration and Control Area Services Tariff *etc.*
Filed Date: 01/14/2010.
Accession Number: 20100114–0216.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 26, 2010.

Docket Numbers: ER10–604–000.
Applicants: Ameren Services Company.
Description: Ameren Services Company submits an executed revised service agreement for Wholesale Distribution Service and with Illinois Municipal Electric Agency.
Filed Date: 01/15/2010.
Accession Number: 20100114–0219.
Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER10–605–000.
Applicants: Elm Road Services LLC.
Description: Elm Road Services, LLC submits Power Purchase Agreement Providing for Sales of Test Power between ERS and Wisconsin Electric Power Company.
Filed Date: 01/15/2010.
Accession Number: 20100114–0220.
Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2010.

Docket Numbers: ER10–606–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interconnection service agreement among PJM, *et al.*
Filed Date: 01/14/2010.
Accession Number: 20100114–0218.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–614–000.
Applicants: Xcel Energy Services Inc.
Description: Public Service Company of Colorado submits Comanche 3 Test Energy Letter Agreement as a supplement to Public Agreement with Intermountain Rural Electric Association.
Filed Date: 01/19/2010.
Accession Number: 20100119–0225.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–615–000.
Applicants: Ameren Services Company.
Description: Union Electric Company submits executed revised service agreement for Wholesale Distribution Service with the Wabash Valley Power Association, Inc.
Filed Date: 01/19/2010.
Accession Number: 20100119–0224.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–617–000.
Applicants: Duke Energy Carolinas, LLC
Description: Duke Energy Carolinas submits the 2/5/09 confirmation with North Carolina Municipal Power Agency 1, and request that the agreement be made effective 1/1/11.
Filed Date: 01/14/2010.
Accession Number: 20100120–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, February 04, 2010.

Docket Numbers: ER10–618–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff to incorporate revised point to point transmission service rates for the Mid Kansas Electric Company *etc.*
Filed Date: 01/19/2010.
Accession Number: 20100120–0204.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Docket Numbers: ER10–619–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff to implement rate changes for Nebraska Public Power District.
Filed Date: 01/19/2010.
Accession Number: 20100120–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 09, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–17–000.
Applicants: South Carolina Electric & Gas Company, South Carolina Generating Company, Inc.
Description: Amendment to Application of South Carolina Electric & Gas Company, *et al.*
Filed Date: 01/19/2010.
Accession Number: 20100119–5200.
Comment Date: 5 p.m. Eastern Time on Friday, January 29, 2010.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM10–4–001; QM10–4–002.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire supplemental information to filing seeking authorization to terminate mandatory power purchase obligation for QF's greater than 5 MWs.
Filed Date: 01/15/2010; 01/12/2010.
Accession Number: 20100115–5117; 20100119–0001.
Comment Date: 5 p.m. Eastern Time on Friday, February 12, 2010.

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. 2010–1547 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 15, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–1090–000.
Applicants: Southern Star Center Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. forwards a *CD containing its Section 154.1(d) filing.*
Filing Date: 03/20/2009.
Accession Number: 20090324–0054.
Comment Date: 5 p.m. Eastern Time on Wednesday January 27, 2010.

Docket Numbers: RP09–1090–001.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc submits a CD containing the electronic versions of its Section 154.1(d) filing.
Filed Date: 09/28/2009.
Accession Number: 20091002–0092.
Comment Date: 5 p.m. Eastern Time on Wednesday January 27, 2010.

Docket Numbers: RP10–310–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits First Revised Sheet 225 *et al* to its FERC Gas Tariff, Fourth Revised Volume 1.
Filed Date: 01/13/2010.
Accession Number: 20100113–0211.
Comment Date: 5 p.m. Eastern Time on Monday, January 25, 2010.

Docket Numbers: RP10–311–000.
Applicants: Potomac-Appalachian Transmission Pipeline.
Description: TransCanada Corporation Refund Report for Coyote Springs Lateral Interruptible Transportation.
Filed Date: 01/15/2010.
Accession Number: 20100115–5025.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 27, 2010.

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. 2010–1548 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

January 20, 2010.

	Docket Nos.
Gilberton Power Company ...	EG10–1–000
CPV Keenan II Renewable Energy	EG10–2–000
Vantage Wind Energy LLC ...	EG10–3–000
Three Buttes Windpower, LLC	EG10–4–000
Grant County Wind, LLC	EG10–5–000

Take notice that during the month of December, 2009, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1528 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2677–019]

City of Kaukauna, WI; Notice of Availability of Environmental Assessment

January 20, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for a new license for the 8-megawatt (MW) Badger-Rapide Croche Hydroelectric Project located on the Fox River in Outagamie County, Wisconsin, and has prepared an Environmental Assessment (EA) in cooperation with the U.S. Army Corps of Engineers. In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments on the EA should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Badger-Rapide Croche Project No. 2677–019" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact John Smith at (202) 502–8972.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1534 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–464–000]

Colorado Interstate Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Raton 2010 Expansion Project

January 20, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Raton 2010 Expansion Project proposed by Colorado Interstate Gas Company (CIG) in the above-referenced docket. CIG requests authorization to construct approximately 118 miles of 16-inch diameter pipeline in Las Animas, Huerfano, Pueblo, and El Paso Counties, Colorado in two segments (the Spanish Peaks and Aguilar Laterals). The Project would increase firm capacity into CIG's system by 130,000 dekatherms per day (Dth/d).

The EA assesses the potential environmental effects of the construction and operation of the Raton 2010 Expansion Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Raton 2010 Expansion Project includes the following proposed facilities:

- Spanish Peaks Lateral (Line 247A)—a 28 mile 16-inch diameter pipeline from the existing Line 222A in Las Animas County, Colorado to the intersection of existing Line 27A near

the town of Aguilar in Las Animas County, Colorado;

- Aguilar Lateral (Line 248A)—a 91 mile 16-inch diameter pipeline from the existing Line 27A near the town of Aguilar, Colorado northerly through Huerfano and Pueblo Counties, Colorado to the intersection of existing Line 212A in El Paso County, Colorado;
- One new Kennedy Meter Station in Las Animas County, Colorado;
- Modify the existing Wet Canyon Meter Station in Las Animas County, Colorado;
- Modify the existing Picketwire Meter Station in Las Animas County, Colorado; and
- Modify the existing Bowie Meter Station in Weld County, Colorado.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, interest groups, and individuals, tribes, newspapers and libraries in the project area, and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that we receive your comments in Washington, DC on or before February 19, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP09–464–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert 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 on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "*Sign up*" or "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments 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.

If you choose the option to mail your comments, label one copy of the comments for the attention of Gas Branch 2, PJ–11.2. Please mail your comments promptly, so that they will be received in Washington, DC on or before February 19, 2010.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–464). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission 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.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1535 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM06–22–011]

North American Electric Reliability Corporation; Notice of Filing

January 20, 2010.

Take notice that on January 19, 2010, North American Electric Reliability Corporation (NERC) filed additional information that will allow the Commission to evaluate its approval of NERC's Critical Infrastructure Protection Version 1 Implementation Plan, in compliance with the Commission's December 17, 2009 Order, *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order Addressing Compliance Filing and Requiring Further Compliance Filing, 129 FERC ¶ 61,224 (2009) (December 17 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 9, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1527 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–327–000]

Dynegy Midwest Generation, Inc.; Notice of Filing

January 20, 2010.

Take notice that, on January 19, 2010, Dynegy Midwest Generation, Inc. filed to supplement its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 9, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1529 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–9–000]

Transmission Loading Relief Reliability Standard and Curtailment Priorities

Issued January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Commission requests comment on the interplay between Reliability Standard IRO–006–4 (Reliability Coordination—Transmission Loading Relief) and the curtailment priorities set forth in the Commission's *pro forma* open access transmission tariff, particularly sections 13.6 and 14.7.

DATES: Comments are due 60 days after publication in the **Federal Register.**

ADDRESSES: You may submit comments, identified by docket number by any of the following 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, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Ruta Kalvaitis Skučas, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–6647, *ruta.skucas@ferc.gov*.

Thomas Dautel, Federal Energy Regulatory Commission, Office of Energy Policy & Innovation, 888 First Street, NE., Washington, DC 20426, (202) 502–6196, *thomas.dautel@ferc.gov*.

Thanh Loung, Federal Energy Regulatory Commission, Office of Electric Reliability, 888 First Street, NE., Washington, DC 20426, (202) 502–6080, *thanh.luong@ferc,gov*.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

1. In this Notice of Inquiry (NOI), the Commission requests comments from industry and stakeholders regarding the interplay between Reliability Standard IRO–006–4 (Reliability Coordination—Transmission Loading Relief) and curtailment priorities in Commission-approved Open Access Transmission Tariffs (OATT). The Commission seeks further information, comments and data on whether Reliability Standard IRO–006–4 directs a reliability coordinator to curtail a firm interchange transaction crossing over a constrained flowgate prior to curtailing a non-firm native network load transaction across the same flowgate.

I. Background

2. On December 21, 2007, the North American Electric Reliability Corporation (NERC), the Commission-certified electric reliability organization (ERO), submitted for Commission approval modifications to Reliability Standard IRO–006–3, known as the transmission loading relief (TLR) procedure.[1] As discussed in greater detail below, Reliability Standard IRO–006–4 provides Interconnection-wide

[1] Reliability Standard IRO–006–4 modifies Reliability Standard IRO–006–3, which the Commission approved in Order No. 693. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

transmission loading relief procedures that can be used to prevent or manage potential or actual system operating limit or interconnection reliability operating limit violations.[2]

3. As discussed below, the NRG Companies filed comments on Reliability Standard IRO–006–4, asserting that the proposed modified Reliability Standard is not consistent with the requirements of the Commission-approved *pro forma* OATT. They asserted that, due to flaws in the Interchange Distribution Calculator,[3] firm transactions may be curtailed prior to non-firm transactions, resulting in an OATT violation. They also argued that the Interchange Distribution Calculator is flawed for several reasons, including that it does not take native load transactions into account when determining which transactions should be curtailed to relieve congestion. The Constellation Energy Commodities Group, Inc. filed comments in support of the NRG Companies' comments, arguing that the use of the Interchange Distribution Calculator has resulted in unjust and discriminatory curtailments, particularly firm transactions before non-firm transactions.

4. On July 21, 2008, the Commission issued Order No. 713, which, *inter alia,* directed NERC to submit a filing explaining one aspect of the TLR procedure before such procedure could be approved.[4] Following NERC's response, on March 19, 2009, the Commission approved Reliability Standard IRO–006–4 in Order No. 713–A. In addition, the Commission directed NERC to develop modifications to IRO–006–4, pursuant to section 215(d)(5) of the Federal Power Act (FPA).[5] In response to comments regarding competitive concerns and the application of the Interchange Distribution Calculator, the Commission concluded:

> The above comments on suggested improvements to the [transmission loading relief] procedure are beyond the scope of this proceeding, which pertains to the separation of business practices from the ERO's [transmission loading relief] procedure and implementation of the Commission's directives set forth in Order No. 693. We note, however, that the ERO indicated in its December 21, 2007 filing that it has a three-phase plan to improve the [transmission loading relief] procedures, and the third phase will consist of "a complete redrafting to incorporate enhancement and changes beyond the separation of reliability and business practice issues." Therefore, the phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding. We also note that NERC states it is currently updating the [Interchange Distribution Calculator] to more accurately determine the impacts of native load and network service.[6]

5. In a request for rehearing of Order No. 713–A, the NRG Companies, the Electric Power Supply Association, and Constellation Energy Commodities Group (Rehearing Parties) challenged the Reliability Standard on several grounds.[7] First, they assert that Reliability Standard IRO–006–4 violates the curtailment priorities established in Order Nos. 888[8] and 890[9] and the *pro forma* OATT approved by the Commission in those proceedings, because the standard favors native network load transactions over interchange transactions with respect to curtailment priority, and allows the curtailment of firm transactions before non-firm transactions.

6. The Rehearing Parties assert that, under sections 13.6 and 14.7 of the Commission's *pro forma* OATT, non-firm transmission services must be curtailed before firm transmission services, and firm point-to-point and network integration transmission service customers have an equal priority with the transmission provider's use of the system to deliver Network Resources to its native load. They maintain that, because of its reliance on the flawed Interchange Distribution Calculator, Reliability Standard IRO–006–4 would direct a reliability coordinator[10] to curtail a firm interchange transaction crossing over a constrained flowgate prior to curtailing a non-firm native network load transaction across the same flowgate. The Rehearing Parties also assert that the Commission has recognized such flaws in the Interchange Distribution Calculator and has directed NERC to address them.[11]

II. Discussion

A. OATT Requirements

7. Curtailment priorities are largely set forth in two sections of the Commission's *pro forma* OATT. Section 13.6 of the Commission's *pro forma* OATT, entitled Curtailment of Firm Transmission Service, provides that:

> Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. *Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J.* If multiple transactions require Curtailment, to the

[2] A System Operating Limit or SOL is the value (such as MW, MVar, amperes, frequency or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. NERC Glossary of Terms Used in Reliability Standards at 19, *available at http://www.nerc.com/files/Glossary_12Feb08.pdf* (NERC Glossary). An Interconnection Reliability Operating Limit or IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System. *Id.* at 10.

[3] The Interchange Distribution Calculator is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection. *Id.* at 9.

[4] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* Order No. 713, 124 FERC ¶ 61,071 (2008), *order on reh'g,* Order No. 713–A, 126 FERC ¶ 61,252 (2009), *order on reh'g,* Order No. 713–B, 130 FERC ¶ 61,032 (2010). The Commission sought clarification of whether the removal and transfer to NAESB of business-related requirements formerly contained in Reliability Standard IRO–006–3 would impact bulk-power system reliability, an issue unrelated to the current proceeding. Order No. 713, 124 FERC ¶ 61,071 at P 50.

[5] 16 U.S.C. 824o(d)(5) (2006). The modifications relate to the use of the term "alone" in Requirement R1.1 and changes to the Violation Risk Factors for Requirements R1 through R4 to "high," and are not related to the issues discussed in this NOI. Order No. 713–A, 126 FERC ¶ 61,252 at P 36, 59.

[6] Order No. 713–A, 126 FERC ¶ 61,252 at P 21 (footnotes omitted).

[7] *Request for Rehearing and Clarification of the NRG Companies, the Electric Power Supply Association and Constellation Energy Commodities Group,* Docket No. RM08–7–002 (Apr. 20, 2009) (Request for Rehearing).

[8] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[9] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009).

[10] The NERC Glossary defines a reliability coordinator as: "The entity that is the highest level of authority who is responsible for the reliable operation of the Bulk Electric System, has the Wide Area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The Reliability Coordinator has the purview that is broad enough to enable the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision." NERC Glossary at 16.

[11] Request for Rehearing at 8 n.12, *citing North American Electric Reliability Council,* 85 FERC ¶ 61,353 (1998).

extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. *All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service.* * * *. [T]he Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. . . .[12]

8. Section 14.7 of the Commission's *pro forma* OATT, entitled Curtailment or Interruption of Service, provides that:

The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons * * *. *Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J.* The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, (4) transmission service for Network Customers from non-designated resources, or (5) transmission service for Firm Point-to-Point Transmission Service during conditional curtailment periods * * *. *Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service.* * * *. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff.[13]

9. As indicated by the above-quoted text, the *pro forma* OATT provides that when curtailments are necessary, non-firm service shall be subordinate to firm service.

B. Reliability Standard IRO–006–4

10. Reliability Standard IRO–006–4, which is applicable to balancing authorities, reliability coordinators and transmission operators, establishes transmission loading relief procedures:

The purpose of this standard is to provide Interconnection-wide transmission loading relief procedures that can be used to prevent or manage potential or actual [system operating limit] and [interconnection reliability operating limit] violations to maintain reliability of the Bulk Electric System.

11. The Reliability Standard contains five requirements. Requirement R1 obligates a reliability coordinator experiencing a potential or actual system operating limit or interconnection reliability operating limit violation within its reliability coordinator area to select one or more procedures to mitigate potential or actual transmission overloads. Pursuant to the Commission's direction in Order No. 693,[14] sub-requirement R1.1 specifically notes:

The [transmission loading relief] procedure alone is an inappropriate and ineffective tool to mitigate an [interconnection reliability operating limit] violation due to the time required to implement the procedure. Other acceptable and more effective procedures to mitigate actual [interconnection reliability operating limit] violations include: reconfiguration, redispatch, or load shedding.

12. Requirement R2 mandates that the reliability coordinator only use local transmission loading relief or congestion management procedures to which the transmission operator experiencing the potential or actual system operating limit or interconnection reliability operating limit is a party. Requirement R3 establishes that a reliability coordinator with a transmission loading relief obligation from an interconnection-wide procedure follow the curtailments as directed by the interconnection-wide procedure. It also requires that a reliability coordinator desiring to use a local procedure as a substitute for curtailments as directed by the interconnection-wide procedure must obtain prior approval from the ERO. Requirement R4 mandates that each reliability coordinator comply with interconnection-wide procedures, once they are implemented, to curtail transactions that cross interconnection boundaries. Requirement R5 directs balancing authorities and reliability coordinators to comply with applicable interchange-related Reliability Standards during the implementation of transmission loading relief procedures.

13. NERC has established 7 TLR levels.[15] At Level 1, the reliability coordinator notifies of a potential system operating limit or interconnection reliability operating limit violation. At Level 2, the reliability coordinator holds interchange transactions at current levels to prevent operating limit violations. At Level 3, the reliability coordinator reallocates transmission by curtailing non-firm interchange transactions to allow higher-priority transactions to continue, and/or curtails non-firm interchange transactions to prevent further operating limit violations. At Level 4, the reliability coordinator reconfigures the transmission system to allow firm transactions to continue. At Level 5, the reliability coordinator curtails firm interchange transactions, either to allow certain other firm transactions to continue or to mitigate any further operating limit violations. At Level 6, the reliability coordinator implements emergency procedures. At Level 0, the TLR has concluded.

14. As previously noted, the Interchange Distribution Calculator is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection.[16]

C. Concerns Regarding Reliability Standard IRO–006–4

15. In Docket No. RM08–7–000, both the NRG Companies and the Rehearing Parties raised concerns regarding Reliability Standard IRO–006–4. In comments filed in response to the Commission's Notice of Proposed Rulemaking regarding Reliability Standard IRO–006–4, the NRG Companies argued that certain flaws in the Interchange Distribution Calculator result in violations of sections 13.6 and 14.7 of the Commission's *pro forma* OATT. First, NRG Companies asserted that there are flaws in the Interchange Distribution Calculator, which allows certain types of transactions to avoid curtailment.[17] NRG Companies explained that, for example, the Interchange Distribution Calculator does not take into account internal non-firm transactions, defined as those with a source and sink in the same Balancing Area, and will curtail firm transactions before these internal non-firm transactions. As a result, NRG Companies assert that interchange transactions bear a disproportionate share of the system's reliability obligations. Further, NRG Companies argue, the Interchange Distribution

[12] Order No. 890–B, 123 FERC ¶ 61,299, Pro Forma OATT 13.6 (emphasis added).

[13] Order No. 890–B, 123 FERC ¶ 61,299, Pro Forma OATT 14.7 (emphasis added).

[14] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577.

[15] *Transmission Loading Relief Procedures, TLR Levels, available at http://www.nerc.com/page.php?cid=567205.*

[16] NERC Glossary at 9.

[17] *Comments of the NRG Companies* at 8, 16–17, Docket No. RM08–7–000 (Oct. 10, 2008) (NRG Comments).

Calculator does not distinguish between firm and non-firm native load transmission services, assuming that all internal transactions are firm and assigning firm curtailment priorities to them.[18]

16. Following issuance of Order No. 713–A, the Rehearing Parties sought rehearing, asserting that Reliability Standard IRO–006–4 is not just and reasonable because it results in OATT violations and discriminates in favor of native load transactions made by a load serving entity over similar transactions entered into by an otherwise similarly-situated transmission-dependent utility or merchant generator. The Rehearing Parties cite to NRG's comments in the underlying proceeding that point to problems with the Interchange Distribution Calculator, upon which the Reliability Standard relies to determine curtailments.[19] They assert that sections 13.6 and 14.7 of the Commission's *pro forma* OATT require that non-firm transmission services be curtailed before firm transmission services, and state that firm point-to-point and network integration transmission service customers have an equal priority with the transmission provider's use of the system to deliver network resources to its native load.[20]

17. According to the Rehearing Parties, because of its reliance on the flawed Interchange Distribution Calculator, which does not take internal native load transactions into account, Reliability Standard IRO–006–4 would direct a reliability coordinator to curtail a firm interchange transaction crossing over a constrained flowgate prior to curtailing a non-firm native network load transaction across the same flowgate. The Rehearing Parties assert that this is a violation of the OATT's curtailment priorities and constitutes undue discrimination in favor of native load transactions. According to the Rehearing Parties, earlier reforms to the transmission loading relief procedures and the Interchange Distribution Calculator have not remedied these flaws.[21]

D. Commission Questions

18. In an order issued concurrently with this NOI, the Commission denies the Rehearing Parties' request for rehearing of Order No. 713–A as outside of the scope of the proceeding in Docket No. RM08–7–002.[22] However, the Commission believes that commenters have raised issues regarding Reliability Standard IRO–006–4 that merit further inquiry. Although we have reviewed the comments filed by NRG Companies and the Request for Rehearing in Docket No. RM08–7, we seek broader input from industry before determining how to proceed.

19. Therefore, the Commission seeks public comment on whether the current application of the transmission loading relief procedures and Reliability Standard IRO–006–4 are inconsistent with OATT curtailment priorities and, if so, recommended corrective actions.[23] In addition, the Commission seeks public comment on the following questions:

(a) Whether Reliability Standard IRO–006–4, as implemented by various transmission providers, reliability coordinators and balancing authorities, results in firm service being made subordinate to non-firm service?

(b) How do Transmission Providers currently implement OATT sections 13.6 and 14.7? Specifically, discuss whether Transmission Providers rely solely on the Interchange Distribution Calculator in determining which transactions to curtail, or whether they also take into account non-firm transactions internal to the Balancing Authority which are currently not reflected in the Interchange Distribution Calculator.

(c) If the Interchange Distribution Calculator results in firm service being made subordinate to non-firm service, would including transactions internal to a Balancing Authority help resolve the problem? If so, what parties would be impacted? If there are affected parties, please provide examples of what the impacts on those parties would be.

(d) If the Interchange Distribution Calculator results in firm service being made subordinate to non-firm service, would modifing it to calculate the Transfer Distribution Factors (TDF) for transactions within a Balancing Authority solve the identified issue of firm transactions being curtailed before non-firm transactions within a Balancing Authority?

(e) What is the role and responsibility of the transmission provider, reliability coordinator and balancing authority, in the TLR procedures and curtailment?

(f) As noted above, a Level 5 TLR is called to allow certain firm transactions to continue or to mitigate further operating limit violations and a Level 6 TLR is called to implement emergency procedures. Are commenters aware of Level 5 or Level 6 TLR procedures being called for reasons other than to allow certain other firm transactions to continue or to mitigate any further operating limit violations?

(g) If this is an issue, does it occur in non-RTO/ISO regions, within ISO/RTO footprints, or both?

20. The Commission also seeks an update from the ERO regarding its efforts to make improvements to the Interchange Distribution Calculator.[24]

III. Comment Procedures

21. The Commission invites interested persons to submit comments on the matters and issues proposed in this NOI, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 60 days from publication in the **Federal Register**. Comments must refer to Docket No. RM10–9–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

22. The Commission encourages comments to 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. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

23. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

24. 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.

IV. Document Availability

25. 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*)

[18] NRG Comments at 4.

[19] Request for Rehearing at 7, *citing* NRG Comments at 12–16.

[20] *Id.*

[21] Request for Rehearing at 8, *citing North Am. Electric Reliability Council,* 85 FERC ¶ 61,353 (1998), *order on reh'g,* 87 FERC ¶ 61,161 (1999).

[22] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* Order No. 713–B, 130 FERC ¶ 61,032 (2010).

[23] This proceeding will not address issues related to the Curtailment Threshold previously approved by the Commission. *North Am. Electric Reliability Council,* 87 FERC ¶ 61,160 (1999), *reh'g denied,* 96 FERC ¶ 61,079 (2001).

[24] We understand that the ERO previously estimated that resolving problems in the Interchange Distribution Calculator would take approximately 2 to 5 years; however, more than a year has passed since that estimate. *Compliance Filing of the North American Electric Reliability Corporation In Response to Paragraph 50 of Order No. 713* at 10, Docket No. RM08–7–001 (Sept. 11, 2008).

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.

26. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary 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.

27. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By the Commission. Commissioner Norris voting present.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1525 Filed 1–26–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2009–0304, FRL–9106–3]

Maine Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Camden, Rockport, Rockland and portions of Owls Head.

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, Office of Ecosystem Protection, Coastal and Oceans Protection Unit, Five Post Office Square, Suite 100, OEP06–1, Boston, MA 02109–3912. Telephone: (617) 918–1538. Fax number: (617) 918–0538. E-mail address: *rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 13, 2009, EPA published a notice that the state of Maine had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Camden, Rockland, Rockport and portions of Owls Head. Six comments were received on this petition. The response to comments can be obtained utilizing the above contact information.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a No Discharge Area (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

This Notice of Determination is for the waters of Camden, Rockport, Rockland and portions of Owls Head. The NDA boundaries are as follows:

Waterbody/general area	From longitude	From latitude	To longitude	To latitude
From USCG navigational aid red and white bell "CH" west across the water to Northeast Point in Camden:	69° 2′ 16.1″ W	44° 12′ 40.98″ N	69° 2′ 47.61″ W	44° 12′ 32.84″ N
From Northeast point west following the shore to the head of navigation in Camden Harbor at the mouth of the Megunticook River in Camden:	69° 2′ 47.61″ W	44° 12′ 32.84″ N	69° 3′ 51.14″ W	44° 12′ 37.58″ N
South following the shore to the head of navigation in Rockport Harbor and the mouth of the Goose River in Rockport:	69° 3′ 51.14″ W	44° 12′ 37.58″ N	69° 4′ 23.79″ W	44° 11′ 11.35″ N
South following the shore to the extent of navigation of Rockland Harbor and the mouth of the Unnamed stream in Rockland:	69° 4′ 23.79″ W	44° 11′ 11.35″ N	69° 6′ 11.65″ W	44° 4′ 41.42″ N
East following the shore to Owls Head in the town of Owls Head:	69° 6′ 11.65″ W	44° 4′ 41.42″ N	69° 2′ 36.46″ W	44° 5′ 30.58″ N
East in a straight line across the water to USGC navigational green can "7":	69° 2′ 36.46″ W	44° 5′ 30.58″ N	69° 2′ 30.06″ W	44° 5′ 24.95″ N
North in a straight line across the water to USCG navigational aid red and white bell "CH":	69° 2′ 30.06″ W	44° 5′ 24.95″ N	69° 2′ 16.1″ W	44° 12′ 40.98″ N

The area includes the municipal waters of Camden, Rockport, Rockland, and portions of Owls Head.

The information submitted to EPA by the state of Maine certifies that there are six pumpout facilities located within this area. A list of the facilities, with locations, phone numbers, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN THE NO DISCHARGE AREA

(Camden, Rockport, and Rockland)

Name	Location	Contact info.	Hours	Mean low water depth
Harbormaster	Town Landing Camden	207–236–3353, VHF 16	8am–5pm, 7 days	N/A.
Wayfarer Marine	59 Sea Street Camden	207–236–4378, VHF 9	8am–5pm, 7days	10 ft.
Journey's End Marina	120 Tilson Ave. Rockland	207–598–4444, VHF 9	8am–5pm, 7 days	8 ft.
Landings Marina	Commercial Street Rockland	207–596–6573, VHF 9	9am–5pm, 7 days	5 ft.
City of Rockland	Rockland Public Landing Rockland.	207–594–0312, VHF 9	9am–5pm, 7 days	6 ft.
Trident Yacht Basin	60 Ocean Street Rockland	207–236–8100, VHF 9	9am–5pm, 7 days	23 ft.

Dated: January 15, 2010.

H. Curtis Spalding,

Regional Administrator, New England Region.

[FR Doc. 2010–1581 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0681; FRL–8437–2]

Draft Test Guidelines; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of four draft test guidelines for Product Performance of Public Health Uses of Antimicrobial Agents for public review and comment.

DATES: Comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0681, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0681. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Electronic access to the OPPTS Test Guidelines: To access the OPPTS harmonized test guidelines electronically, please go to http://www.epa.gov/oppts and select "Test Methods & Guidelines" on the left side navigation menu. You may also access the guidelines in *http://www.regulations.gov* grouped by series under dockets ID numbers EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159, and EPA–HQ–OPPT–2009–0576.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Communications Services Branch (7506P), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone numbers: (703) 305–5017 and TDD: (202) 554–0551; fax number: (703) 305–5558.

For technical information contact: Michele Wingfield, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6349; fax number: (703) 305–5620; e-mail address: wingfield.michele@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

These draft guidelines are part of a series of test guidelines established by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing pesticides and chemical substances to develop data for submission to the Agency under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136, *et seq.*), and section 408 of the Federal Food, Drug and Cosmetic (FFDCA) (21 U.S.C. 346a).

The OPPTS test guidelines serve as a compendium of accepted scientific

methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA. The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and the companies that are subject to data submission requirements under TSCA, FIFRA, and/or the FFDCA.

As a guidance document, the test guidelines are not binding on either EPA or any outside parties, and the EPA may depart from the test guidelines where circumstances warrant and without prior notice. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guideline, but EPA recognizes that departures may be appropriate in specific situations. You may propose alternatives to the recommendations described in the test guidelines, and the Agency will assess them for appropriateness on a case-by-case basis.

II. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and chemical substances for submission to EPA under FIFRA and/or FFDCA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

III. Overview

A. What Action is EPA Taking?

EPA is announcing the availability for public review and comment of the following four draft test guidelines under Series 810–Product Performance Test Guidelines for Public Health Uses of Antimicrobial Agents:

- OPPTS 810.2000 - General Considerations for Public Health Uses of Antimicrobial Agents.
- OPPTS 810.2100 – Sterilants - Efficacy Data Recommendations.
- OPPTS 810.2200 - Disinfectants for Use on Hard Surfaces—Efficacy Data Recommendations.
- OPPTS 810.2300 - Sanitizers for Use on Hard Surfaces—Efficacy Data Recommendations.

These guidelines address efficacy testing for antimicrobial agents intended to be used on hard, inanimate, environmental surfaces, and which bear label claims as sterilants, disinfectants, and/or sanitizers. Data from these studies are used to support the labeling claims for public health related antimicrobial agents.

B. How Were These Test Guidelines Developed?

The product performance use guidelines for antimicrobial agents were last updated in 1982 under the "Pesticide Assessment Guidelines - Subdivision G, Product Performance." Since then, the Agency has presented several issues at two separate meetings of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) (one in September 1997 and the other in July 2007) related to the conduct of studies for antimicrobial agents. In addition to formatting changes to incorporate the guidelines into the OPPTS guidelines series 810, EPA has added sections that incorporate the recommendations from the two SAPs, new guidelines and clarifications from other guidance documents, and comments from the regulated industry. In particular, a new section has been added that describes the data to be submitted to support labeling claims against two spore forming bacteria, *Bacillus anthracis* and *Clostridium difficile*. Altogether, these revised guidelines, once final, will represent the Agency's current recommendations for conducting studies to support antimicrobial pesticide label claims.

On October 8, 2008, EPA published in the **Federal Register** a proposed rule entitled "Data Requirements for Antimicrobial Pesticides" (73 FR 59382). Proposed § 158.2220 (40 CFR part 158) contains a table entitled "Antimicrobial Product Performance Data Requirements," which referenced under the Guidelines Number column the 91 series of guidelines. EPA's intention is to replace the 91 series designations with the appropriate reference to the 810 series designations under 810.2000. Therefore, at the time of the publication of the final rule, appropriate references to the OPPTS test guideline numbers and names will be incorporated into the final data requirement regulations.

List of Subjects

Environmental protection, Chemical testing, Test guidelines.

Dated: January 15, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 2010–1323 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0091; FRL–8807–3]

Pesticide Experimental Use Permit; Receipt of Amendment and Extension Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 29964-EUP-6 from Pioneer Hi-Bred International, Incorporated requesting to amend and extend an existing experimental use permit (EUP) for the following plant-incorporated protectants (PIPs) and their associated combined-trait hybrids. The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0091, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington,VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0091. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8920; e-mail address: *kausch.jeannine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in agricultural biotechnology or those who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse

human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

In accordance with 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Pioneer Hi-Bred International, Incorporated, (29964-EUP-6).

Pesticide Chemicals: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary (vector PHP8999) for its production in corn event TC1507 (Organization for Economic Cooperation and Development (OECD) Unique Identifier: DAS-01507-1), *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary (vector PHP17662) for their production in corn event DAS-59122-7 (OECD Unique Identifier: DAS-59122-7), *Bacillus thuringiensis* Cry1Ab delta-endotoxin protein and the genetic material necessary (vector pZO1502) for its production in corn event *Bt*11 (OECD Unique Identifier: SYN-BT011-1), *Bacillus thuringiensis* Cry1Ab delta-endotoxin protein and the genetic material necessary (vector PV-ZMCT01) for its production in corn event MON 810 (OECD Unique Identifier: MON-00810-6), *Bacillus thuringiensis* Vip3Aa20 insecticidal protein and the genetic material necessary (vector pNOV1300) in corn event MIR162 (OECD Unique Identifier: SYN-IR162-4), and *Bacillus thuringiensis* mCry3A protein and the genetic material necessary (vector pZM26) in corn event MIR604 (OECD Unique Identifier: SYN-IR604-5).

Summary of Request: Pioneer Hi-Bred International, Incorporated has requested an amendment and extension of experimental use permit 29964-EUP-6, which was first granted on April 22, 2009. Under the existing EUP, plantings are permitted through March 31, 2010. Pioneer Hi-Bred International, Incorporated is now proposing to extend the experimental program until June 30, 2011 and to amend it by conducting testing with up to 1.52 pounds of Cry1F protein, 19.52 pounds of Cry34Ab1 and Cry35Ab1 proteins, 0.16 pounds of Cry1Ab protein (MON 810), 14.51 pounds of Vip3Aa20 protein, 0.47 pounds of mCry3A protein, and 0.16 pounds of Cry1Ab protein (*Bt*11) on 33,311 acres (1,414 acres of non-PIP and border corn plants are also proposed for a total of 34,725 acres). The proposed program will be conducted in the Commonwealth of Puerto Rico and States of Arkansas, California, Colorado, Georgia, Hawaii, Iowa, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Carolina, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Washington, and Wisconsin. Trial protocols will concentrate on nursery/breeding observation, yield and agronomic evaluation, efficacy, insect resistance management, inbred and hybrid seed production, and regulatory studies.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 14, 2010.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–1356 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0930; FRL–8806-5]

Pesticide Products: Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0930, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0930. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Gina Casciano, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0513; e-mail address: *casciano.gina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to a complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications, as follows, to register a manufacturing-use pesticide product and an end-use pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 80286–RU. *Applicant*: ISCA Technologies, Inc., 1230 Riverside, CA, 92507. *Product name*: SPLAT CLM MP. *Active ingredients*: Insecticide and (Z,Z,E)-7,11,13–Hexadecatrienal at 66.5%. *Proposed classification/Use*: Food Use, Outdoor Use (G. Casciano).

File Symbol: 80286–RL. *Applicant*: ISCA Technologies, Inc., 1230 Riverside, CA, 92507. *Product name*: SPLAT CLM. *Active ingredients*: Insecticide and (Z,Z,E)-7,11,13–Hexadecatrienal at 0.15%. *Proposed classification/Use*: Food Use, Outdoor Use (G. Casciano).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 19, 2010.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–1582 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0788; FRL–8796–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the file symbol for the pesticide of interest as shown in the registration application summary, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by mail, telephone or email. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting in a docket that addresses multiple products, please indicate to which file symbol(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol*: 264–RRNL. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Indaziflam 500 SC Herbicide. *Active ingredient*: Herbicide with Indaziflam at 45.05%. *Proposed use*: Pre-emergent control of annual grasses and broadleaf weeds in citrus fruits, stone fruits, pome fruits, grapes, tree nuts, pistachios, olives, and also for sugarcane grown in and imported from Brazil. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*

2. *File Symbol*: 264–RRNA. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Indaziflam 200 SC Herbicide. *Active ingredient*: Herbicide with Indaziflam at 19.05%. *Proposed use*: Preemergent control of annual

grasses and broadleaf weeds in citrus fruit, stone fruit, pome fruit, grapes, tree nuts, pistachios, and olives. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*.

3. *File Symbol*: 352–TIE. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 Technical Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 89.3%. *Proposed use*: For formulation into an end-use herbicide for use in terrestrial non-crop areas and outdoor domestic landscape turf grass. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

4. *File Symbol*: 352-TIG. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 Technical Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 95.6%. *Proposed use*: For formulation into an end-use herbicide for use in terrestrial non-crop areas and outdoor domestic landscape turf grass. *Contact*: Mindy Ondish, (703) 605–723, *ondish.mindy@epa.gov*.

5. *File Symbol*: 352-TIU. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX–KJM44 80 MUP Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 80.0%. *Proposed use*: For formulation into an end-use herbicide for use in terrestrial non-crop areas and outdoor domestic landscape turf grass. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

6. *File Symbol*: 352–TIL. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, DE 19898. *Product name*: DPX-KJM44 80XP Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 80.0%. *Proposed use*: Weed control of broadleaf weeds and woody plants in terrestrial non-crop areas and unimproved turf sites. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

7. *File Symbol*: 352-TIA. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 240SL Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor, potassium salt at 24.0%. *Proposed use*: Weed control of broadleaf weeds and woody plants in terrestrial non-crop areas and unimproved turf sites. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

8. *File Symbol*: 352-TIT. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 50SG Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 50.0%. *Proposed use*: Weed control of broadleaf weeds and woody plants in terrestrial non-crop areas and unimproved turf sites. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

9. *File Symbol*: 352–TII. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-Q2B37 Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 42.1%, Chlorsulfuron at 11.9%, and Sulfometuron at 23.7%. *Proposed use*: Weed control of broadleaf weeds and grasses in terrestrial non-crop areas. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

10. *File Symbol*: 352–TIO. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX–Q2B38 Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 28.7%, Imazapyr at 37.3%, and Metsulfuron at 8.6%. *Proposed use*: Weed control of broadleaf weeds and woody plants in terrestrial non-crop areas. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

11. *File Symbol*: 352–TON. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-Q2B39 Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 57.1% and Metsulfuron at 11.2%. *Proposed use*: Weed control of broadleaf weeds and woody plants in terrestrial non-crop areas. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

12. *File Symbol*: 352–TOR. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-QKJ02 Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 57.1% and Chlorsulfuron at 21.4%. *Proposed use*: Broadleaf weed control in terrestrial non-crop areas and unimproved turf sites. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

13. *File Symbol*: 352–TOE. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E.I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 80XP Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 80.0%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

14. *File Symbol*: 352–TOG. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 240SL Turf Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor, potassium salt at 24.0%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

15. *File Symbol*: 352–TOU. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 50SG Turf Herbicide. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 50.0%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

16. *File Symbol*: 352–TOL. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 10% Manufacturing Concentrate. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 10.0%. *Proposed use*: For formulation into an end-use herbicide for use in terrestrial non-crop areas and outdoor domestic landscape turf grass. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

17. *File Symbol*: 352–TOA. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 10% Manufacturing Concentrate. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 10.0%. *Proposed use*: For formulation into an end-use herbicide for use in terrestrial non-crop areas and outdoor domestic landscape turf grass. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

18. *File Symbol*: 352–TOT. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.064G Turf Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.064%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

19. *File Symbol*: 352–TOI. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.053G Turf Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.053%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

20. *File Symbol*: 352–TOO. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.032G Turf Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.032%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

21. *File Symbol*: 352–INN. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.073G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.073%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

22. *File Symbol*: 352–INR. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.065G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.065%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

23. *File Symbol*: 352–INE. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.059G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.059%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

24. *File Symbol*: 352–ING. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.053G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.053%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

25. *File Symbol*: 352–INU. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.049G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.049%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

26. *File Symbol*: 352–INL. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.039G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.039%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

27. *File Symbol*: 352–INA. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.037G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.037%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

28. *File Symbol*: 352–INT. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.033G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.033%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

29. *File Symbol*: 352–INI. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.03G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.03%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

30. *File Symbol*: 352–INO. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.027G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.027%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

31. *File Symbol*: 352–IRN. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-KJM44 0.024G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.024%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

32. *File Symbol*: 352–IRR. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*:

DPX-KJM44 0.02G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor methyl at 0.02%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

33. *File Symbol*: 352–IRE. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 0.06G Turf Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 0.06%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

34. *File Symbol*: 352–RG. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 0.05G Turf Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 0.05%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

35. *File Symbol*: 352–IRU. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 0.03G Turf Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 0.03%. *Proposed use*: Selective broadleaf weed control in cool and warm season turfgrasses. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

36. *File Symbol*: 352–IRL. *Docket Number*: EPA–HQ–OPP–2009–0789. *Applicant*: E. I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Product name*: DPX-MAT28 0.068G Lawn Herbicide + Fertilizer. *Active ingredient*: Herbicide with Aminocyclopyrachlor at 0.068%. *Proposed use*: Broadleaf weed control in residential lawns. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

37. *File Symbol*: 432–RUOL. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: BCS-AA10717 0.0142% Plus Turf Fertilizer Herbicide. *Active ingredient*: Herbicide with Indaziflam at 0.0142%. *Proposed use*: Pre-emergent herbicide on fertilizer for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

38. *File Symbol*: 432–RUOA. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: BCS-AA10717 0.0213% Plus Turf Fertilizer Herbicide. *Active ingredient*: Herbicide with Indaziflam at 0.0213%. *Proposed use*: Pre-emergent herbicide on fertilizer for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

39. *File Symbol*: 432–RUOT. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: BCS-AA10717 0.0284% Plus Turf Fertilizer Herbicide. *Active ingredient*: Herbicide with Indaziflam at 0.0284%. *Proposed use*: Pre-emergent herbicide on fertilizer for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

40. *File Symbol*: 432–RUOI. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: BCS-AA10717 2% MUP Herbicide. *Active ingredient*: Herbicide with Indaziflam at 2.0%. *Proposed use*: For formulation into herbicide products intended for control of weeds in turfgrass, ornamentals, nurseries, Christmas trees, landscape plantings, forestry, and hardscapes in non-crop areas. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

41. *File Symbol*: 432–RUOO. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: BCS-AA10717 20WSP Herbicide. *Active ingredient*: Herbicide with Indaziflam at 20.0%. *Proposed use*: Pre-emergent herbicide for the control of annual grasses, annual sedges, and broadleaf weeds in turfgrass, ornamentals, nurseries, Christmas trees, landscape plantings, forestry, and hardscapes in non-crop areas. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

42. *File Symbol*: 432–RLNR. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: BCS-AA10717 Herbicide Technical. *Active ingredient*: Herbicide with Indaziflam at 95.8%. *Proposed use*: For formulation into herbicide products intended for the control of weeds in turfgrass, ornamentals, nurseries, Christmas trees, landscape plantings, forestry, hardscapes in non-crop areas, citrus fruits, pome fruits, stone fruits, grapes, tree nuts, pistachios, and olives. *Contact*: Bethany Benbow, (703) 347-8072, *benbow.bethany@epa.gov*.

43. *File Symbol*: 432-RLNI. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Esplanade 200 SC Herbicide. *Active ingredient*: Herbicide with Indaziflam at 19.05%. *Proposed use*: Pre-emergent herbicide for the control of annual grasses and broadleaf weeds in non-crop areas, railroad and rail yards, managed roadsides, established ornamental and perennial plantings, fence rows, utilities, hardscapes, and other industrial, municipal, and government sites. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*.

44. *File Symbol*: 432-RLNO. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Environmental Science, A Business Group of Bayer CropScience, LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Esplanade F Herbicide. *Active ingredient*: Herbicide with Indaziflam at 19.05%. *Proposed use*: Pre-emergent herbicide for the control of annual grasses and broadleaf weeds in forest areas. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*.

45. *File Symbol*: 59639–RLU. *Docket Number*: EPA–HQ–OPP–2009–0205. *Applicant*: Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596-8025. *Product name*: Imazosulfuron Technical. *Active ingredient*: Herbicide with Imazosulfuron at 99.5%. *Proposed use*: For formulation into herbicide products intended for use in/on bare ground non-crop areas, conifers, deciduous trees, non-bearing fruit and nut trees, ornamentals, turfgrass, peppers (bell and non-bell), tomatoes, and rice. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*.

46. *File Symbol*: 59639–RAA. *Docket Number*: EPA–HQ–OPP–2009–0205. *Applicant*: Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596–8025. *Product name*: V–10142 AG Herbicide. *Active ingredient*: Herbicide with Imazosulfuron at 75.0%. *Proposed use*: A selective herbicide for the control and/or suppression of certain weeds in tomatoes, peppers (bell and non-bell), and rice. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*.

47. *File Symbol*: 59639-RLL. *Docket Number*: EPA–HQ–OPP–2009–0205. *Applicant*: Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596-8025. *Product name*: V-10142 Herbicide. *Active ingredient*: Herbicide with Imazosulfuron at 75.0%. *Proposed use*: A selective herbicide for the control of nutsedge and other weeds in established turfgrass, around established ornamentals and conifers, and to maintain bare ground non-crop areas. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

48. *File Symbol*: 63588–OR. *Docket Number*: EPA–HQ–OPP–2009–0717. *Applicant*: K-I Chemical U.S.A., Inc. c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. *Product name*: Pyroxasulfone Technical. *Active ingredient*: Herbicide with Pyroxasulfone at 99.2%. *Proposed use*: For formulation only into registered end-use herbicide products. *Contact*: Michael Walsh, (703) 308–2972, *walsh.michael@epa.gov*.

49. *File Symbol*: 63588–OE. *Docket Number*: EPA–HQ–OPP–2009–0717. *Applicant*: K-I Chemical U.S.A., Inc. c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. *Product name*: Pyroxasulfone 85 WG. *Active ingredient*: Herbicide with Pyroxasulfone at 85.0%. *Proposed use*: Herbicide for the control of weeds in field corn, popcorn, sweet corn, soybeans, and winter wheat. *Contact*: Michael Walsh, (703) 308–2972, *walsh.michael@epa.gov*.

50. *File Symbol*: 63588–OG. *Docket Number*: EPA–HQ–OPP–2009–0717. *Applicant*: K-I Chemical U.S.A., Inc. c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603-5126. *Product name*: V-10233 Herbicide. *Active ingredient*: Herbicide with Pyroxasulfone at 42.5% and Flumioxazin at 33.5%. *Proposed use*: Herbicide for the control and/or suppression of certain weeds in field corn, soybeans, fallow land, non-crop areas around farms, orchards, vineyards, and to maintain bare ground in non-crop areas. *Contact*: Michael Walsh, (703) 308–2972, *walsh.michael@epa.gov*.

51. *File Symbol*: 72155–IO. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Advanced, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Lawn 3FL Herbicide Concentrate/Ready-to-Spray. *Active ingredient*: Herbicide with Indaziflam at 0.25%, 2,4-D at 4.89%, Dicamba at 0.54%, and MCPP-p at 1.15%. *Proposed use*: Herbicide for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

52. *File Symbol*: 72155–ON. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Advanced, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Lawn 3FL Herbicide Ready-to-Use. *Active ingredient*: Herbicide with Indaziflam at 0.0031%, 2,4-D at 0.309%, Dicamba at 0.034%, and MCPP-p at 0.073%. *Proposed use*: Herbicide for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

53. *File Symbol*: 72155–OR. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Advanced, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Lawn 3FL Herbicide Granule. *Active ingredient*: Herbicide with Indaziflam at 0.05%, Dicamba at 0.11%, and Penoxsulam at 0.06%. *Proposed use*: Herbicide for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

54. *File Symbol*: 72155–OR. *Docket Number*: EPA–HQ–OPP–2009–0636. *Applicant*: Bayer Advanced, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name*: Lawn 3FL Herbicide Granule. *Active ingredient*: Herbicide with Indaziflam at 0.05%, Dicamba at 0.11%, and Penoxsulam at 0.06%. *Proposed use*: Herbicide for the control of annual grasses, annual sedges, and broadleaf weeds in turf. *Contact*: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov*.

55. *File Symbol*: 86833–R. *Docket Number*: EPA–HQ–OPP–2009–0800. *Applicant*: The Humane Society of the United States, 2100 L St., NW, Washington, DC 20037. *Poduct name*: ZonaStat-H. *Active ingredient*: Contraceptive with Porcine zona pellucida at 0.1%. *Proposed use*: Contraceptive for the use in limiting populations of wild and feral horses and burros. *Contact*: Jennifer Gaines, (703) 305–5967, *gaines.jennifer@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 19, 2010

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–1579 Filed 1–26–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

January 21, 2010.

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. 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; (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; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC 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 OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 29, 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.

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: 3060–0942.

Title: Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low–Volume Long Distance Users, Federal–State Joint Board on Universal Service.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 185 respondents; 945 responses.

Estimated Time Per Response: 2 – 60 hours.

Frequency of Response: Annual and quarterly reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 9,841 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission or the Universal Service Administrative Company (USAC). If the Commission requests respondents to submit information to the Commission that the respondents believe are confidential, respondents may request confidential treatment of such information pursuant to 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission will submit this revision to the Office of Management and Budget (OMB) after this comment period in order to obtain the full clearance from them. The Commission has reduced the total annual burden by 11,480 hours because the Competitive LEC quarterly reporting requirement has been consolidated into 3060–0986 and is being removed from this information collection.

The Report and Order, FCC 00–193, required the Commission to take further action to further accelerate the development of competition in the local and long–distance telecommunications markets, and to further establish explicit universal service support that will be sustainable in an increasingly competitive marketplace, pursuant to the mandate of the Telecommunications Act of 1996. The Commission requires the following entities under the Coalitions for Affordable Local and Long Distance Service (CALLS) Proposal: 1) modified tariff filings with the Commission; 2) quarterly and annual data filings (line counts, price and revenue data); and 3) cost support information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–1585 Filed 1–26–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed and Approved By the Federal Communications Commission Under Delegated Authority, Comments Requested

January 21, 2010.

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. 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; (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; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC 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 OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 29, 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.

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: 3060–1132.

Title: National Broadband Plan Survey: Demand for Broadband.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 4,500 respondents; 4,500 responses.

Estimated Time Per Response: .33 hours (20 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in Public Law No. 110–385, Broadband Data Improvement Act of 2008 and Public Law No. 111–5, American Reinvestment and Recovery Act of 2009.

Total Annual Burden: 1,350 hours.

Privacy Act Impact Assessment: No.

Nature and Extent of Confidentiality: No personally identifiable information will be transmitted to the Commission from the survey contractor as a matter of vendor policy.

Need and Uses: The Commission is now seeking the full three year clearance from the Office of Management and Budget (OMB) for this information collection. The Commission sought and received emergency OMB approval in December 2009 for this information collection. Emergency OMB approvals are only valid for six months. In order to obtain the full three year clearance, the Commission must submit this as an extension (no change in the reporting requirement and/or burden estimates.)

The American Recovery and Reinvestment Act of 2009 authorized the Federal Communications

Commission to create the National Broadband Plan that shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. Consistent with this effort, and pursuant to the requirements under the Broadband Data Improvement Act of 2008, the Commission's Office of Strategic Planning seeks to conduct a survey of residential consumers of broadband Internet to determine their willingness to pay for different components of broadband service in order to make recommendations as part of the National Broadband Plan which is now due to Congress by March 17, 2010.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–1586 Filed 1–26–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review to the Office of Management and Budget (OMB), Comments Requested

January 21, 2010.

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. 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; (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; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC 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 OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before February 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: 3060–0757.

Title: FCC Auctions Customer Survey.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for–profit.

Number of Respondents: 1,000 respondents; 1,000 responses.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 250 hours.

Privacy Act Impact Assessment: N/A. Any individuals responding to the survey are acting in an entrepreneurial capacity, as they did when they filed the application to participate in a FCC auction (FCC Form 175, OMB Control Number 3060–0600).

Nature and Extent of Confidentiality: There is no need for confidentiality. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission will submit this information collection as a revision to the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them.

The Commission has modified some of the questions in the survey and updated the different services being auctioned. The survey is voluntary and the information will be used by the Commission to evaluate the competitive bidding methodologies and other operational processes used to date and to improve these techniques for use in future auctions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–1587 Filed 1–26–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). A Clarification of Applicability of the Statement of Policy was published in the October 11, 1996 issue of the **Federal Register** (61 FR 53494). The following is a listing of financial institutions in liquidation of the Corporation, superseding the listing published in the July 2, 1992 issue of the **Federal Register** at page 29494, and all subsequent updates thereto, through and including the most recent update set forth in the October 11, 1996 issue of the **Federal Register** (61 FR 53496). The respective states in which each of the institutions in liquidation is located are set forth in the lists of the financial institutions in liquidation. This list (as updated in the **Federal Register** from time to time) constitutes the financial

institutions in liquidation from January 1, 2008 through year end 2009 and may be relied upon (as updated from time to time in the **Federal Register**) as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy. For information concerning the identification of any institutions which have been placed in liquidation subsequent to the date of publication, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

This listing does not include receiverships that have been terminated by the Receiver. Any assets of a terminated receivership cede to the Federal Deposit Insurance Corporation in its corporate capacity. For information concerning any receivership which has been terminated, contact the Manager of Receivership Oversight in the appropriate service center.

Dated: January 20, 2010.

Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

INSTITUTIONS IN LIQUIDATION (2008 AND LATER)

[In alphabetical order]

Bank Ref. No.	Bank name	City	State	Date closed
10030	1st Centennial Bank	Redlands	CA	1/23/2009
10110	Affinity Bank	Ventura	CA	8/28/2009
10035	Alliance Bank, N.A	Culver City	CA	2/06/2009
10018	Alpha Bank & Trust	Alpharetta	GA	10/24/2008
10014	Ameribank, Inc	Northfork	WV	9/19/2008
10057	America West Bank	Layton	UT	5/01/2009
10053	American Southern Bank	Kennesaw	GA	4/24/2009
10052	American Sterling Bank	Sugar Creek	MO	4/17/2009
10127	American United Bank	Lawrenceville	GA	10/23/2009
10155	AmTrust Bank	Cleveland	OH	12/04/2009
10005	ANB Financial, NA	Bentonville	AR	5/09/2008
10029	Bank of Clark County	Vancouver	WA	1/19/2009
10132	Bank of Elmwood	Racine	WI	10/23/2009
10064	Bank of Lincolnwood	Lincolnwood	IL	6/05/2009
10080	Bank of Wyoming	Thermopolis	WY	7/10/2009
10136	Bank USA, N.A	Phoenix	AZ	10/30/2009
10081	BankFirst	Sioux Falls	SD	7/17/2009
10061	BankUnited FSB	Coral Gables	FL	5/21/2009
10154	Benchmark Bank	Aurora	IL	12/04/2009
10109	Bradford Bank	Baltimore	MD	8/28/2009
10118	Brickwell Community Bank	Woodbury	MN	9/11/2009
10152	Buckhead Community Bank, The	Atlanta	GA	12/04/2009
10134	California National Bank	Los Angeles	CA	10/30/2009
10049	Cape Fear Bank	Wilmington	NC	4/10/2009
10106	Capitalsouth Bank	Birmingham	AL	8/21/2009
10148	Century Bank, F.S.B	Sarasota	FL	11/13/2009
10058	Citizens Community Bank	Ridgewood	NJ	5/01/2009
10063	Citizens National Bank	Macomb	IL	5/22/2009
10141	Citizens National Bank	Teague	TX	10/30/2009
10162	Citizens State Bank	New Baltimore	MI	12/18/2009
10103	Colonial Bank	Montgomery	AL	8/14/2009
10045	Colorado National Bank	Colorado Springs	CO	3/20/2009
10011	Columbian Bank and Trust Company, The	Topeka	KS	8/22/2008
10151	Commerce Bank of Southwest Florida	Fort Myers	FL	11/20/2009
10101	Community Bank of Arizona	Phoenix	AZ	8/14/2009
10137	Community Bank of Lemont	Lemont	IL	10/30/2009
10100	Community Bank of Nevada	Las Vegas	NV	8/14/2009
10068	Community Bank of West Georgia	Villa Rica	GA	6/26/2009
10022	Community Bank, The	Loganville	GA	11/21/2008
10092	Community First Bank	Prineville	OR	8/07/2009
10099	Community National Bank of Sarasota City	Venice	FL	8/07/2009
10065	Cooperative Bank	Wilmington	NC	6/19/2009
10037	Corn Belt Bank and Trust Company	Pittsfield	IL	2/13/2009
10117	Corus Bank, N.A	Chicago	IL	9/11/2009
10034	County Bank	Merced	CA	2/06/2009
10003	Douglass National Bank	Kansas City	MO	1/25/2008
10023	Downey Savings & Loan	Newport Beach	CA	11/21/2008
10104	Dwelling House Savings & Loan	Pittsburgh	PA	8/14/2009
10107	Ebank	Atlanta	GA	8/21/2009
10073	Elizabeth State Bank, The	Elizabeth	IL	7/02/2009
10054	First Bank of Beverly Hills	Calabasas	CA	4/24/2009
10055	First Bank of Idaho, FSB	Ketchum	ID	4/24/2009
10112	First Bank of Kansas City	Kansas City	MO	9/04/2009
10097	First BankAmericano	Elizabeth	NJ	7/31/2009
10108	First Coweta Bank	Newnan	GA	8/21/2009
10128	First DuPage Bank	Westmont	IL	10/23/2009
10167	First Federal Bank of California, F.S.B	Santa Monica	CA	12/18/2009
10025	First Georgia Community Bank	Jackson	GA	12/5/2008

INSTITUTIONS IN LIQUIDATION (2008 AND LATER)—Continued

[In alphabetical order]

Bank Ref. No.	Bank name	City	State	Date closed
10009	First Heritage Bank, NA	Newport Beach	CA	7/25/2008
10006	First Integrity Bank, NA	Staples	MN	5/30/2008
10066	First National Bank of Anthony, The	Anthony	KS	6/19/2009
10078	First National Bank of Danville, The	Danville	IL	7/02/2009
10008	First National Bank of Nevada	Reno	NV	7/25/2008
10084	First Piedmont Bank	Winder	GA	7/17/2009
10010	First Priority Bank	Bradenton	FL	8/01/2008
10157	First Security National Bank	Norcross	GA	12/04/2009
10114	First State Bank	Flagstaff	AZ	9/04/2009
10098	First State Bank	Sarasota	FL	8/07/2009
10093	First State Bank of Altus	Altus	OK	7/31/2009
10077	First State Bank of Winchester, The	Winchester	IL	7/02/2009
10036	Firstbank Financial Services	Mcdonough	GA	2/06/2009
10047	Firstcity Bank	Stockbridge	GA	3/20/2009
10129	Flagship National Bank	Bradenton	FL	10/23/2009
10074	Founders Bank	Worth	IL	7/02/2009
10021	Franklin Bank, SSB	Houston	TX	11/07/2008
10019	Freedom Bank	Bradenton	FL	10/31/2008
10044	Freedom Bank of Georgia	Commerce	GA	3/06/2009
10146	Gateway Bank of St. Louis	St. Louis	MO	11/06/2009
10122	Georgian Bank	Atlanta	GA	9/25/2009
10051	Great Basin Bank of Nevada	Elko	NV	4/17/2009
10156	Greater Atlantic Bank	Reston	VA	12/04/2009
10105	Guaranty Bank	Austin	TX	8/21/2009
10027	Haven Trust Bank	Duluth	GA	12/12/2008
10042	Heritage Community Bank	Glenwood	IL	2/27/2009
10131	Hillcrest Bank Florida	Naples	FL	10/23/2009
10144	Home Federal Savings Bank	Detroit	MI	11/06/2009
10070	Horizon Bank	Pine City	MN	6/26/2009
10004	Hume Bank	Hume	MO	3/07/2008
10161	Imperial Capital Bank	La Jolla	CA	12/18/2009
10113	Inbank	Oak Forest	IL	9/04/2009
10166	Independent Bankers' Bank	Springfield	IL	12/18/2009
10007	Indymac Bank, FSB	Pasadena	CA	7/11/2008
10095	Integrity Bank	Jupiter	FL	7/31/2009
10012	Integrity Bank	Alpharetta	GA	8/29/2008
10120	Irwin Union Bank and Trust Company	Columbus	IN	9/18/2009
10121	Irwin Union Bank, FSB	Columbus	IN	9/18/2009
10124	Jennings State Bank	Spring Grove	MN	10/02/2009
10076	John Warner Bank, The	Clinton	IL	7/02/2009
10142	Madisonville State Bank	Madisonville	TX	10/30/2009
10031	Magnet Bank	Salt Lake City	UT	1/30/2009
10016	Main Street Bank	Northville	MI	10/10/2008
10111	Mainstreet Bank	Forest Lake	MN	8/28/2009
10017	Meridian Bank	Eldred	IL	10/10/2008
10071	Metropolitan Bank, N.A	Irvine	CA	6/26/2009
10056	Michigan Heritage Bank	Farmington Hills	MI	4/24/2009
10079	Millennium State Bank of Texas	Dallas	TX	7/02/2009
10072	Mirae Bank	Los Angeles	CA	6/26/2009
10094	Mutual Bank	Harvey	IL	7/31/2009
10028	National Bank of Commerce	Berkeley	IL	1/16/2009
10069	Neighborhood Community Bank	Newnan	GA	6/26/2009
10050	New Frontier Bank	Greeley	CO	4/10/2009
10163	New South Federal Savings Bank	Irondale	AL	12/18/2009
10138	North Houston Bank	Houston	TX	10/30/2009
10048	Omni National Bank	Atlanta	GA	3/27/2009
10149	Orion Bank	Naples	FL	11/13/2009
10150	Pacific Coast National Bank	San Clemente	CA	11/13/2009
10139	Pacific National Bank	San Francisco	CA	10/30/2009
10140	Park National Bank	Chicago	IL	10/30/2009
10130	Partners Bank	Naples	FL	10/23/2009
10096	Peoples Community Bank	West Chester	OH	7/31/2009
10165	Peoples First Community Bank	Panama City	FL	12/18/2009
10024	PFF Bank & Trust	Pomon	CA	11/21/2008
10040	Pinnacle Bank	Beaverton	OR	2/13/2009
10115	Platinum Community Bank	Rolling Meadows	IL	9/04/2009
10143	Prosperan Bank	Oakdale	MN	11/06/2009
10158	Republic Federal Bank, N.A	Miami	FL	12/11/2009
10038	Riverside Bank of the Gulf Coast	Cape Coral	FL	2/13/2009
10133	Riverview Community Bank	Otsego	MN	10/23/2009
10075	Rock River Bank	Oregon	IL	7/02/2009

INSTITUTIONS IN LIQUIDATION (2008 AND LATER)—Continued

[In alphabetical order]

Bank Ref. No.	Bank name	City	State	Date closed
10164	RockBridge Commercial Bank	Atlanta	GA	12/18/2009
10135	San Diego National Bank	San Diego	CA	10/30/2009
10126	San Joaquin Bank	Bakersfield	CA	10/16/2009
10026	Sanderson State Bank	Sanderson	TX	12/12/2008
10085	Security Bank of Bibb County	Macon	GA	7/24/2009
10086	Security Bank of Gwinnett County	Suwanee	GA	7/24/2009
10087	Security Bank of Houston County	Perry	GA	7/24/2009
10088	Security Bank of Jones County	Gray	GA	7/24/2009
10089	Security Bank of North Fulton	Alpharetta	GA	7/24/2009
10090	Security Bank of North Metro	Woodstock	GA	7/24/2009
10020	Security Pacific Bank	Los Angeles	CA	11/07/2008
10043	Security Savings Bank	Henderson	NV	2/27/2009
10039	Sherman County Bank	Loup City	NE	2/13/2009
10041	Silver Falls Bank	Silverton	OR	2/20/2009
10013	Silver State Bank	Henderson	NV	9/05/2008
10059	Silverton Bank, N.A	Atlanta	GA	5/01/2009
10160	SolutionsBank	Overland Park	KS	12/11/2009
10123	Southern Colorado National Bank	Pueblo	CO	10/02/2009
10067	Southern Community Bank	Fayetteville	GA	6/19/2009
10062	Strategic Capital Bank	Champaign	IL	5/22/2009
10033	Suburban Federal Savings Bank	Crofton	MD	1/30/2009
10153	Tattnall Bank, The	Reidsville	GA	12/04/2009
10046	Team Bank, N.A	Paola	KS	3/20/2009
10082	Temecula Valley Bank	Temecula	CA	7/17/2009
10102	Union Bank, N.A	Gilbert	AZ	8/14/2009
10147	United Commercial Bank	San Francisco	CA	11/06/2009
10145	United Security Bank	Sparta	GA	11/06/2009
10159	Valley Capital Bank, N.A	Mesa	AZ	12/11/2009
10116	Vantus Bank	Sioux City	IA	9/04/2009
10119	Venture Bank	Lacey	WA	9/11/2009
10083	Vineyard Bank, N.A	Rancho Cucamonga	CA	7/17/2009
10125	Warren Bank	Warren	MI	10/02/2009
10015	Washington Mutual Bank	Henderson	NV	9/25/2008
10091	Waterford Village Bank	Williamsville	NY	7/24/2009
10060	Westsound Bank	Bremeron	WA	5/08/2009

[FR Doc. 2010–1560 Filed 1–26–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Vernon R. Pfaff, Fairbury, Indiana; to acquire voting shares of United Commerce Bancorp, and thereby indirectly acquire voting shares of United Commerce Bank, both of Bloomington, Indiana.

Board of Governors of the Federal Reserve System, January 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1508 Filed 1–26–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Clary Anthony Family Irrevocable Trust No. 101, Shreveport, Louisiana; Lynda June Anthony, Shreveport, Louisiana; and Luther Clary Anthony, Jr., Atlanta, Texas, Co Trustees; Lynda June Anthony, Shreveport, Louisiana; Luther Clary Anthony, Jr., Atlanta, Texas; Luther Clary Anthony Sr., Springhill, Louisiana; Frankie Sayers Anthony, Springhill, Louisiana, individually, to retain voting shares of,

and acquire additional shares of, Citizens Bankshares of Springhill, Inc., and thereby indirectly acquire and retain voting shares of Citizens Bank & Trust Company, both of Springhill, Louisiana.

Board of Governors of the Federal Reserve System, January 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1565 Filed 1–26–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. First Niagara Financial Group, Inc., Buffalo, New York; to acquire by its proposed acquisition of Harleysville National Corporation, Harleysville, Pennsylvania, up to 19.9 percent of the outstanding shares of Berkshire Bancorp, Inc., and thereby indirectly acquire shares of Berkshire Bank, both of Wyomissing, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Cabool State Bank Employee Stock Ownership Plan, Cabool, Missouri; to acquire an additional 1.04 percent of, for a total of 31.67 percent of, the voting shares of Cabool Bancshares, Inc., and thereby indirectly acquire additional voting shares of Cabool State Bank, both of Cabool, Missouri.

2. First National Bancorp, Inc., Green Forest, Arkansas; to acquire an additional 0.78 percent of, for a total of 9.06 percent of, the voting shares of Legacy National Bank, Springdale, Arkansas.

Board of Governors of the Federal Reserve System, January 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1507 Filed 1–26–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0650]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Prevention Research Centers Program National Evaluation Reporting System—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Prevention Research Centers (PRC) Program was established by Congress through the Health Promotion and Disease Amendments of 1984. CDC manages the PRC program and currently provides funding to PRC grantees that are housed within schools of public health, medicine or osteopathy. Awards are made for five years and may be renewed through a competitive application process. PRCs conduct outcomes-oriented health promotion and disease prevention research on a broad range of topics using a multi-disciplinary and community-based approach. Research projects involve State and local health departments, health care providers, universities, community partners, and other organizations. PRCs collaborate with external partners to assess community health priorities; identify research priorities; set research agendas; conduct research projects and related activities such as training and technical assistance; and disseminate research results to public health practitioners, researchers, and the general public. Each PRC receives an approximately equal amount of funding from CDC to establish its core capacity and support a core research project as well as training and evaluation activities. Research foci reflect each PRC's area of expertise and the needs of the community. Health disparities and goals outlined in *Healthy People 2010* are a particular emphasis for most PRC core research.

CDC is currently approved to collect progress and performance information from PRCs through the PRC Information System (IS), a Web-based application (OMB #0920–0650, exp. 8/31/2010). The IS was developed to organize programmatic information through work plans and progress reports and to assist in tracking progress toward and achievement of the PRC performance indicators. Respondents also report data

related to the prevention research projects, products resulting from those projects, trainings related to those projects, and partnerships.

CDC will request OMB approval to continue collecting progress and performance information from PRCs for three years, with changes. The current IS will be phased out and replaced with two restructured information collections. The first information collection will be conducted utilizing a simplified, more user-friendly Web-based survey system. The second information collection will consist of telephone interview involving a key contact person for each PRC grantee. CDC proposes to amend the title of the OMB approval to reflect the change in data collection methodology.

In the next approval period, information collection will be restructured around a revised set of performance indicators that are based on a review of fiscal year 2007 data and input from the PRCs from 2008–2009. During that time, the CDC PRC Program office and grantees concluded that performance could be adequately monitored using a subset of the previously approved questions, implementing minor changes to some questions, instituting a brief telephone interview, and reducing the frequency of data collection.

CDC will continue to use the information reported by PRCs to identify training and technical assistance needs, respond to requests for information from Congress and other sources, monitor grantees' compliance with cooperative agreement requirements, evaluate progress made in achieving goals and objectives, and describe the impact and effectiveness of the PRC program.

PRCs will report the required information to CDC once per year. Although the number of respondent PRCs will increase to 35, the overall estimated burden is expected to decrease due to a reduction in the estimated burden per respondent. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
PRC Program	Survey	35	1	6	210
	Telephone Interview	35	1	1	35
Total					245

Dated: January 20, 2010.

Maryam Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1649 Filed 1–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–09AM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov.*

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 a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarify 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 information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Prevalence Survey of Healthcare Associated Infections (HAIs) and Antimicrobial Use in U.S. Acute Care Hospitals—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) (proposed), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to conduct two surveys to obtain national estimates of Healthcare Associated Infections (HAIs) prevalence and antimicrobial use in the United States. Preventing HAIs is a CDC priority, and an essential step in reducing the occurrence of HAIs is to accurately estimate the burden of these infections in U.S. hospitals and to describe the types of HAIs and their causative organisms, including antimicrobial-resistant pathogens.

The scope and magnitude of HAIs in the U.S. were last directly estimated in the 1970s and 1980s by CDC's Study on the Efficacy of Nosocomial Infection Control (SENIC), in which comprehensive data were collected from a sample of 338 hospitals; 5% of hospitalized patients acquired an infection not present at the time of admission. CDC's current HAI surveillance system, the National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666, expiration date 9/30/2012), focuses instead on device-associated and procedure-associated infections in a variety of patient locations, and does not receive data on all types of HAIs to make hospital-wide burden estimates. The purpose of this information collection request is to assess the magnitude and types of HAIs and antimicrobial use occurring in all patient populations within acute care hospitals in order to inform decisions made by local and national policy makers and hospital infection control personnel regarding appropriate targets and strategies for preventing HAIs and the emergence of antimicrobial-resistant pathogens and encouraging appropriate antimicrobial use. Such assessments can be obtained in periodic national prevalence studies, such as

those that have been conducted in several European countries.

CDC proposes to conduct two surveys to collect this data. The first survey will be a limited roll-out survey and will be conducted in 30 facilities across 10 States in collaboration with State public health authorities and CDC's Emerging Infections Program (EIP). The survey will be conducted on a single day in participating facilities. Infection Control Practitioners in participating facilities, such as infection control personnel, will collect limited demographic and clinical information on a sample of eligible inpatients and, on the same day, EIP site personnel will collect information on HAIs and antimicrobial use for surveyed patients who are on antimicrobial therapy at the time of the survey. The second survey will involve 500 facilities across the same 10 States and use the same methodology. As with the first survey, CDC will collaborate with State public health authorities and EIP sites.

CDC will use the data provided to estimate the prevalence of HAIs and antimicrobial use across this sample of U.S. hospitals as well as to estimate the distribution of infection types, causative organisms, and nature of and rationale for antimicrobial use.

This proposed project supports CDC's Strategic Goal of "Healthy Healthcare Settings," specifically the objectives to "Promote compliance with evidence-based guidelines for preventing, identifying, and managing disease in healthcare settings" and "Prevent adverse events in patients and healthcare workers in healthcare settings." There are no costs to respondents, other than their time to complete the survey.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Infection Control Practitioners—Survey #1	30	83	5/60	208
EIP personnel—Survey #1	10	99	15/60	248
Infection Control Practitioners—Survey #2	500	83	5/60	3,458
EIP personnel—Survey #2	10	1650	15/60	4,125
Total				8,039

Dated: January 22, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1653 Filed 1–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Addiction Technology Transfer Centers (ATTC) Network Program Monitoring (OMB No. 0930–0216)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) will continue to monitor program performance of its Addiction Technology Transfer Centers (ATTCs). The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Healthcare Research and Quality, National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the ATTCs develop and update state-of-the-art, research-based curricula and professional development training.

Each of the forms is described below. SAMHSA/CSAT is proposing to revise the Event Description and Post-Event forms currently used by the ATTCs. The Follow-Up forms will not be changed. The Pre-Events forms currently in use will be eliminated.

Sixty percent of the forms are administered in person to participants at educational and training events, who complete the forms by paper and pencil. Ten percent of the training courses are online, and thus, those forms are administered online. The remaining thirty percent is made up of 30-day follow-up forms that are distributed to consenting participants via electronic mail using an online survey tool.

(1) The Event Description Form will be revised. The form collects event information. It includes questions regarding the SAMHSA priority areas and cross-cutting principles covered by the content of the event. SAMHSA's priority areas and cross-cutting principles have been revised since this form was approved, so the form will be revised to match the updated priorities and principles. In addition, the Event Description Form asks which of SAMHSA's Technical Assistance Publications (TAPs) and Treatment Improvement Protocols (TIPs) were used during the event. New TIPs and TAPs have been published since the form was approved. Those new TIPs and TAPs will be added to the form.

(2) The Pre-Event Form for meetings, technical assistance events, and training events will be eliminated. The demographic information that was collected on this form will be added to the Post-Event Forms. By incorporating this demographic information on the Post-Event Forms, the Pre-Event Form can be eliminated, thereby reducing the response burden for participants.

(3) The Post-Event Form for all events will be revised. The five current demographic questions will be revised to reflect a more current understanding of the field, and five additional demographic questions will be included.

(4) The Follow-Up Form for all events will remain the same as the ones currently in use by the ATTCs.

Event Description: The event description form asks approximately 10 questions of the ATTC faculty/staff for each of the ATTC events. The approved form asks the event focus, format, and publications to be used in the event. As noted above, it will be revised to reflect updates to SAMHSA's priority areas and cross-cutting principles and the publication of new TIPs and TAPs.

Technical Assistance and Meeting Events Forms

The ATTCs provide technical assistance, which is a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. The ATTCs hold meetings, which are ATTC sponsored or co-sponsored events in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy. The ATTCs will collect satisfaction measures after each technical assistance and meeting event. The ATTCs will base the Post-Event Form on the approved CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB # 0930–0197). The only revision to this GPRA form will be that the ATTCs will revise the five current demographic questions asked on this form and include five additional demographic questions. The ATTCs will collect satisfaction measures 30 days after each event by using the approved CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB # 0930–0197). The ATTCs are eliminating the Technical Assistance and Meeting Pre-Event Forms currently in use.

Post-Event Form for Technical Assistance and Meetings: The Post-Event Information form for technical assistance and meetings asks approximately 25 questions of each individual that participated in the event. The current form asks the participants to report satisfaction with the quality of the event and event materials, and to assess their level of skills in the topic area. The five current demographic questions on the form will be revised to reflect a more current understanding of the field, and five additional demographic questions will be included. The form will ask participants to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, and employment setting.

30-Day Follow-Up Form for Technical Assistance and Meetings: The Follow-up Information Form for technical assistance and meetings asks about 20 questions of about 25 percent of consenting participants. The approved form asks the participants to report satisfaction with the quality of the event materials, to assess their level of skills in the topic area, and to report whether or not they have shared information from the event at their place of work. This form is already approved by OMB and will not be revised (OMB # 0930–0197).

Training Forms

Trainings are defined as ATTC sponsored or co-sponsored events, mainly focusing on the enhancement of knowledge and/or skills of counselors and other professionals who work with individuals with substance use disorder-related problems. The ATTCs will collect information from training participants at the end of the training event by using a revised version of the currently approved Post-Event Form for training. The current approval for this form is under OMB # 0930–0216. The only revision to this Post-Event Form will be that the ATTCs will revise the five current demographic questions asked and include five additional demographic questions. The ATTCs will collect information from training participants 30 days after the training event by using the same form currently approved for this purpose under OMB # 0930–0216. The Pre-Event Form for training will be eliminated.

Post-Event Form for Training: The Post- Form for Training asks approximately 25 questions of each individual that participated in the training. The approved form asks the participants to report satisfaction with, usefulness of, and quality of the training and training materials as well as to assess their level of skills in the topic area. The five current demographic questions on the form will be revised to reflect a more current understanding of the field, and five additional demographic questions will be included. The form will ask participants to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, and employment setting.

Follow-up Form for Training: The Follow-up Information Form for Training asks about 25 questions of about 25 percent of consenting participants. The approved form asks the participants to report satisfaction with, usefulness of, and quality of the training and training materials as well as to assess their level of skills in the topic area. The form also asks participants to report whether or not they have shared information from the event at their place of work and which, if any, barriers they have encountered to applying the information gained from the training. This form is already approved by OMB and will not be revised (OMB # 0930–0216).

The information collected on the ATTC forms will assist CSAT in documenting the numbers andtypes of participants in ATTC events, describing the extent to which participants reportimprovement in their clinical competency, and which method is most effective in disseminatingknowledge to various audiences. This type of information is crucial to support CSAT incomplying with GPRA reporting requirements and will inform future development of knowledgedissemination activities. In the future, SAMHSA is considering including additional performancemonitoring measures for the ATTC program. More robust measures of the impact of ATTCtraining and technology transfer efforts are being considered.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total annual burden hours
Faculty/staff				
Event Description Form	250	1	.25	62.50
Meeting and Technical Assistance Participants				
Post-Event Form	5,000	1	.12	600
Follow-up Form	Covered under CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB # 0930–0197)			
Training Participants				
Post-Event Form	30,000	1	.16	4,800
Follow-up Form	7,500	1	.16	1,200

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total annual burden hours
Total	42,750			6,662.50

Written comments and recommendations concerning the proposed information collection should be sent by February 26, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: January 19, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–1572 Filed 1–26–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10BA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Development and Testing of an HIV Prevention Intervention Targeting Black Bisexually-Active Men—new—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

African Americans continue to be disproportionately affected by HIV/AIDS. Results from the National HIV Behavioral Surveillance Project published in the June 2006 Morbidity and Mortality Weekly Reports showed that during 2001–2004, although African-Americans accounted for approximately 13 percent of the population, they accounted for the majority (51 percent) of HIV/AIDS diagnoses in 33 states. Black men who have sex with men (MSM) have been identified as the population segment with the highest rates of HIV infection in the U.S. and as a population in need of new HIV prevention interventions. Previous research indicates that 20% to 40% of Black MSM also have female sex partners. Interventions developed for gay men may not be relevant or appropriate for men who have sex with men and women (MSMW), many of whom do not self-identify as gay and who may need different prevention strategies for their male and female partners. No interventions in the scientific literature with demonstrated efficacy in reducing HIV-related sexual risk behaviors have been developed and evaluated specifically for African-American MSMW. The proposed study is essential for developing effective HIV/AIDS prevention interventions for at-risk African-American MSMW and for informing policies and programs that will more effectively protect them and their partners from infection.

The purpose of the proposed study is to develop and pilot-test three novel behavioral interventions to reduce sexual risk for HIV infection and transmission among African-American MSMW who do not inject drugs. Eligible respondents will be recruited using chain referral sampling techniques. Three study sites (Public Health Management Corporation (PHMC), Nova Southeastern University, and California State University (CSU) at Dominguez Hills) will use a randomized controlled trial to evaluate the effectiveness of the intervention. Respondents will be reimbursed up to a total of $300 for their time and for completing all data collection forms. If these interventions are found to be effective, organizations that implement risk-reduction interventions will be able to use the curricula to intervene with this population more successfully. Ultimately, the beneficiary of this data collection will be African-American MSMW at risk for HIV. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
Prospective Participant	Screening Instrument	1,250	1	5/60	104
Enrolled Participant	Locator Form	750	1	10/60	125
Enrolled Participant-PHMC	Baseline Assessment	250	1	1	250
Enrolled Participant-Nova	Baseline Assessment	240	1	1	240
Enrolled Participant-CSU	Baseline Assessment	260	1	1	260
Enrolled Participant-PHMC	Acceptability Survey	250	6	10/60	250
Enrolled Participant-Nova	Acceptability Survey	240	1	10/60	40

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
Enrolled Participant-CSU	Acceptability Survey	260	1	10/60	43
Enrolled Participant-PHMC	Immediate Follow-Up Assessment	225	1	30/60	113
Enrolled Participant-Nova	Immediate Follow-Up Assessment	216	1	30/60	108
Enrolled Participant-CSU	Immediate Follow-Up Assessment	234	1	30/60	117
Enrolled Participant-PHMC	3 month Follow-Up Assessment	200	1	1	200
Enrolled Participant-Nova	3 month Follow-Up Assessment	192	1	1	192
Enrolled Participant-CSU	3 month Follow-Up Assessment	208	1	1	208
Total					2,250

Dated: January 20, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1650 Filed 1–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0026]

Draft Guidance for Industry on Assessment of Abuse Potential of Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Assessment of Abuse Potential of Drugs." This draft guidance is intended to assist sponsors who are developing drug and other medical products with the potential for abuse that may need to be scheduled under the Controlled Substances Act. Drugs with abuse potential generally include drugs that affect the central nervous system, drugs that are chemically or pharmacologically similar to other drugs with known abuse potential, and drugs that produce psychoactive effects such as sedation, euphoria, or mood change.

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 March 29, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Corinne P. Moody, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5144, Silver Spring, MD 20993–0002, 301–796–5402.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Assessment of Abuse Potential of Drugs." Under the Federal Food, Drug, and Cosmetic Act, an abuse potential assessment is part of the general evaluation of the safety and efficacy of a drug to be used under medical supervision. If a drug has abuse potential, the Secretary of Health and Human Services (HHS) is required under the Controlled Substances Act of 1970 (CSA) to make a recommendation for scheduling to the Drug Enforcement Administration (DEA). The regulatory responsibilities for this process are described in Title 21 United States Code (U.S.C.) 811, with delegation of authority to FDA from HHS. The Controlled Substance Staff (CSS) of FDA performs the scientific evaluation of the abuse potential of a drug for HHS, in consultation with the National Institute on Drug Abuse (NIDA), as described in a Memorandum of Understanding (MOU) of March 8, 1985 (50 FR 9518).

When a sponsor submits a marketing application for a drug with abuse potential to FDA for review, the sponsor is required to propose a CSA schedule and provide a basis for this proposal (21 CFR 314.50(d)(5)(vii)). The sponsor's proposal is considered by the agency during its evaluation of the drug's abuse potential. At the time a marketing application is submitted to FDA for review, the sponsor signs a statement agreeing not to market the product until the DEA makes a final scheduling decision.

FDA prepares a scientific analysis with a recommendation for scheduling, based on the submission of the sponsor that includes a scientific and medical evaluation of all relevant and available data, an assessment of the public health risk, and a proposal for scheduling. This recommendation is forwarded to DEA for consideration in the decision on final scheduling of the drug. Scheduling results in specific regulatory requirements relating to the drug's labeling, prescribing, advertising, manufacturing, promotion, marketing, and use in the practice of medicine. Not following these requirements can result in criminal penalties.

This draft guidance is being issued 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 assessing abuse potential of drugs. 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 statutes and regulations.

II. 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: January 21, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1516 Filed 1–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0420] (formerly Docket No. 2007D–0365)

Guidance for Industry on the Use of Mechanical Calibration of Dissolution Apparatus 1 and 2—Current Good Manufacturing Practice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "The Use of Mechanical Calibration of Dissolution Apparatus 1 and 2—Current Good Manufacturing Practice (CGMP)." This guidance recommends an alternative method for manufacturers to comply with FDA's CGMP regulations that require laboratory apparatus be calibrated at suitable intervals in accordance with established written specifications. The guidance is intended to aid drug manufacturers (including ancillary testing laboratories) in calibrating U.S. Pharmacopeia (USP) Dissolution Apparatus 1 and 2 to help assure that critical parameters associated with the dissolution apparatus meet certain mechanical calibration (MC) tolerances.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Larry A. Ouderkirk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4228, Silver Spring, MD 20993–0002, 301–796–1585.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "The Use of Mechanical Calibration of Dissolution Apparatus 1 and 2—Current Good Manufacturing Practice (CGMP)." The guidance recommends an alternative method for manufacturers to comply with the CGMP regulations that require laboratory apparatus be calibrated at suitable intervals in accordance with established written specifications (§§ 211.160(b)(4) and 211.68 (21 CFR 211.160(b)(4) and 211.68)).

Historically, both MC and chemical (tablet) calibration procedures have been employed to assure that reproducible and repeatable data are obtained with dissolution test apparatus. Recent studies performed in FDA and USP laboratories have identified several significant sources of variation within Apparatus 1 and 2 that can be minimized by employing an enhanced MC procedure. The enhanced MC procedure recommended in the guidance can be used as an alternative to the current Apparatus Suitability procedure for USP Dissolution Apparatus 1 and 2 described in USP General Chapter <711> *Dissolution* that employs basic MC with a performance verification test (PVT) using USP Reference Standard tablets.

In the **Federal Register** of October 19, 2007 (72 FR 59298), FDA published a notice announcing the availability of a draft guidance entitled "The Use of Mechanical Calibration of Dissolution Apparatus 1 and 2—Current Good Manufacturing Practice (CGMP)." The notice gave interested persons an opportunity to submit comments by January 17, 2008. Comments received during the comment period have been carefully reviewed, and changes were made to the draft guidance in an effort to make the document clearer. Also, as a result of the received comments, the guidance provides advice on controlling the following recognized sources of significant variability in dissolution testing: Dissolved gases, vibration, and vessel dimensions.

In finalizing this guidance, FDA has made changes to the draft guidance to reflect the most recent changes to USP General Chapter <711> *Dissolution*. On August 1, 2007, USP revised its Chapter <711> as follows: (1) Changed the terminology "calibrator tablets" to "reference standard (RS) tablets," which is the term used to describe tablets used to establish system suitability; and (2) renamed the "Apparatus Suitability Test, Apparatus 1 and 2" to "Performance Verification Test, Apparatus 1 and 2." In making these revisions, USP has explicitly stated, "USP's RS tablets are not calibrator tablets."[1] USP has also announced its intention as of December 1, 2009, to discontinue use of its Salicylic Acid Tablets RS in the Performance Verification Test for Dissolution Apparatus 1 and 2 in <711> (but USP will retain use of its Prednisone Tablets RS). Although USP <711> establishes critical tolerances and parameters for dissolution apparatus, it does not describe enhanced MC practices that can optimize and assure consistent apparatus performance. In October 2007, USP posted to its Web site a "toolkit" to aid practitioners in performing apparatus MC. However, we note that neither the mechanical tolerances specified in USP <711> nor the MC procedure described in the USP toolkit is as comprehensive or stringent as the enhanced MC procedure recommended in the agency guidance.

The CGMP regulations in §§ 211.160(b)(4) and 211.68 require that laboratory apparatus (mechanical equipment used in manufacturing) be calibrated at suitable intervals in accordance with an established written program of scheduled procedures containing provisions for remedial actions. The enhanced MC procedure recommended in the agency guidance satisfies these CGMP requirements and thus can be used as an alternative to the Apparatus Suitability procedure described in USP <711>. Furthermore,

[1] Deng G., A. J. Ashley, W. E. Brown, et al., 2008, "The USP Performance Verification Test, Part I: USP Lot P Prednisone Tablets—Quality Attributes and Experimental Variables Contributing to Dissolution Variance," *Pharmaceutical Research*; 25(5): 1100–1109.

the agency does not consider a reference tablet-based procedure such as a PVT to be a critical component when the enhanced MC procedures recommended in the agency guidance are followed.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on a new process for making available to sponsors FDA guidance on how to design product-specific bioequivalence studies to support ANDAs. 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 statutes and regulations.

II. 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: January 21, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1517 Filed 1–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Task Force on Community Preventive Services

Name: Task Force on Community Preventive Services meeting.

Times and Dates: 8 a.m.–5:30 p.m. EST, February 17, 2010; 8 a.m.–1 p.m. EST, February 18, 2010.

Place: Centers for Disease Control and Prevention, 2500 Century Parkway, Atlanta, Georgia 30345.

Status: Open to the public, limited only by space available.

Purpose: The mission of the Task Force is to develop and publish the *Guide to Community Preventive Services (Community Guide),* which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

Matters To Be Discussed: Updates of reviews of interventions to increase screening for breast, cervical and colorectal cancer, interventions to increase vaccination rates, and interventions to increase physical activity; reviews of effectiveness of collaborative care for the management of depressive disorders and of interventions to reduce the overservice of alcohol; and the scope of reviews of interventions to reduce inequalities in health outcomes.

Agenda items are subject to change as priorities dictate.

Contact person or additional information: Nasheka Powell, Community Guide Branch, Centers for Disease Control and Prevention, 1600 Clifton Road, M/S E–69, Atlanta, GA 30333, phone: 404.498.1123.

Dated: January 20, 2010.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1569 Filed 1–26–10; 8:45 a.m.]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of National Conversation on Public Health and Chemical Exposures Leadership Council Conference Call

Time and Date: 1 p.m.–3 p.m., Friday, January 29, 2010.

Location: Teleconference.

Status: The public is invited to listen to the meeting by phone, see "contact for additional information" below.

Purpose: This is the second meeting of the National Conversation on Public Health and Chemical Exposures Leadership Council. The National Conversation on Public Health and Chemical Exposures is a collaborative initiative through which many organizations and individuals are helping develop an action agenda for strengthening the nation's approach to protecting the public's health from harmful chemical exposures. The Leadership Council provides overall guidance to the National Conversation project and will be responsible for issuing the final action agenda. For additional information on the National Conversation on Public Health and Chemical Exposures, visit this Web site: *http://www.atsdr.cdc.gov/nationalconversation/.*

Meeting agenda: The call will include discussing (1) Revised project milestones and process elements, (2) revised National Conversation Operating Procedures, (3) the Policies and Practices work group charge, and (4) plans for developing and utilizing a community conversation toolkit on the issue of public health and chemical exposures.

Contact for additional information: If you would like to receive additional information on listening to the meeting by phone, please contact: *nationalconversation@cdc.gov* or Ben Gerhardstein at 770–488–3646.

Dated: January 19, 2010.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1571 Filed 1–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0054]

Strengthening the Center for Devices and Radiological Health's 510(k) Review Process; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled "Strengthening the Center for Devices and Radiological Health's 510(k) Review Process." The purpose of the public meeting is to identify actions that the Center for Devices and Radiological Health (CDRH) can consider taking to strengthen the premarket notification process for review of medical devices, also known as the 510(k) process. FDA is seeking input on a number of identified challenges associated with the 510(k) process and is requesting comments on this topic.

Dates and Time: The public meeting will be held on February 18, 2010, from 8 a.m. to 5:30 p.m. Persons interested in attending and/or participating in the meeting must register by 5 p.m. on

February 12, 2010. Submit electronic or written comments by March 5, 2010.

Location: The public meeting will be held at the Hilton Washington DC North/ Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877. A live webcast of this meeting will be viewable on the day of the meeting at *http://www.ConnectLive.com/events/fda021810*. Closed captioning for this webcast will be available at *http://www.speche.com/sbload.aspx?Load=Web,All,New&Height=90%25&Width=100%25&ClientID=31213*.

Contact Person: James Swink, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 1609, Silver Spring, MD 20993, 301–796–6313, e-mail: *james.swink@fda.hhs.gov*.

Registration: If you wish to attend the public meeting, you must register online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list). Provide complete contact information for each attendee, including: Name, title, affiliation, address, e-mail, and telephone number. Registration requests should be received by February 12, 2010.

If you wish to make an oral presentation during any of the open comment sessions at the meeting (see section II of this document), you must indicate this at the time of registration. FDA has included general discussion topics and specific questions for comment in section III of this document. You should also identify which discussion topic you wish to address in your presentation. In order to keep each open session focused on the discussion topic at hand, each oral presentation should address only one discussion topic. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is to begin.

If you would like to participate in the planned end-of-day round-table discussion (see section II of this document), you must indicate this at the time of registration, and also submit a brief statement that describes your experience with the 510(k) program. FDA is seeking participants interested in engaging in an end-of-day round-table discussion reflecting on the presentations given earlier in the day. The round-table discussion will include no more than 10 non-FDA participants. Only one participant from an organization or company will be assigned to the discussion group. FDA will attempt to have a range of constituencies participate in the discussion group. Others in attendance at the public meeting will have an opportunity to listen to the discussion.

Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the public meeting will be provided on a space-available basis beginning at 7 a.m.

If you need special accommodations due to a disability, please contact James Swink at 301–796–5610, *james.swink@fda.hhs.gov* at least 7 days in advance of the public meeting.

Comments: FDA is holding this public meeting to obtain information on a number of questions regarding the 510(k) process. The deadline for submitting comments related to this public meeting is March 5, 2010.

Regardless of attendance at the public meeting, interested persons may submit electronic or written comments. Submit electronic comments to *http://www.regulations.gov*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined below, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The premarket notification (or 510(k)) process for the review of medical devices was established under the Medical Device Amendments of 1976 (MDA) to the Federal Food, Drug, and Cosmetic Act (act). A post-MDA device may be legally marketed without an approved premarket approval application (PMA) if FDA concludes, through review of a 510(k) submission (unless the device is exempt from this submission requirement), that the device meets the comparative standard of "substantial equivalence" to a "predicate" device. By regulation, substantial equivalence may be determined by a comparison to a device that was legally marketed prior to May 28, 1976 (a pre-amendments device), or a device which has been reclassified from class III to class II or I (the predicate), or a device which has been found to be substantially equivalent through the 510(k) premarket notification process. (21 CFR 807.92(a)(3)).

Congress enacted the Safe Medical Devices Act of 1990 (SMDA) to define "substantial equivalence" consistent with the agency's administration of the 510(k) program. "Substantial equivalence" means, with respect to a device being compared to a predicate device, that the device has the same intended use as the predicate device and that the FDA by order has found the device either has the same technological characteristics as the predicate device, or has different technological characteristics and the information submitted that the device is substantially equivalent to the predicate device contains information, including appropriate clinical or scientific data if deemed necessary by the FDA, that demonstrates that the device is as safe and effective as a legally marketed device and does not raise different questions of safety and effectiveness than the predicate device. (Section 513(i)(1)(A) of the act (21 U.S.C. 360c(i)(1)(A))).

The current 510(k) program reflects the statutory framework and FDA's implementation of that framework. It is intended to meet two important public health goals: To make available to consumers devices that are safe and effective, and to promote innovation in the medical device industry. The 510(k) premarket notification process provides a mechanism for the classification of a device that is found to be substantially equivalent to a predicate device that does not require premarket approval. Over the past several years, concerns have been raised about whether the 510(k) program optimally achieves its intended goals.

In light of these concerns, FDA commissioned the Institute of Medicine (IOM) to conduct an independent review of the program and, if necessary, to recommend administrative, regulatory, and/or statutory changes. Given that the IOM study is not expected to conclude until March 2011, CDRH has also convened an internal 510(k) Working Group to recommend possible actions that CDRH could take in the short term to strengthen the program, and to identify longer term

options FDA could consider to strengthen the program.

II. Public Meeting

The objective of this public meeting is to receive public input on key challenges related to the 510(k) program, focusing on the following four areas: (1) Issues related to predicate devices, (2) issues related to new technologies and scientific evidence, (3) issues related to practices CDRH has adopted in response to a high volume of 510(k)submissions, and (4) issues related to postmarket surveillance and new information about marketed devices.

During the meeting, FDA staff will present a brief overview of each of the areas of challenge listed previously. Each of the four FDA presentations will be followed by an open comment session, during which members of the public may present oral comments related to the topic under discussion. Specific questions related to each discussion topic are listed below (see section III of this document). As described previously, individuals who are interested in making an oral presentation during any of the open comment sessions must indicate this at the time of registration and must also identify which discussion topic they intend to address (see the *Registration* section of this document). In order to keep each open session focused on the discussion topic at hand, each oral presentation should address only one discussion topic. Commentators are free to submit written comments on any discussion topic(s) to the open docket (see the *Comment* section of this document). FDA will schedule speakers for each open session as time permits.

After the four open comment sessions, the meeting will close with a round-table discussion between FDA staff and selected participants representing a range of constituencies (for more information about participating in the round-table discussion, see the *Registration* section of this document). The participants in the round-table discussion will reflect on the day's presentations, engage in a dialogue with each other and FDA staff, and provide closing thoughts. The participants will not be asked to develop consensus opinions during the discussion, but rather to provide their individual perspectives. Others in attendance at the meeting will have an opportunity to listen to the round-table discussion.

In advance of the meeting, additional information, including a meeting agenda with a speakers' schedule for each open comment session, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov*. This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

III. Issues for Discussion

The discussion of the four general topics described in the following section of this document should not be limited by current statutes or regulations, as the recommendations the 510(k) Working Group develops may include recommendations for changes to current law.

A. Issues Related to Predicate Devices

1. FDA maintains a searchable online database to provide interested parties, including prospective 510(k) submitters, with information about devices that have been cleared for marketing through the 510(k) process. Currently, if a device has been cleared, CDRH's Office of Device Evaluation (ODE) and Office of In-Vitro Diagnostics (OIVD) post online FDA's "Substantially Equivalent" (SE) letter to the 510(k) submitter with the Indications for Use page for the device, as well as the 510(k) Summary (written by the 510(k) submitter) or the 510(k) Statement for the 510(k) (as specified by 21 CFR 807.93) (see 21 CFR 807.87(h)). OIVD also posts a "decision summary" (written by FDA reviewers) which includes a summary of submitted data and a comparison of the device to the predicate(s). With respect to the information described previously, please comment on the following:

a. How effective is the 510(k) database and search engine in helping prospective submitters find and evaluate the adequacy of predicate devices for 510(k) submissions, and write substantial equivalency rationales? What aspects of the database and search engine are useful? What could be improved? What, if anything, should be added to the 510(k) database and search engine?

b. How effectively do the publicly released documents listed previously describe the cleared indications for use of each device, the technological characteristics of the device, and the methods and type of information that were used to determine substantial equivalence to the device's predicate(s)? If these documents are not sufficient, please describe what additional information or documentation would be useful to interested parties.

c. Should FDA require 510(k) holders who receive a substantial equivalence decision for their device to submit a redacted version of their 510(k) submission after clearance, for public release? Please explain why or why not.

2. Some 510(k) submitters do not accurately portray the similarities and differences between the device under review and the predicate device(s). It is unclear whether this problem is due to the submitters' lacking complete information about devices that have been cleared previously and may be used as predicates, or whether there are other contributing factors. Please comment on this problem and what steps FDA should take to address it.

3. Generally, a device that has a clearance under the 510(k) process may be used as a predicate, regardless of whether or not the device is still in use, remains relevant to current standards of care, or has been replaced by new technology. Please comment on the utility of this generally inclusive strategy and its positive or negative impact on achieving the two public health goals of the 510(k) program. Should there be stricter criteria for what predicate devices are eligible for use in new 510(k) submissions? If so, what criteria should be used, and how should those criteria be defined so that they can be consistently and effectively applied? Where possible, please also provide specific examples of cases in which the use of an "outdated" predicate device may have been beneficial or problematic.

4. Incremental device changes may seem innocuous individually (i.e., in one 510(k) submission), but over time such changes may accumulate to create a device that is significantly different from the original device (referred to as "predicate creep"). Similarly, clinical non-inferiority studies may be submitted as evidence of substantial equivalence between a device under review and a predicate. When a series of such studies is conducted over time (i.e., device B is non-inferior to A, device C is non-inferior to B, and device D is non-inferior to C), the difference in effectiveness between device A and D may approach clinical significance (referred to as "non-inferiority creep"). Please comment on what if any changes should be made to the 510(k) program based on the occurrence of predicate creep and non-inferiority creep. Are there circumstances under which FDA should consider a more thorough review of multiple incremental device changes between 510(k) submissions, or a more thorough review of the appropriateness of clinical non-inferiority studies when

assessing differences in device safety and effectiveness? Please explain.

5. In some cases, more than one predicate device has been submitted by the 510(k) submitter in its evaluation of substantial equivalence. For example, if there is not a single predicate device that has the same indication for use and technological characteristics as the device under review, a submitter may cite one predicate device in an effort to demonstrate the same intended use, and a different predicate device in an effort to demonstrate the same technological characteristics. The use of more than one predicate in this manner, in an effort to demonstrate substantial equivalence, has been referred to as using a "split predicate." When a submitter uses a split predicate, the "new" device may be very different from any other device on the market. In other instances, a submitter has used more than one predicate device in the hope that each predicate individually (not combined with the other predicate) supports substantial equivalence. Please comment on whether the use of a split predicate or more than one predicate serves the public health goals of the 510(k) program. If possible, please include examples.

6. To find that a device is substantially equivalent, FDA must determine, among other things, whether or not a new device has the same "intended use" as the predicate device (Section 513(i) of the act). FDA uses a standardized series of questions, organized into a flowchart (available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM081395.pdf*), to guide all 510(k) reviews. Currently, the flowchart distinguishes between an "indication for use" and an "intended use": A device under review may have a different "indication for use" than the predicate, yet still be determined to have the same "intended use" and therefore may be found substantially equivalent.

a. Please describe your understanding of an "indication for use" as compared to an "intended use." Please describe what criteria, if any, FDA should use to determine whether or not to consider a different "indication for use" to be a different "intended use." Please provide examples of different "indications for use" that you believe should or should not be considered different "intended uses" and explain your reasoning.

b. What are the advantages and disadvantages of distinguishing between the terms "indication for use" and "intended use" during the review process? What are the advantages and disadvantages of combining these concepts into one term?

B. Issues Related to New Technologies and Scientific Evidence

1. Section 513(i) of the act defines the term "different technological characteristics" as "a significant change in the materials, design, energy source, or other features of the device from those of the predicate device." Without regard to the statutory definition, what "other features" should FDA consider (or not consider) to be "different technological characteristics"? If you do not believe any other features should be considered different technological characteristics, please state why.

2. When a 510(k) submitter receives a Not Substantially Equivalent (NSE) determination from FDA, the submitter may petition FDA, if this type of device has not been approved through the PMA process, to classify this new type of device through the Evaluation of Automatic Class III Designation (or de novo) process. FDA may classify such a device as Class I is if the device type is generally of low risk and general controls are determined to be adequate to provide reasonable assurance of safety and effectiveness, or as Class II if special controls can be developed and are adequate, along with general controls, to provide reasonable assurance of safety and effectiveness for the device type. What criteria should FDA use to determine which risks can be mitigated through general controls alone or with special controls, and which risks are sufficient to make the device ineligible for de novo classification?

3. If a device under review has "different technological characteristics" than the predicate(s), it may still be determined to be substantially equivalent if "the information submitted that the device is substantially equivalent to the predicate contains information, including appropriate clinical or scientific data if deemed necessary by the [FDA] * * *, that demonstrates the device is as safe and effective as a legally marketed device and (II) [the device under review] does not raise different questions of safety and effectiveness than the predicate device" (section 513(i) of the act). How should FDA identify and characterize the risks associated with a new technology that do not raise "different questions of safety and effectiveness?" Are there types of new technology that should not be considered appropriate to be cleared for market through the 510(k) process? Should FDA define "different questions of safety and effectiveness?" If so, please provide suggestions for such a definition.

4. In some circumstances, FDA may consider data from one of the following four types of comparison studies, or a combination of any of them, to determine whether a new device is substantially equivalent to a predicate device: (1) A comparison of specifications to an FDA-recognized standard; (2) a comparison of specifications through bench testing; (3) a comparison of specifications through bench and animal or bench and clinical testing; or (4) a comparison of specifications through bench, animal, and clinical testing.

a. For each particular type of comparison, describe when the comparison is appropriate for a new device.

b. When clinical testing is deemed necessary, such testing is often used to determine whether a device is at least as safe and effective as the predicate (i.e., no worse than the predicate by a small, clinically insignificant difference called the non-inferiority margin). If the device is not expected to perform any better than the predicate, then a large sample size may be necessary to show non-inferiority in accordance with the small margin. By contrast, clinical studies conducted to demonstrate superiority to a control, instead of non-inferiority to a predicate, may require a relatively small sample size. Considering that devices under the 510(k) program may represent relatively minor changes compared with a predicate, are there circumstances under which one could show that a device is at least as safe and effective as the predicate without the need to conduct a large non-inferiority study? Please explain.

c. The previous comparisons in (2), (3), and (4) each require some type of testing. Under what circumstances should such testing be performed on the new device alone, and under what circumstances should such testing be performed on the new device in addition to a predicate device as a concurrent comparison? Are there circumstances when a clinical study that does not use the predicate device as the comparator (e.g., uses a standard of care or a reference method instead) would be appropriate to evaluate substantial equivalence? Please explain.

5. Some 510(k) submitters do not always initially provide sufficient engineering and design information for their devices under review, to enable FDA to have a sufficient understanding of how the device operates, and whether there are any design issues that would prevent it from operating as intended. Has FDA established sufficiently clear

guidelines concerning the provision of such information in 510(k) submissions? If not, what additional guidance might be helpful?

6. Section 513(f)(5) of the act (21 U.S.C. 360c(f)(5)) states that FDA may not withhold an initial classification determination based on "a failure to comply with any provision of the act unrelated to a substantial equivalence decision," including current good manufacturing practice (cGMP) requirements, unless there is a substantial likelihood that such failure will potentially present a serious risk to human health. Would it be beneficial for FDA to have greater authority to withhold an initial classification determination based on a failure to comply with cGMP requirements or other provisions of the act? Please explain.

7. Currently, some 510(k) submissions include as the "indication for use" a device function that is not associated with a specific clinical utility (e.g., treatment or diagnosis of a specific condition).

a. For new devices, should a requirement of the 510(k) program be that a device's "indication for use" be proven to FDA to provide clinical utility?

b. Please provide examples of devices whose "indications for use" statements do not describe a clinical utility, and whether this may be beneficial, harmful, or neither. Examples may include devices that are capable of monitoring or measuring a new physiologic parameter that has no standard clinical context, or tool-type devices such as scalpels or lasers that may be cleared to cut and coagulate tissue.

8. How effective is FDA's current implementation of section 513(i)(1)(E) of the act with respect to curbing off-label use that could cause harm? The current implementation is described in "Determination of Intended Use for 510(k) Devices; Guidance for CDRH Staff (Update to K98–1)" which is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm082162htm*. Without regard to current law, should FDA consider modifying its approach? Please explain why or why not. If FDA should consider modifying its approach, how should FDA modify it?

C. Issues Related to Practices CDRH has Adopted in Response to a High Volume of 510(k) Submissions

FDA receives a very large number of 510(k) submissions each year. In response to this high volume of work, CDRH has adopted a number of practices to allow for less resource-intensive reviews, including the third party review program, the Special 510(k) under the 510(k) Paradigm, bundling of devices in 510(k) submissions, and reliance on 510(k) submitters' assertions of conformance to recognized standards (as in the Abbreviated 510(k) program). Due to resource constraints, CDRH often must rely on a single reviewer to assess each 510(k) submission. Please comment on the advantages and disadvantages of each of these practices, as related to the quality and timeliness of 510(k) reviews.

D. Issues Related to Postmarket Surveillance and New Information about Marketed Devices

1. FDA generally does not require postmarket surveillance studies as a condition of medical device 510(k) clearance. Without regard to current law, please comment on whether or not it might be beneficial for FDA to impose such studies as a condition of medical device 510(k) clearance.

2. Without regard to current law, should FDA allow for the rescission of 510(k) clearance decisions under a broad range of circumstances? If so, what specific criteria might justify the rescission of a 510(k) clearance decision?

3. FDA obtains a significant amount of postmarket information for 510(k)-cleared devices, including adverse event reports, recalls, and inspectional findings. Without regard to current law, should such information influence the premarket 510(k) review of similar devices? If so, how?

4. FDA regulations require the submission of proposed labeling (including indications for use, directions for use, precautions, warnings, and contraindications) in a 510(k) prior to clearance of a device. However, 510(k) holders sometimes alter the labeling after clearance, so that the final printed labeling is different from that submitted to FDA in the 510(k). Please comment on whether or not it might be beneficial for FDA to review and clear the final printed labeling for all 510(k) devices or for selected 510(k) devices prior to marketing.

5. FDA does not always know when there has been a purchase, sale, or transfer of ownership of a 510(k) for a particular device. Even though the new owner of the 510(k) is required to register and list, FDA may not be aware that the ownership of the 510(k) for the device has legally transferred. Should FDA exercise more authority in this area? If so, how?

IV. Transcripts

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public meeting at a cost of 10 cents per page. A transcript of the public meeting will be available on the Internet at *http://www.regulations.gov*.

Dated: January 22, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1620 Filed 1–22–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Training Projects Grants, Request for Applications (RFA) 06–484; and Occupational Safety and Health Educational Research Centers, RFA 06–485, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

8:30 a.m.–5 p.m., February 18, 2010 (Closed).
8:30 a.m.–5 p.m., February 19, 2010 (Closed).

Place: Marina Del Ray Marriott, 4100 Admiralty Way, Marina Del Ray, California 90292, Telephone (310) 301–3000.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Occupational Safety and Health Training Projects Grants, RFA 06–484; and Occupational Safety and Health Educational Research Centers, RFA 06–485."

There were site visits conducted at the University of California, Berkeley and San Francisco, October 12–14, 2009; the University of Massachusetts, Lowell, October 21, 2009; the University of West Virginia, October 27, 2009; the University of Colorado, November 2–4, 2009; the University of Minnesota, November 18–20, 2009; and the University of Washington, December 16–18, 2009 to advise and make recommendations to the Disease, Disability, and Injury Prevention and Control SEP: Occupational Safety and Health Training Projects Grants, RFA 06–484; Occupational Safety and Health Educational Research Centers, RFA 06–485.

Contact Person for More Information: Dr. M. Chris Langub, PhD, Scientific Review Administrator, 1600 Clifton Road, NE., Mailstop E74, Atlanta, GA 30333, Telephone (404)498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 19, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–1633 Filed 1–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Science Board to the Food and Drug Administration; 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: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Science Board provides advice primarily to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues, as well as emerging issues within the scientific community in industry and academia. Additionally, the Science Board provides advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on Monday, February 22, 2010, from 8 a.m. to 3 p.m.

Addresses: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Doreen Kezer, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, rm. 14–65, Rockville, MD 20857, 301–827–1249, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512603. 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 February 22, 2010, the Science Board will hear about and discuss an interim report from its subcommittee reviewing research at the Center for Food Safety and Applied Nutrition. The Science Board will also hear about and discuss plans to establish another subcommittee to review research programs at the Center for Drug Evaluation and Research. The Science Board will then hear and discuss updates on science programs at the Office of Regulatory Affairs and the National Center for Toxicological Research.

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 Monday, February 15, 2010. 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 Friday, February 5, 2010. 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 Monday, February 8, 2010.

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 Doreen Kezer 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: January 19, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–1520 Filed 1–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

The Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 12, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Deborah Falls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. 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 March 12, 2010, the committee will discuss, make recommendations, and vote on a premarket approval application for the Deep Brain Stimulation System for Epilepsy sponsored by Medtronic, Inc. This device is indicated as adjunctive therapy for reducing the frequency of seizures in individuals diagnosed with epilepsy. For this device, a patient's epilepsy should be characterized by partial-onset seizures (affecting only a part of the brain when they begin), with or without secondary generalization that are refractory to antiepileptic medications. "Secondary generalization" is used to describe a partial-onset seizure that later spreads to the whole brain. "Refractory" to antiepileptic medications means that the patient's epilepsy does not respond to approved medications.

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 March 5, 2010. Oral presentations from the public will be scheduled at approximately 1 p.m., immediately following lunch. 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 February 25, 2010. 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 February 26, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–796–5966, 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: January 19, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–1519 Filed 1–26–10; 8:45 am]

BILLING CODE 4160–01–S

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; Interventions RFA Grant Review.

Date: February 25, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1651 Filed 1–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meeting

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce a public meeting to obtain public comment on "A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)".

Time and Date: 12–1:30 p.m. EST, February 3, 2010.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, Maryland 20814 (One Bethesda Metro Center).

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 200 people.

Purpose: The purpose of the meeting is to present the annual report of

progress by Federal agencies in accomplishing activities outlined in "A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)" and obtain comments from the public regarding the annual report. "The Action Plan" serves as a blueprint for activities of Federal agencies to address the issue of antimicrobial resistance. The focus of the plan is on domestic issues. A copy of the plan and annual report can be found at *http://www.cdc.gov/drugresistance/actionplan/index.htm.*

Matters to be Discussed: The agenda will consist of welcome and introductory comments, executive summary (including a progress report on revising the Action Plan) and brief reports in each of four focus areas: Surveillance, Prevention and Control, Research, and Product Development. A general discussion will follow the brief reports.

Comments and suggestions from the public for the Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

Limited time will be available for oral questions, comments and suggestions from the public. Depending on the number of individuals wishing to comment, a time limit of three minutes per individual may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted for subsequent review by the Task Force. Persons who anticipate attending the meeting are asked to send written notification to the contact person below by January 28, 2010. Notification information should include name, organization (if applicable), address, phone number, fax number, and e-mail address.

Written comments and suggestions from the public are also encouraged and may be submitted to the contact person or email listed below but must be submitted for consideration no later than March 31, 2010.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Marsha A. Jones, Office of Antimicrobial Resistance, National Center for Emerging and Zoonotic Infectious Diseases (proposed), Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333; telephone: 404–639–4052; fax 404–718–2147; e-mail *aractionplan@cdc.gov.*

SUPPLEMENTARY INFORMATION: "The Public Health Action Plan to Combat Antimicrobial Resistance" (Action Plan) was developed by the Interagency Task Force on Antimicrobial Resistance. The Task Force, created in 1999, is co-chaired by the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). Other Federal agencies that are members of the Task Force include the Agency for Healthcare Research and Quality (AHRQ), Centers for Medicare and Medicaid Services (CMS), the Health Resources and Services Administration (HRSA), the Department of Agriculture (USDA), the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Environmental Protection Agency (EPA).

The Action Plan reflects a broad-based consensus of Federal agencies on actions needed to address antimicrobial resistance. Input from State and local health agencies, universities, professional organizations, pharmaceutical companies, health care delivery organizations, agricultural producers, consumer groups, and other members of the public was important in developing the plan. While some actions are already underway, complete implementation of this plan will require close collaboration with all of these partners, which is a major objective of this process.

The 2001 Action Plan is under revision and is expected to be completed in 2010. Upon completion, the revised Action Plan will be available for public comment.

Dated: January 20, 2010.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1570 Filed 1–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program Part D—Coordinated HIV Services and Access to Research for Women, Infants, Children, and Youth

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of non-competitive replacement award.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing a non-competitive replacement award from the previous grantee, Orlando Health, Incorporated's HUG–ME Program, to the Orange County Health Department, Orlando, Florida, that will ensure continuity of Part D HIV/AIDS care and treatment services without disruption to HIV/AIDS-infected women, infants and children in Orange County and the surrounding areas.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Orange County Health Department, Orlando, Florida.

Amount of the Award: $750,576.00

Period of Support: The period of the supplemental support is from October 1, 2009 through July 31, 2010.

Authority: This activity is under the authority of the Public Health Service Act as amended, Section 2671, (42 USC 300ff–71). The authority for the exception to competition is HHS Grants Policy Directive 2.04, Awarding Grants.

Catalogue of Federal Domestic Assistance Number: 93.153.

Justification for the Exception to Competition: Critical funding for HIV/AIDS care and treatment to the target populations in Orange County, Orlando, Florida, and surrounding areas will be continued through a temporary, non-competitive replacement award to the Orange County Health Department. This temporary award is needed because the former grantee, Orlando Health, Incorporated, has relinquished, effective September 30, 2009, the HUG–ME Program and the HRSA Grant Award supporting it (original Project Period August 1, 2008, through July 31, 2013). The Orange County Health Department is known Statewide as an exceptional site for HIV/AIDS care and treatment services, and has administered its own HRSA Ryan White HIV/AIDS Program Part D—Coordinated HIV Services and Access to Research for Women, Infants, Children, and Youth Grant for the past 9 years. It is well suited to undertake operations of the HUG–ME Program under the previously approved scope of project activities. Additionally, this organization has a thorough understanding of the characteristics and needs of HIV/AIDS-infected populations. The HIV/AIDS Bureau and its Division of Community Based Programs are not aware of any other organization that could provide good quality care and treatment services to the impacted service populations without additional time and resources being devoted to bringing that organization's service capacity up to the level needed under the project scope of this award. This non-competitive replacement award will permit the

Orange County Health Department to ensure continuity of services to the affected populations. The supplemental funding will provide support for 10 months. Additional funding beyond July 31, 2010, will be provided through a limited service area competition that will be announced in the future.

FOR FURTHER INFORMATION CONTACT: Deborah Parham-Hopson, Associate Administrator, HRSA/HAB, 5600 Fishers Lane, Rockville, Maryland, 20857; phone 301 443–1993; *DParham@hrsa.gov.*

Dated: January 13, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–1655 Filed 1–26–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5321–C–04]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year 2009 Neighborhood Stabilization Program 2 (NSP2) Under the American Recovery and Reinvestment Act of 2009; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On May 4, 2009, HUD posted its NSP2 NOFA at *http://www.hud.gov/nsp* and announced the availability of the NOFA on May 7, 2009 (74 FR 21377). The NSP2 NOFA announced the availability of approximately $1.93 billion available in competitive grants authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, approved February 17, 2009). HUD corrected the NSP2 NOFA by Notices posted on the HUD Web site on June 11, 2009 and November 9, 2009, and announced by **Federal Register** publications published on June 17, 2009 (74 FR 28715) and November 16, 2009 (74 FR 58973), respectively. Today's **Federal Register** publication announces that HUD has posted a notice making further corrections to the NSP2 NOFA. Specifically, the Notice corrects the NSP2 NOFA to permit HUD to specify the deadline date for submission of consortium funding agreements in the transmittal letter for the NSP2 grant agreement, which allows the submission deadline to occur after obligation of grant funds.

This notice only affects applications for funding that have already been submitted to HUD by consortium applicants. HUD notes that the deadline for applications was July 17, 2009, and, as a result, will not accept new applications for funding. The notice correcting the NSP2 NOFA is available on the HUD Web site at *http://www.hud.gov/recovery*.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Gimont at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

Dated: *January 21, 2010.*

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–1598 Filed 1–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Navajo Partitioned Lands Grazing Regulations Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to submit the information collection, titled "Navajo Partitioned Lands Grazing Regulations Permits, 25 CFR 161" to the Office of Management and Budget for renewal. The information collection is currently authorized by OMB Control Number 1076–0162, which expires March 31, 2010. The information collection requires the Navajo Nation, members of the Navajo Nation, and tribal organizations authorized by the Navajo Nation to submit certain information in order to obtain, modify, or assign a grazing permit.

DATES: Interested persons are invited to submit comments on or before *March 29, 2010.*

ADDRESSES: You may submit comments on the information collection to David Edington, Office of Trust Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4655, Washington, DC 20240, facsimile: (202) 219–0006, or e-mail *David.Edington@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from David Edington, telephone: (202) 513–0886.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 161, implementing the Navajo-Hopi Settlement Act of 1974, 24 U.S.C. 640d–6402–31, as amended by the Navajo-Hopi Indian Relocation Amendments Acts of 1980, 94 Stat. 929, and the Federal court decisions of *Healing* v. *Jones,* 174 F. Supp. 211 (D. Ariz. 1959) (Healing I), *Healing* v. *Jones,* 210 F. Supp. 126 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963) (Healing II), *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe* v. *Watt,* 719 F.2d 314 (9th Cir. 1983).

Approval for this collection expires March 31, 2010. This information collection allows BIA to receive the information necessary to determine whether an applicant to obtain, modify, or assign a grazing permit on Navajo partitioned lands is eligible and complies with all applicable grazing requirements. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection.

II. Request for Comments

The BIA requests that you send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires March 31, 2010.

It is our policy to make all comments available to the public for review at the

location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0162.

Title: Navajo Partitioned Lands Grazing Regulations Permits, 25 CFR 161.

Brief Description of Collection: Submission of this information is required for Navajo Nation representatives, members, and authorized tribal organizations to obtain, modify or assign a grazing permit on Navajo partitioned lands. Response is required to obtain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Tribes, tribal organizations, and individual Indians.

Number of Respondents: 700.

Total Number of Responses: 3,200.

Estimated Time per Response: Varies, from 0.25 hour to 1 hour.

Estimated Total Annual Burden: 1,227 hours.

Dated: January 21, 2010.

Alvin Foster,

Chief Information Officer—Indian Affairs.

[FR Doc. 2010–1640 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Agency Information Collection Activities: Department of the Interior Regional Climate Science Centers

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (the U.S. Geological Survey) have sent an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. The ICR which is summarized below describes the nature of this collection, the estimate burden, and cost. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before February 26, 2010.

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 Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, NCCWSC in the subject line.

FOR FURTHER INFORMATION CONTACT: Nadine Hartke at U.S. Geological Survey, MS 300 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–4607 (telephone); or *nhartke@usgs.gov* (e-mail). You can also go to *reginfo.gov* if you are interested in retrieving a copy of this ICR.

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS NCCWSC will offer financial support through a cooperative agreement to organizations that maintain the physical facility, professional science researchers and super-computing capacity to host one of these regional centers. The purpose of this Program Announcement is to identify organizations that are willing to host a Regional Center, and to determine if their science and partnership capabilities are sufficient to serve as a Host organization. Host organizations must be able to contribute climate science capabilities that complement and enhance USGS and DOI scientific and computational capacity, and those of other science partners. Information from this collection will be used to evaluate proposals submitted for consideration by the NCCWSC.

II. Data

OMB Control Number: 1028–NEW. This is a new collection.

Title: Department of the Interior Regional Climate Science Centers.

Type of Request: New.

Respondent Obligation: Required to obtain benefits.

Frequency of Collection: Annually, or upon release of Program Announcement.

Estimated Annual Number of and Description of Respondents: An estimated 80 institutions of higher education and other non-profit organizations may respond.

Estimated Annual Number of Respondents: 80.

Estimated Completion Time per Response: 20 hours.

Estimated Annual Burden Hours: 1,600 hours.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the public reporting will average 20 hours per response. This includes time to develop a technical proposal, perform internal proposal reviews, secure support letters, and submit the proposal through Grants.gov.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost:" There are no "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

On November 19, 2009, we published a **Federal Register** notice (74 FR 59989) soliciting comments announcing that we would submit this ICR to OMB for approval. We solicited comments for a period of 60 days, ending on January 19, 2010. We received one comment concerning that **FEDERAL REGISTER** notice and we responded to the following comment in a timely manner.

Comment: Fort Collins—where deer diseases started. Your site is hardly a favorable site for sound science since Fort Collins is where they diseased deer. Many state agencies and colleges are poor choices for this kind of site since they have hired people with preordained minds and closed minds. They practice junk science. I would nominate the NJ Div Fish & Game Division of NJDEP and Rutgers Agribusiness division, both of which seem to have hired biased individuals who don't even practice scientific principles or methods. In my opinion, these divisions seem to hire people with their minds made up who blacklist those who have conflicting views. It is not an open place or site where methods and processes can be discussed. You need to be careful in aligning yourself with the state agencies that "manage" wildlife. They all seem to be stocked by card carrying members of the gun clubs who believe in guns and killing. That kind of closed mind is certainly not environmental in the least. You need to be very careful that you are getting the best science for this kind of project. If you can't get the best science, you might as well not spend the taxpayer dollars because the taxpayers are already paying for a lot of inaccurate, unfactual junk science.

Response: Hello, and thank you for your comment on **Federal Register** document, FR Doc. E9–27780. This response acknowledges our receipt of your comment. We would like to assure you that the USGS mission and goal is to provide the best unbiased science that we can. This is the reason we are

soliciting proposals in this case. Responding to national priorities and global trends is our highest priority and requires science that not only builds on our existing strengths and partnerships but also demands the innovation made possible by integrating the full breadth and depth of our capabilities with other strong science partners which includes other government agencies, academic institutions, non-government organizations and private industries. The USGS chooses to go forward at this time because the science issues that will be addressed will represent major challenges for our Nation's natural resources. We would like to assure you, that as with all our efforts, we will be fair and unbiased in selecting the future sites and ever mindful concerning the advancement of our scientific integrity. We are thankful for your response and concern in this matter.

As the commenter did not address this specific information collection, we have not made any changes as a result of the comment.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden on the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

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 publically 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: January 20, 2010.

Susan D. Haseltine,

Associate Director for Biology, U.S. Geological Survey.

[FR Doc. 2010–1686 Filed 1–26–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Arkansas and Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey in the State of Arkansas was requested by the U.S. Forest Service. The survey in the State of Illinois was requested by the U.S. Army Corps of Engineers.

The lands surveyed are:

Fifth Principal Meridian, Arkansas

T. 13 N., R. 25 W.

The plat of survey represents the dependent resurvey of portions of the south boundary (Standard Parallel North), Township 14 North, Range 25 West; east boundary, Township 13 North, Range 26 West, east boundary, a portion of the south boundary, a portion of the subdivisional lines, the subdivision of certain sections, the survey of certain Forest Service tracts, and exceptions to certain Forest Service tracts of Township 13 North, Range 25 West, of the Fifth Principal Meridian, in the State of Arkansas, and was accepted September 28, 2009.

Fourth Principal Meridian, Illinois

T. 6 S., R 6 W.

The plat of survey represents the dependent resurvey of the fractional township boundary, the subdivisional lines, and the resurvey of the lock and dam no. 24 acquisition boundary, of Township 6 South, Range 6 West, of the Fourth Principal Meridian, in the State of Illinois, and was accepted September 29, 2009.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file a plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 19, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–1584 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Minnesota and Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: These surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fifth Principal Meridian, Minnesota

T. 143 N., R. 41 W.

The plat of survey represents the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines and the dependent resurvey and survey of the subdivision of section 30, of Township 143 North, Range 41 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted October 14, 2009.

Fourth Principal Meridian, Minnesota

T. 48 N., R. 17 W.

The plat of survey represents the dependent resurvey of a portion of the north boundary and the subdivisional lines and the survey of the subdivision of section 4, Township 48 North, Range 17 West, of the Fourth Principal Meridian, in the State of Minnesota, and was accepted December 23, 2009.

Fourth Principal Meridian, Wisconsin

T. 47 N., R 2 W.

The plat of survey represents the dependent resurvey of portions of the south,

west, and east boundaries, a portion of the subdivisional lines, and the east and west centerline of sections 23, 24, 28, and 31, of Township 27 North, Range 2 West, of the Fourth Principal Meridian, in the State of Wisconsin, and was accepted December 16, 2009.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file a plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 19, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–1576 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Prepare an Environmental Impact Statement for a General Management Plan Amendment/Wilderness Study, for Gates of the Arctic National Park and Preserve, Alaska

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for a General Management Plan Amendment/Wilderness Study, for Gates of the Arctic National Park and Preserve, Alaska.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) is preparing an environmental impact statement for a general management plan amendment, including a wilderness study, for Gates of the Arctic National Park and Preserve, Alaska. The environmental impact statement will be approved by the Regional Director, Alaska Region.

A notice of intent to prepare an environmental impact statement for a backcountry management plan/general management plan amendment for Gates of the Arctic was published in the September 23, 2002, **Federal Register** 67(184). However, that plan was never completed. This notice of intent replaces the September 23, 2002, notice.

The general management plan amendment will establish the overall direction for both the park and preserve (referred to hereafter as park), setting broad management goals for managing the area during the next 15 to 20 years. The plan will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park based on such factors as the park's purpose, significance, special mandates, the body of laws and policies directing park management, resource analysis, and public input. The plan also will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the park in the future. In addition, the plan will generally address visitor-use related issues and provide management direction for the six designated wild rivers within the park. The wilderness study will evaluate portions of Gates of the Arctic National Park and Preserve for possible recommendation for wilderness designation. The wilderness study will be included as part of the general management plan amendment.

A range of reasonable alternatives for managing the park will be developed through this planning process and will include, at a minimum, a no-action and a NPS preferred alternative. Major issues the plan amendment will address include visitor access and use of the park, level of administrative and scientific research activities, management of natural and cultural resources, protection of the wilderness character, management adaptations to climate change, external threats the park is or will be facing, partnership opportunities, and collaboration with other land managers to address regional issues. The environmental impact statement will evaluate the potential environmental impacts of the alternative management approaches and the possible proposal for additional wilderness designation within the park.

As the first phase of the planning process, the National Park Service is identifying the issues to be addressed in the general management plan amendment/wilderness study/environmental impact statement. All interested persons, organizations, and agencies are encouraged to submit comments and suggestions on issues and concerns that should be addressed in the general management plan amendment/wilderness study/environmental impact statement, and the range of appropriate alternatives that should be examined.

DATES: The National Park Service is planning to begin public scoping in January 2010 via a newsletter to State and Federal agencies; associated native corporations; neighboring communities; borough; local organizations, researchers and institutions; the congressional delegation; and other interested members of the public. In addition, the National Park Service will hold public scoping meetings regarding the general management plan amendment in the winter of 2010 in Anchorage, Fairbanks, and many of the resident zone communities of Gates of the Arctic. Specific dates, times, and locations will be announced in the local media, on the Internet at *http://www.nps.gov/gaar,* and will also be available by contacting the park headquarters. In addition to attending the scoping meetings, people wishing to provide input to this initial phase of developing the general management plan/wilderness study/environmental impact statement may mail or e-mail comments to the park at the address below.

Written comments concerning the scope of the general management plan/wilderness study/environmental impact statement will be accepted for 60 days from the publication of this notice.

ADDRESSES: If you wish to comment on any issues and opportunities associated with the plan, you may submit your comments by any one of several methods. You may comment via the Internet to *http://parkplanning.nps.gov/gaar.* You may also mail comments to Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, Alaska 99709. Finally, you may hand-deliver comments to the park at the above address.

General park information and requests to be added to the project mailing list should be directed to: the Superintendent, Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT: Greg Dudgeon, Superintendent, at the address above. Telephone: 907–457–5752. General information about Gates of the Arctic National Park and Preserve is available on the Internet at *http://www.nps.gov/gaar.*

SUPPLEMENTARY 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 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: January 11, 2010.

Sue E. Masica,

Regional Director, Alaska.

[FR Doc. 2010–1568 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N187; 40136–1265–0000–S3]

Banks Lake National Wildlife Refuge, Lanier County, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Banks Lake National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Ms. Laura Housh, Regional Planner, Okefenokee National Wildlife Refuge, 2700 Suwannee Canal Road, Folkston, GA 31537. You may also access and download the document from the Service's Web site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Ms. Laura Housh; telephone: 912/496–7366, Extension 244; E-mail: *laura_housh@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Banks Lake NWR. We started this process through a notice in the **Federal Register** on December 6, 2007 (72 FR 68892). For more about the process, see that notice.

Established in 1985, Banks Lake NWR is located near the city of Lakeland, Lanier County, Georgia. The refuge lies in the Grand Bay-Banks Lake (GBBL) ecosystem, an area that comprises the second-largest freshwater wetland system in Georgia. The 3,559-acre refuge includes a diversity of habitats consisting of open water, cypress-gum swamp, herbaceous marsh, scrub/shrub, and evergreen forested wetlands. Banks Lake is a prominent feature of the refuge, with many anglers seeking bass and other fish. Other recreational opportunities include wildlife observation and wildlife photography. The refuge hosts several listed species, migratory birds, and a variety of other wildlife, many of which are aquatic.

We announce our decision and the availability of the final CCP and FONSI for Banks Lake NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA). The CCP will guide us in managing and administering Banks Lake NWR for the next 15 years.

The CCP will guide us in managing and administering Banks Lake National Wildlife Refuge for the next 15 years. Alternative B, as we described in the final CCP, is the foundation for the CCP.

The compatibility determinations for fishing; wildlife observation; wildlife photography; environmental education and interpretation; research studies and scientific collection; special events that advance outdoor recreation or conservation; commercial guided services for wildlife observation, photography, and interpretation; guided sport fishing; vegetation control on refuge shoreline by adjacent landowners; and fishing tournaments are available in the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

Approximately 50 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** on June 4, 2009 (74 FR 26883). Approximately 25 comments were received from local citizens and the State.

Selected Alternative

After considering the comments we received, we have selected Alternative B for implementation. The primary focus under Alternative B will be to expand management of all refuge resources. Monitoring efforts for listed species, general fish and wildlife, habitats, and water quality will be increased in order to gain a better understanding of their status and trends. The refuge boundary will be surveyed. We will conduct additional surveys to increase the understanding and protection of cultural resources. Public use opportunities will be increased.

Alternative B is considered to be the most effective for meeting the purposes of the refuge by protecting rare, threatened, and endangered species; maintaining biodiversity; and improving visitor services.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 30, 2009.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. 2010–1575 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2010–N015; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting March 2–4, 2010. The meeting is open to the public. The meeting agenda will include discussion of the current draft Recommendations to the Secretary.

DATES: The meeting is scheduled for March 2–4, 2010. For session times, *see* "Session Times" under **SUPPLEMENTARY INFORMATION.** To attend, you must register by February 23, 2010. See below.

ADDRESSES: We will hold the meeting at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Rooms 200A & B, Arlington, Virginia, 22203. For more information, see "Meeting Location Information."

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2007, the Secretary of the Interior (Secretary) established the Committee to provide advice and recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is made up of 22 members representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. All Committee meetings are open to the public.

Meeting Location Information

Persons planning to attend the meeting must register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html,* by February 23, 2010. Seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. Limited standing room will be available if all seats are filled.

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 2 weeks in advance of the meeting.

SESSION TIMES

Meeting Days:	Start time:	End time:
March 2, 2010	1 p.m.	5:30 p.m.
March 3, 2010	8 a.m.	5:30 p.m.
March 4, 2010	8 a.m.	3:00 p.m.

Dated: January 21, 2010.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. 2010–1540 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 9, 2010. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by

Dated: February 11, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ALASKA

Lake and Peninsula Borough-Census Area Kasna Creek Mining District, Address Restricted, Port Alsworth, 10000017

ARKANSAS

Ashley County

Crossett Methodist Church, 500 Main St., Crossett, 10000018

GEORGIA

Meriwether County

Eleanor Roosevelt School, (Rosenwald Schools in Georgia, 1912–1937) Parham St. at Leverette Hill Rd., Warm Springs, 10000019

ILLINOIS

Clinton County

Twiss, James C., House, 298 N. Page St., Aviston, 10000020

IOWA

Dickinson County

Mini-Wakan State Park Historic District, (CCC Properties in Iowa State Parks MPS) 24490 100th St., Spirit Lake, 10000021

MISSOURI

Atchison County

Rankin Hall, 402 N. 13th St., Terkio, 10000022

NEW YORK

Broome County

Vestal Central School, 201 Main St., Vestal, 10000023

Chemung County

Brand, John, Jr., House, 351 Maple Ave., Elmira, 10000024

Gerity, William S., House, 415 William St., Elmira, 10000025

Erie County

Alling & Cory Buffalo Warehouse, 136 N. Division St., Buffalo, 10000026

Buffalo Trunk Manufacturing Company Building, 125 Cherry St., Buffalo, 10000027

Montgomery County

Chalmers Knitting Mills, 21–41 Bridge St., Amsterdam, 10000028

Oneida County

Stanley, Edward W., Recreation Center, 36 Kirkland Ave., Clinton, 10000029

Steuben County

Presbyterian Church of Atlanta, 2 Main St., Atlanta, 10000030

Warren County

Methodist Episcopal Church, 33 Harrisburg Rd., Stony Creek, 10000031

Westchester County

Bird Homestead, 600 Milton Rd., Rye, 10000032

[FR Doc. 2010–1600 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from November 2 to November 6, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: January 20, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARKANSAS

Clay County

Piggott Commercial Historic District, Roughly bounded on the N. by W. Cherry on the South by W. Court, on the E. by S. Throgmorton and the W. by Clay, Piggott, 09000867, LISTED, 11/04/09

Faulkner County

Oak Grove Cemetery Historic Section, E. Bruce St. approx. .3 mi. E. of Harkrider St., Conway, 09000868, LISTED, 11/04/09

Garland County

Joers, Peter Dierks, House, 2111 Park Ave., Hot Springs, 09000773, LISTED, 11/04/09

COLORADO

Las Animas County

McCormick House, 1919 Pinon St., Trinidad, 09000869, LISTED, 11/04/09

CONNECTICUT

Middlesex County

Xi Chapter, Psi Upsilon Fraternity, 242 High St., Middletown, 09000870, LISTED, 11/04/09

ILLINOIS

Ogle County

Indian Statue, Lowden Memorial State Park, 1411 N. River Rd., Oregon, 09000871, LISTED, 11/05/09

Piatt County

Monticello Courthouse Square Historic District, Roughly bounded by Market, RR tracks, N. Hamilton, Independence & Marion Sts., Monticello, 08000400, LISTED, 11/05/09

KANSAS

Dickinson County

Garfield Elementary School, 300 NW 7th St., Abilene, 09000874, LISTED, 11/04/09 (Public Schools of Kansas MPS)

Ford County

Dodge City Downtown Historic District, Roughly bounded by Front St. on the S., 3rd Ave. on the W., Vine St. on the N., and Central Ave. on the E., Dodge City, 09000875, LISTED, 11/04/09

Gray County

Gray County Courthouse (Old), 117 S. Main, Cimarron, 09000873, LISTED, 11/04/09

Reno County

Norris, G.W., House, 301 E. 12th Ave., Hutchinson, 09000876, LISTED, 11/04/09

Sedgwick County

Penley House, 3400 Penley Dr., Wichita, 09000877, LISTED, 11/04/09 (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957)

Sedgwick County

Powell House, 330 N. Crestway, Wichita, 09000676, LISTED, 11/04/09 (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957)

Wabaunsee County

Alma Downtown Historic District, Missouri St., 2nd to 5th, Alma, 09000354, LISTED, 11/06/09

MAINE

Cumberland County

BAGHEERA (schooner), Maine State Pier, Commercial St., Portland, 09000878, LISTED, 11/04/09

York County

Cape Arundel Golf Club, 19 River Rd., Kennebunkport, 09000879, LISTED, 11/04/09

York County

Sanford Mills Historic District, Bounded by Washington St., Pioneer Ave., Emery St., and Weaver Dr., Sanford, 09000880, LISTED, 11/04/09

MASSACHUSETTS

Hampden County

Calhoun, Apartments, The, 1391–1399 Dwight St. & 85 Jefferson Ave., Springfield, 09000881, LISTED, 11/05/09

Hampden County

Verona, Apartments, The, 1245–1255 Dwight St. & 6–10 Allendale St., Springfield, 09000882, LISTED, 11/05/09

MISSISSIPPI

Carroll County

Vaiden High School, 504 Mulberry St., Vaiden, 09000883, LISTED, 11/05/09

Clarke County

McNair, Dr., House, 116 E. Church St., Quitman, 94000500, LISTED, 11/04/09 (Clarke County MPS)

Hinds County

Wiener House at 228 Ridge Drive, 228 Ridge Dr., Jackson, 09000884, LISTED, 11/02/09

Lincoln County

Alexander Teen Center, 456 Rogers St., Brookhaven, 09000885, LISTED, 11/03/09

Warren County

Glenwood-Vicklan Historic District, Including Vicklan St., Glenwood Cir., Edna Dr., and Chambers St. (E. of the Bayou), Vicksburg, 09000886, LISTED, 11/03/09 (Vicksburg MPS)

MISSOURI

Buchanan County

Central Police Station, 701 Messanie, St. Joseph, 09000887, LISTED, 11/05/09

St. Louis Independent City

National Candy Company Factory, 4230 Gravois Ave., St. Louis, 09000889, LISTED, 11/05/09

St. Louis Independent City

Our Lady of Perpetual Help Parish Hall, School, Convent, and Rectory, 5217 N. 21st. (Parish Hall), 2017 Linton Ave., (School & Convent), and 2011 Linton Ave. (Rectory), St. Louis, 09000890, LISTED, 11/05/09

OREGON

Lake County

Shirk, David L., Ranch, Guano Valley, Sec. 35, Township 38 S., Range 27 E., Willamette Meridian, Adel vicinity, 09000891, LISTED, 11/04/09

SOUTH DAKOTA

Fall River County

State Soldiers Home Barn, 2500 Minnekahta Ave., Hot Springs, 09000446, LISTED, 11/05/09

VERMONT

Rutland County

Bridge 4, Vermont Rt. 31, Poultney, 09000892, LISTED, 11/05/09 (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS)

WISCONSIN

Ozaukee County

Port Washington Fire Engine House, 102 E. Pier St., Port Washington, 09000894, LISTED, 11/05/09

[FR Doc. 2010–1601 Filed1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Policy on Cooperating Associations, Draft Director's Order #32

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The National Park Service (NPS) is requesting comments on revision of its policy governing nonprofit partners operating under a cooperating association (Association) agreement. This policy will apply to all units of the national park system, and will replace the previous policy which was issued in March 1998.

Director's Order #32: Cooperating Associations has been updated to reflect the findings and recommendations of the Cooperating Association Steering Committee submitted to the National Leadership Council in August 2009. These recommendations include as follows:

- The primary purpose of Cooperating Associations is to provide support to NPS through the sale and publication of interpretive materials and text.
- While nonprofit organizations may engage in different roles with NPS, Cooperating Association activities are those guided by the Cooperating Association Agreement while other roles may be guided by separate legal instrument(s).

DATES: Comments must be received by February 26, 2010.

ADDRESSES: The Draft Director's Order #32 is available for public inspection online at *http://www.nps.gov/policy/DO-32Draft.pdf*. Requests for printed copies and written comments should be sent to Rose Fennell, NPS Servicewide Cooperating Association Coordinator, 1849 C Street NW. (2450), Washington, DC 20240 or to the Internet address: *rose_fennell@nps.gov*. Please include "Comments on Director's Order #32" in the e-mail subject line.

FOR FURTHER INFORMATION CONTACT: Rose Fennell at (202) 513–7143.

SUPPLEMENTARY INFORMATION: Director's Order #32 (DO–32) is a policy intended to govern the internal management of the NPS as it relates to working with Associations. It will cover topics associated with the cooperating association program such as: legal authorities for Association activities; the standard Cooperating Association Agreement; responsibilities of NPS and Association staff; planning, sales activities, facilities and equipment; administrative requirements; fundraising and donations acceptance by Associations; and, aid to NPS. This new revision of DO–32 will replace the existing one, originally published in March 1998. The reference manual (RM–32) will be revised to outline procedures for implementation of the new version of DO–32.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated January 18, 2010.

Christopher K. Jarvi,

Associate Director, Partnerships and Visitor Experience.

[FR Doc. 2010–1566 Filed 1–26–10; 8:45 a.m.]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Wind Cave National Park, Custer County, SD

AGENCY: National Park Service.

ACTION: Notice of Availability for the Record of Decision on the Final Elk Management Plan and Final Environmental Impact Statement, Wind Cave National Park, Custer County, South Dakota.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Final Elk Management Plan and Final Environmental Impact Statement (Plan), Wind Cave National Park, Custer County, South Dakota. On December 3, the Midwest Regional Director approved the ROD for the project. As soon as practicable, the NPS will begin to implement the Preferred Alternative contained in the final EIS.

The NPS will implement the preferred alternative, Alternative B, as described in the final Plan issued on October 30, 2009. The emphasis of this alternative is to make maximum use of hunting on public and private lands outside the park to reduce and maintain the population of elk utilizing the park. This will be accomplished cooperatively with the South Dakota Department of Game Fish and Parks through managed annual public hunting on lands surrounding Wind Cave National Park. Initial reduction activities are expected to occur over a period of 1 to 5 years, with annual maintenance activities conducted thereafter. Because this may not be sufficient to reduce the elk population park-wide alone, a monitoring and adaptive management approach is inherent in the alternative. If hunting outside the park does not fully accomplish initial reduction goals within a prescribed timeframe, reduction methods described in other alternatives such as roundup and live shipping to a slaughterhouse or sharpshooting may be used to reach the target population range. The same would be true for maintenance.

The ROD includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decisionmaking process.

FOR FURTHER INFORMATION CONTACT: Superintendent Vidal Davila, Wind Cave National Park, 26611 U.S. Highway 385, Hot Springs, SD 57747–9430. You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov*); simply click on the link to Wind Cave National Park.

Dated: December 3, 2009.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 2010–1567 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT0300000 L17110000DF0000]

Notice of Reestablishment of the Grand Staircase-Escalante National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972. Notice is hereby given that the Secretary of the Interior (Secretary) has reestablished the Bureau of Land Management's (BLM) Grand Staircase-Escalante National Monument Advisory Committee (Committee).

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Legislative Affairs and Correspondence (600), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Monument managers on science and management issues and on the achievement of objectives set forth in the Grand Staircase-Escalante National Monument Management Plan.

CERTIFICATION STATEMENT: I hereby certify that the reestablishment of the Grand Staircase-Escalante National Monument Advisory Committee is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Dated: January 21, 2010.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–1621 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR912000–L63100000.DD0000]

Notice of Reestablishment of the Secure Rural Schools Resource Advisory Committees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972. Notice is hereby given that the Secretary of the Interior (Secretary) has reestablished the Bureau of Land Management's Secure Rural Schools Resource Advisory Committees.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Legislative Affairs and Correspondence (600), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

SUPPLEMENTARY INFORMATION: The purpose of the Committees is to provide recommendations to the Secretary for project funding, as required by the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393, as amended by Public Law 110–343, Title VI (2008).

Certification Statement

I hereby certify that the reestablishment of the Secure Rural Schools Resource Advisory Committees is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: January 21, 2010.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–1624 Filed 1–26–10; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–677]

In the Matter of: Certain Course Management System Software Products; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

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 an initial determination ("ID") (Order No. 6) terminating the investigation of the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. 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 (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on June 9, 2009, based upon a complaint filed on behalf of Blackboard Inc. of Washington, DC ("Blackboard") on April 17, 2009, and supplemented on May 6 and May 14, 2009. 74 FR 27345 (June 9, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain course management system software products that infringe certain claims of United States Patent No. 6,988,138. The notice of investigation named Desire2Learn, Inc. of Ontario, Canada ("D2L") as respondent.

On December 17, 2009, Blackboard and D2L filed a joint motion pursuant to Commission Rule 210.21(b) to terminate the investigation based upon a settlement agreement. On December 24, 2009, the Commission investigative attorney filed a response in support of the motion. On December 28, 2009, the ALJ issued Order No. 6, granting the motion. No petitions for review were filed.

The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: January 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–1489 Filed 1–26–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–47]

Mr. Checkout North Texas; Admonition of Registrant

On August 14, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA or "the Government"), issued an Order to Show Cause to Mr. Checkout North Texas (Respondent), of Grand Prairie, Texas. The Order to Show Cause proposed the revocation of Respondent's DEA Certificate of Registration as a distributor of list I chemicals on the ground that its continued registration was "inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h)." Show Cause Order at 1.

The Show Cause Order specifically alleged that Respondent was distributing certain list I chemical products containing pseudoephedrine and ephedrine, which are precursor chemicals used in the illicit manufacture of methamphetamine, a schedule II controlled substance, to convenience stores and truck stops, and that these stores traditionally sell only very small quantities of non-prescriptions drugs. *Id.* at 2. The Order further alleged that the specific list I chemical products Respondent distributes "are rarely found in any retail store serving the traditional therapeutic market," and have "a history of being diverted into the illicit production of methamphetamine." *Id.* The Order thus alleged that Respondent "continues to be primarily involved in the list I chemical business and is continuing to sell these products with high diversion potential to retailers who have minimal expectation of sales of products of these kinds." *Id.* at 3. Finally, the Order alleged that Respondent "has been involved in the distribution of listed chemical products out of an unregistered location in violation of the registration requirements of 21 U.S.C. 822." *Id.* at 2.

On September 17, 2007, Respondent timely requested a hearing on the allegations and the matter was placed

on the docket of the Agency's Administrative Law Judges (ALJ). Thereafter, on February 5, 2008, a hearing was held in Dallas, Texas. ALJ Ex. 2; ALJ at 4. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed briefs.

On June 10, 2009, the ALJ issued her recommended decision (ALJ). Therein, the ALJ concluded that the Government had failed to show that Respondent's continued registration is inconsistent with the public interest. ALJ at 36. As to the first factor—the maintenance of effective controls against diversion—the ALJ noted that, during an inspection in April 2006, Respondent's owner, Mr. Thomas Naulty, told an Agency Diversion Investigator (DI) "that he had stored and distributed some listed chemical products from another storage facility"; however, when the DI advised Mr. Naulty that such distribution constituted a violation of DEA regulations, he "took corrective action by moving the listed chemical products to the approved storage facility and inform[ed the DI] of this later that same day." *Id.* at 26.

Because the record contained "no evidence of inadequate recordkeeping" or "evidence that the Respondent sold controlled substances [1] over the regulatory threshold amounts," the ALJ concluded that "Mr. Naulty's immediate response" to the DI's notification that Respondent was violating the regulations "demonstrates the Respondent's commitment to compliance." *Id.* at 27. The ALJ thus concluded that this factor supports Respondent's continued registration. *Id.*

As to the second and fourth factors—Respondent's compliance with applicable laws and its past experience in the distribution of listed chemicals—the ALJ again noted that Mr. Naulty had taken prompt corrective action upon being told that Respondent was violating DEA regulations by distributing from the unregistered location. *Id.* The ALJ also found significant that "Respondent's owners personally deliver the listed chemical products to its customers" and "require their listed chemical customers to comply with the sales limits of the [Combat Methamphetamine Epidemic Act]." *Id.* at 27–28. Based on "Respondent's sincere commitment to compliance over a 10 year time period," the ALJ concluded that the evidence "heavily weighs in favor of continuing Respondent's DEA registration." *Id.* at 28.

As to factor three—Respondent's record of convictions under Federal or State laws relating to controlled substances or listed chemicals—the ALJ observed that the record contained no evidence of such convictions by either Mr. Naulty or his son, Mr. Anthony Naulty, owner of Mr. Checkout & Son, a subsidiary of Respondent. *Id.* at 5, 28. The ALJ also noted that the record contained no evidence that any of "Respondent's customers had been convicted of a crime related to the handling of listed chemical products or methamphetamine." *Id.* at 28.

Finally, as to factor five—other factors that are relevant to and consistent with the public health and safety—the ALJ noted that "[i]n the past, the DEA has revoked the registrations of listed chemical product distributors because it found the listed chemical products had been sold in quantities that exceeded the amount that could be expected to be sold to customers with legitimate need for such products." *Id.* (citations omitted). The ALJ then reasoned that "[i]mplicit in this issue * * * is the necessity for the Government to establish an expected monthly sales amount—the quantity consistent with 'legitimate demand'— that can be compared against the Respondent's actual sales." *Id.* at 29 (citation omitted). While noting that in past cases, "the Government attempted to establish this baseline by entering the declarations of its expert witness, Jonathan Robbin," the ALJ observed that "[m]ore recently * * * the validity of Mr. Robbin's methodology and the applicability of the underlying data he uses have been sharply called into question," and that I "ha[ve] declined to rely on [his] figures in reaching her decisions." *Id.* at 29–30 (citing *Novelty Distributors, Inc.,* 73 FR 52589, 52693–95 (2008); *Gregg & Son Distributors,* 74 FR 17517, 17519–20 (2009); *Sunny Wholesale, Inc.,* 73 FR 57655, 57658–59 (2008)).

Accordingly, although Respondent did not challenge the statistical evidence contained in the affidavit which the Government entered into evidence, the ALJ concluded that she could not "simply close [her] eyes to the reduced credibility of Mr. Robbins methods and analysis." *Id.* at 30–31. Based on the decisions cited above, as well as because "Mr. Robbin's analysis was clearly not tailored to this Respondent," the ALJ concluded that the Government had not "established by a preponderance of the evidence that these figures accurately represent[ed] the average dollar amount of expected sales." *Id.* at 31.

The ALJ further noted that the Government did not establish Respondent's own average monthly sale, per customer, of listed chemical products. *Id.* Because there was no "baseline average sales figure to compare" Respondent's sales to, the ALJ concluded that the Government had failed to prove by a preponderance of the evidence that "this Respondent sold listed chemical products in such excessive quantities" as to support the inference that the products were being diverted into the illicit manufacture of methamphetamine. *Id.* at 33.

The ALJ also noted that the evidence showed that "at one time, the Respondent distributed a rose in a glass container," and that "[c]redible evidence establishes that the packaging of this product is sometimes used as drug paraphernalia." *Id.* The ALJ further remarked that "the record contains no evidence that the roses sold by the Respondent were ever sold at retail in conjunction with other products that would lead the seller of the roses to believe this product would be used as drug paraphernalia," that "there are no regulations or other guidance provided by DEA * * * to indicate that the Respondent was on notice of the potential misuse of this product," and that "there is no evidence that Respondent had any actual knowledge of such potential misuse of the product." *Id.* at 33. The ALJ thus found that "the evidence relevant to the fifth factor does not lead to the conclusion that this Respondent's DEA registration should be revoked." *Id.* at 33–34.

Having found that "the Government has failed to prove by a preponderance of the evidence that the Respondent engaged in excessive sales or created a serious risk of diversion," the ALJ ultimately found that "the evidence in this case supports a conclusion that the continued registration of the Respondent would not be inconsistent with the public interest." *Id.* at 36. Accordingly, she recommended that "the Respondent's DEA registration should be continued and its renewal application should be granted without restrictions." *Id.*

Neither party filed exceptions to the ALJ's Decision. On July 29, 2009, the ALJ forwarded the matter to me for final agency action.

Having reviewed the record in its entirety, I adopt the ALJ's conclusion that the Government did not prove by a preponderance of the evidence that Respondent engaged in sales in excess of legitimate demand or otherwise has failed to maintain effective controls against diversion. I also agree with the ALJ's conclusion that Respondent

[1] The Respondent's registration does not entitle him to distribute controlled substances, but rather only listed chemicals. I presume that the ALJ meant the latter.

violated Federal law by distributing from an unregistered location, but that because Respondent immediately discontinued this practice upon learning that it was a violation, this conduct does not warrant the revocation of its registration. Finally, I agree with the ALJ's conclusion that the Government has not established that Respondent violated the drug paraphernalia statute (21 U.S.C. 863) when it sold glass roses. I therefore also adopt her conclusion that Respondent's continued registration is not inconsistent with the public interest. However, based on Respondent's conduct in distributing from an unregistered location, I conclude that it should be admonished. I make the following findings of fact.

Findings

Respondent, which is owned by Mr. Thomas Naulty as a sole proprietorship, is a wholesale distributor of various products including non-prescription drug products, as well as sunglasses, ball caps, candies, batteries, condoms "and whatever you can find around the checkout area of a convenience store." Tr. 105–06. Among the non-prescription drugs distributed by Respondent are products which contain the list I chemicals pseudoephedrine and ephedrine. GX 29. Respondent distributes list I chemical products to convenience stores, gas stations, and similar establishments in the Dallas, Texas metropolitan area. *Id.* at 63; GX 31.

Both pseudoephedrine and ephedrine have FDA-approved therapeutic uses. Ephedrine is lawfully marketed under the Food, Drug and Cosmetic Act for over-the-counter use as a bronchodilator to treat asthma, and pseudoephedrine is lawfully marketed for over-the-counter use as a decongestant. *See* GX 15, at 3–4. Both substances are, however, regulated as list I chemicals under the Controlled Substances Act because they are precursor chemicals which are easily extracted from over-the-counter drug products and frequently diverted into the illicit manufacture of methamphetamine, a schedule II controlled substance. See 21 U.S.C. 802(34); *id.* 812(c); 21 CFR 1308.12(d). *See also* GX 15, at 8.

Respondent has held a DEA registration to distribute list I chemicals since November 1997. GX 1. While the expiration date of its most recent registration certificate is January 31, 2007, on January 5, 2007, Respondent submitted a renewal application. GX 1; Tr. 65. Accordingly, I find that Respondent's registration has remained in effect pending the issuance of this Decision and Final Order.[2] *See* 5 U.S.C. 558(c).

Mr. Anthony Naulty is Thomas Naulty's son. *Id.* at 4. Anthony Naulty is the owner of Mr. Checkout & Sons, which, pursuant to a partnership agreement executed in October 2005 and still in effect on the date of the hearing, was a subsidiary of Respondent. *Id.* at 112; RX 12. Under the agreement, Thomas Naulty handles the responsibilities of maintaining inventory and setting distribution schedules for Respondent and Mr. Checkout & Sons; Anthony Naulty manages sales, physical distribution, and the accounts receivable for both businesses. RX 12. Anthony Naulty planned to take over Respondent upon Thomas Naulty's retirement and so applied for his own registration. Tr. 48. Sometime in 2007, Anthony Naulty was served with an Order to Show Cause which proposed the denial of his application; he then withdrew his application. *Id.* at 55. However, the record does not disclose the basis of the Agency's decision to deny the application.

The 2006 Inspection

In April 2006, two DEA Diversion Investigators (DIs) visited Respondent to conduct a cyclic investigation.[3] *Id.* at 61. The DIs went to Respondent's registered location, which is Mr. Naulty's residence in Grand Prairie, Texas, and reviewed its recordkeeping, security, and business practices. *Id.* at 61–62. The DIs determined, however, that Respondent stores its listed chemical products in a unit of a storage facility located at 3150 East Pioneer Parkway, Arlington, Texas, some five or six miles from its registered location.[4] *Id.* at 61–62, 102, 111–12.

The DIs also determined that Respondent was storing listed chemicals in a second storage unit located in McKinney, Texas, which is an estimated 40 miles from Respondent's registered location. *Id.* at 62–64. According to Mr. Naulty, his son was distributing listed chemicals from this storage unit. *Id.* at 116. However, upon being informed by the DIs that this was a violation of DEA regulations (because the products were not being returned to the registered location prior to being distributed), Respondent immediately ceased doing so. *Id.* at 63 & 116; *see also* 21 CFR 1309.23(b)(1).

The DIs also determined that Respondent distributed Max Brand, a pseudoephedrine product, as well as seven ephedrine products including Mini-Thin, Twin Tabs, Mini-Two Way, and Rapid Action. Tr. 74; GX 25. The DI testified that none of the eight products were available at chain pharmacies or supermarkets, which are considered to be the "traditional" market where consumers purchase over-the-counter drugs containing list I chemicals to treat cough, cold, and asthma.[5] Tr. 75. Moreover, other evidence in the record shows that at least two of the products distributed by Respondent (Max Brand and Mini-Two Way) have been found in numerous seizures conducted by law enforcement.[6] *See* GXs 2 & 3.

During the inspection, Mr. Naulty provided the DIs with Respondent's

[2] Respondent also holds a State of Texas permit as a Wholesale Distributor of Drugs. GX 30; RX 11; *see also* Tr. 105–06.

[3] DEA Investigators had previously inspected Respondent prior to granting its initial registration, as well as in 2001. Tr. 37–38, 89–90, 93.

[4] At the hearing, an Agency Diversion Investigator (DI) testified that under DEA regulations, the use of such a storage facility is permissible and expected for small, independent registrants like Respondent. *Id.* at 90. Apparently, the DI had not read any of the Agency decisions which have held that the use of public storage units to store listed chemicals does not provide an acceptable level of security. *See Stephen J. Heldman,* 72 FR 4032, 4034 (2007); *Sujak Distributors,* 71 FR 50102, 50104 (2006).

The ALJ credited the DI's testimony "that, pursuant to DEA regulations, the Respondent is required to move the listed chemical products to the registered location before distributing them." ALJ at 10; *see also* Tr. 62, 83, 90; *see also* 21 CFR 1309.23(b)(1).

[5] According to a Diversion Investigator, DEA considers the "traditional" market for cough, asthma and cold remedies containing list I chemicals to include large chain grocery stores, nationally recognized pharmacy chains, larger convenience stores (*e.g.,* 7–11), and large retail stores (*e.g.,* Wal-Mart). GX 16, at 5. It considers the "non-traditional," or "gray," market for these products to include smaller-chain and non-chain convenience stores and other smaller retail establishments "where consumers would not normally purchase over the counter medications." *Id.* at 6. Such "non-traditional" outlets typically carry listed chemical products in higher strengths and packaged in bottles or blister packs in larger quantities. *Id.* Convenience store sales of such products are a major source of the ephedrine and pseudoephedrine used in the illicit manufacture of methamphetamine. Tr. 19; GX 16, at 8–9.

According to a DEA Special Agent, methamphetamine traffickers use people who engage in a practice known as "smurfing." GX 16, at 6; Tr. 18. This practice involves going to multiple stores and buying the maximum number of packages possible of ephedrine and/or pseudoephedrine at each store. Tr. 18. Smurfers typically avoid larger retail stores such as "Target or Wal-Mart," because such chains have loss-prevention personnel dedicated to detecting shoplifting and suspicious buying practices. *Id.* at 18–19. As a result, smurfers target convenience stores and gas stations, which generally lack these security practices; these stores have thus become a large and consistent source of precursor chemicals for the illicit manufacturers of methamphetamine. *Id.* at 19.

[6] At the time of the hearing in February 2008, Respondent carried one pseudoephedrine product and two ephedrine products, Mini-Thin and BronchEase. Tr. 103–05. The ALJ found that Thomas Naulty "credibly testified the Respondent would cease handling the pseudoephedrine product" in mid-2008. ALJ at 7; *see also* Tr. 104.

customer list for list I chemical products; the list contained contact information for 49 businesses and was comprised of convenience stores, small markets, and gas stations. Tr. 93–94; GX 31. Thomas Naulty indicated that Respondent made deliveries to customers approximately once every two weeks. Tr. 84, 122. According to Thomas Naulty's testimony, his customers generally buy three to four dozen packages of list I chemical products at a time. *Id.* at 122. Mr. Naulty further indicated that, of those stores that sell both ephedrine and pseudoephedrine products, "one [product] outsells the other, so they buy minimally and averagely" such that if a customer purchased four dozen of one type of product, it would purchase only one dozen of the other type. *Id.* at 122–23.

During the inspection, Thomas Naulty told the DI that list I chemical product sales constituted approximately 20 percent of his overall dollar sales. *Id.* at 88. Moreover, at the hearing, Thomas Naulty testified that list I chemical products constituted approximately 23 percent of his total dollar sales and thus represented the inventory item which generated the largest sales volume. *Id.* at 104, 118–20.

During the inspection, the DI reviewed Respondent's purchase and sales invoices for the seven months prior to April 10, 2006. *Id.* at 84. To show some of Respondent's purchases and sales of list I chemical products, the Government entered into evidence two purchase invoices from December 2005, one sales invoice from March 2006, and one sales invoice from April 2006. *See* GXs 32 & 33. However, the DI only made copies of the two sales invoices which were entered into evidence. Tr. 84–85.

One of the sales invoices shows that a customer purchased 120 bottles of 36-count Max Brand pseudoephedrine (60-mg. strength) for $288 as well as twelve 48-count blister packs of Mini Thin ephedrine for $36. GX 33, at 2; *see also* Tr. 74–76, 78–80. In testimony, the DI asserted that, from the invoices he had reviewed, while some stores might receive a delivery of half a case (72 bottles); no store received a full case (144 bottles). *Id.* at 85.

The DIs did not, however, prepare a compilation of the sales invoices they reviewed. Nor did the Government produce any other evidence to show what Respondent's average monthly sale of list I products was to its various customers.[7]

Moreover, the Government apparently did not conduct an audit of Respondent's handling of list I products and produced no evidence showing that Respondent had violated any provisions of the CSA or Agency regulations or that its recordkeeping was inadequate. At the conclusion of the inspection, the DIs informed Thomas Naulty that they had found no violations of DEA regulations.[8] *Id.* at 98–99.

After the inspection, one of the DIs conducted customer verifications at the two stores whose sales invoices he had copied. *Id.* at 87. The customers verified that they had purchased and received the quantities listed in the invoices. *Id.*

At the time of the hearing, Respondent distributed list I chemical products to twenty-four customers, all of whom had self-certified as required by the Combat Methamphetamine Epidemic Act ("CMEA"). *Id.* at 127–28; RX 7. Respondent also required that its customers enter into a written stipulation that they cannot purchase only list I chemical products. Tr. 129.

At its own expense, Respondent provided its list I chemical product customers with logbooks outlining the sales restrictions of the CMEA. *Id.* at 105. Thomas Naulty further indicated his belief that Respondent's customers were satisfying the statutory requirements for the logbook. *Id.* at 129–30. As the ALJ further found, there is "no evidence that any of the stores that purchase listed chemical products from the Respondent have failed to abide by the self-certification requirements, the behind-the-counter placement requirements, the regulated transaction limits, or any other provisions of the CMEA or the Texas methamphetamine precursor legislation." ALJ at 7.

At the hearing, the Government also pointed to a sales invoice, which showed that on April 3, 2006, Respondent sold 72 glass roses to a store in Arlington, Texas. GX 33, at 2. Government Counsel then asked the DI if he knew "what a glass rose is?" Tr. 79. The DI replied: "Not particularly. I've heard it's also used in clan[destine methamphetamine] labs." *Id.* However, the DI did not know what this item is specifically used for. *Id.* Moreover, on cross-examination, the Government did not ask Mr. Naulty any questions regarding his sales of glass roses.

The record contains no evidence that Respondent or Thomas or Anthony Naulty has been convicted of a State or Federal crime related to the use or distribution of controlled substances or listed chemical products. *See also* ALJ at 9. Similarly, the record contains no evidence that any of Respondent's customers or individuals related to those businesses has been convicted of a crime involving the manufacture, distribution or use of methamphetamine. *See also id.* Finally, the record contains no evidence that any of the listed chemical products actually distributed by Respondent has been discovered in a methamphetamine laboratory. *See also id.*

Finally, the ALJ found that Thomas Naulty "credibly testified that he is committed to handling listed chemical products in a manner that would prevent them from being diverted into illegitimate channels." ALJ at 19 (citing Tr. 106). She also found that he "credibly testified that his company 'will continue to follow the DEA rules and regulations as we have in the past. Whatever compliance is necessary, we will do.'" *Id.* (citing Tr. 107–08).

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to distribute a list I chemical "may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). Moreover, under section 303(h), "[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest." *Id.* § 823(h). In making the public interest determination, Congress

[7] The Government also introduced into evidence a declaration prepared by an expert in statistical analysis of "demographic, economic, geographic, survey and sales data." GX 25 (affidavit of Jonathan Robbin, President of Ricercar, Inc). Therein, the Government's Expert opined that "the expected sale of ephedrine (Hcl) tablets in a convenience store ranges between $0 and $25, with an average of $12.58," and that "[a] monthly retail sale * * * of $60 of ephedrine (Hcl) tablets would be expected to occur about once in a million times in random sampling." *Id.* at 7–8.

In her discussion of this evidence, the ALJ noted that in several cases, the Expert's "methodology and the applicability of the underlying data he uses have been sharply called into question," and that more recently, I had "declined to rely on [Robbin's] figures in reaching her decisions." ALJ at 30 (citing *Novelty Distributors, Inc.,* 73 FR 52689, 52693–95 (2008)). For this reason, as well as because the Expert "analysis was clearly not tailored to this Respondent," the ALJ declined "to rely on his figures." *Id.* at 31.

As the Expert's affidavit indicates that he used the same methodology which I found wanting in *Novelty,* I am again compelled to reject this evidence as not probative of either the average expected sales levels of these products to meet legitimate demand at convenience stores, or of the probability of various sales levels occurring in normal commerce. I therefore do not make any findings regarding these issues.

[8] Of course, the DIs had found a violation because Respondent had distributed products through the McKinney, Texas storage unit.

directed that the following factors be considered:

(1) maintenance by the [registrant] of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the [registrant] with applicable Federal, State, and local law;

(3) any prior conviction record of the [registrant] under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the [registrant] in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

Id.

"These factors are considered in the disjunctive." *Gregg & Son Distributors,* 74 FR at 17520; *see also Joy's Ideas,* 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and I may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for renewal of a registration. *Gregg & Son,* 74 FR at 17520; *Jacqueline Lee Pierson Energy Outlet,* 64 FR 14269, 14271 (1999). Moreover, I am not required to make findings as to all of the factors. *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

The Government bears the burden of proof. 21 CFR 1309.54. Having considered all of the factors, I conclude that while the Government has proved a single violation of Federal law, the evidence does not support the conclusion that Respondent's continued registration is inconsistent with the public interest.

During the hearing, the Government appeared to raise three principal allegations: (1) That Respondent was selling excessive quantities of listed chemical products to non-traditional retailers, (2) that Respondent sold an item which is used as drug paraphernalia, and (3) that Respondent distributed products directly from a storage facility which was located forty miles from its registered location without first returning them to its registered location. The first two allegations require no more than token discussion because they fail for lack of substantial evidence. While the third allegation was proved, Respondent quickly corrected the violation.

As for the first allegation, having previously found that the Government Expert's methodology is unreliable and it being apparent that the expert's affidavit relies on the same methodology, once again I conclude that his findings as to both the monthly expected sales range and the statistical improbability of certain sales levels of listed chemical products in legitimate commerce at convenience stores are not supported by substantial evidence. *See Novelty Distributors,* 73 FR at 52693–94; *see also CBS Wholesale Distributors,* 74 FR 36746, 36748 (2009); *Gregg & Son,* 74 FR at 17520. While this provides reason alone to find the allegation unproven, the deficiency in the Government's case is compounded by its failure to show what Respondent's average monthly sales were to its various customers. The allegation is therefore rejected.

The Government also failed to prove that Respondent violated Federal law by selling drug paraphernalia. *See* 21 U.S.C. 863. While I have now held in several cases that glass roses constitute drug paraphernalia, *see, e.g., Gregg & Son,* 74 FR at 17521, the Supreme Court has held that the statute imposes a scienter requirement. *See Posters 'N' Things, Ltd.* v. *United States,* 511 U.S. 513, 524 (1994). ("It is sufficient that the defendant be aware that customers in general are likely to use the merchandise with drugs. Therefore, the Government must establish that the defendant knew that the items at issue are likely to be used with illegal drugs.") (citing *United States* v. *United States Gypsum Co.,* 438 U.S. 422, 444 (1978) ("knowledge of 'probable consequences' sufficient for conviction")).

The Government produced absolutely no evidence that Mr. Naulty was aware that the glass roses' likely use is as drug paraphernalia. Nor did it even pose this obvious question to Mr. Naulty when it cross-examined him. The allegation therefore also fails for lack of substantial evidence.

The only allegation that was proved was that Respondent distributed list I chemical products directly from a storage facility which was not a registered location (and which was located approximately forty miles from its registered location). Under Federal law, "[a] separate registration is required for each principal place of business at one general physical location where List I chemicals are distributed * * * by a person." 21 CFR 1309.23(a). However, a registration is not required for "[a] warehouse where List I chemicals are stored by or on behalf of a registered person, unless such chemicals are distributed directly from such warehouse to locations other than the registered location from which the chemicals were originally delivered." *Id.* § 1309.23(b)(1).

Respondent did not dispute that it distributed list I chemicals from its McKinney storage unit without first returning them to its registered location. In doing so, Respondent violated Federal law. 21 U.S.C. 843(a)(9) ("It shall be unlawful for any person knowingly or intentionally * * * to distribute * * * a list I chemical without registration required by this subchapter[.]"). However, the Government did not establish the extent of the violations and Mr. Naulty immediately ceased doing so upon being told by the DIs that this was a violation. The Government's evidence therefore does not establish that Respondent's continued registration is inconsistent with the public interest. Respondent's violation does, however, warrant an admonition, which shall be made a part of Respondent's record.[9]

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that Mr. Checkout North Texas, be, and it hereby is, admonished. I further order that the application of Mr. Checkout North Texas for renewal of its DEA Certificate of Registration be, and it hereby is, granted. This order is effective immediately.

Dated: January 18, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–1634 Filed 1–26–10; 8:45 am]

BILLING CODE 4410–09–P

[9] As found above, Respondent is currently using a rental storage unit to store list I products. In several cases, DEA has held that the use of such units does not provide adequate security. More specifically, I have noted a number of "security concerns which are raised by these facilities including the inadequacy of their construction, the lack of alarm systems, the lack of 24 hour on-site monitoring, the ability of unauthorized persons to gain access to the facility and the storage units, and the fact that the tenant does not control what other tenants the landlord rents to." *Novelty Distributors,* 73 FR at 52698; *see also Heldman,* 72 FR at 4034; *Sujak Distributors,* 71 FR at 50104.

While it seems unlikely that Respondent's storage unit provides adequate security, the Government did not raise this as an issue at any time in this proceeding. Consistent with the Due Process Clause and Administrative Procedure Act, because Respondent has had no opportunity to contest whether his storage unit provides adequate security, I do not consider the issue. *See CBS Wholesale,* 74 FR at 36749–50.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Cooperative Research Group on Clean Diesel V

Notice is hereby given that, on December 10, 2009, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on Clean Diesel V ("Clean Diesel V") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have withdrawn from this venture: BP America, Inc. Global Fuels Technology, Naperville, IL and Federal Mogul, Inc., Plymouth, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Clean Diesel V intends to file additional written notifications disclosing all changes in membership.

On January 10, 2008, Clean Diesel V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10064).

The last notification was filed with the Department on November 9, 2009. A notice was published in the **Federal Register** on December 17, 2009 (74 FR 66995).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–1240 Filed 1–26–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on December 14, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Continental Cement, Hannibal, MO has been added as a party to this venture. Also, the following parties have withdrawn from this venture: ABB, Incorporated, Wickliffe, OH; Air Products and Chemicals, Inc., Allentown, PA; LWB Refractories, York, PA; MikroPul, Charlotte, NC; Penta Engineering Corporation, St. Louis, MO; Gebr. Pfeiffer USA, Inc., Pembroke Pines, FL and River, Columbus, OH.

In addition, the following companies have changed their names: Hanson Permanente Cement, Pleasanton, CA to Lehigh Hanson; Rinker Materials Corporation, West Palm Beach, FL to CEMEX; St. Lawrence Cement Inc., Mount Royal, PQ, CANADA to Holcim Canada.

No other changes have been made in either the membership or planned activity of the group research project. Membership in each project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on May 18, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2009 (74 FR 30327).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–1243 Filed 1–26–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High Efficiency Dilute Gasoline Engine II

Notice is hereby given that, on December 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II, ("HEDGE II") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alantum, Gyeonggi-Do, Republic of Korea has been added as a party to the venture. Also, Deutz, AG Cologne, Germany has withdrawn as a party to the venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE II intends to file additional written notifications disclosing all changes in membership.

On February 19, 2009, HEDGE II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 2009 (74 FR 15003).

The last notification was filed with the Department on November 9, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 2009 (74 FR 66995).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–1238 Filed 1–26–10; 8:45 am]

BILLING CODE 4410–11–M

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2010–2 CRB SD 2004—2007]

Distribution of the 2004 Through 2007 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice soliciting comments on motion of Phase I claimants for partial distribution.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2004 through 2007 satellite royalty funds.

DATES: Comments are due on or before February 26, 2010.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to:

Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE, Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: On October 27, 2009, representatives of the Phase I claimant categories (the "Phase I Claimants") [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2004, 2005, 2006, and 2007 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. That section requires that the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. Consequently, by today's Notice, the Judges seek comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2004, 2005, 2006 and 2007 satellite royalty funds to the Phase I claimants.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb*.

Dated: January 22, 2010.

William J. Roberts,

Copyright Royalty Judge.

[FR Doc. 2010–1646 Filed 1–26–10; 8:45 am]

BILLING CODE 1410–72–P

[1] The "Phase I Claimants" are the Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before *February 26, 2010.* Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full

description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of the Army, Agency-wide (N1–AU–10–3, 1 item, 1 temporary item). Master files of an electronic information system that contains promotion data for enlisted personnel, including eligibility rosters, selection lists, and review documentation.

2. Department of the Army, Agency-wide (N1–AU–10–5, 1 item, 1 temporary item). Master files of an electronic information system that contains field, scientific, and engineering data used in connection with environmental remediation and restoration activities at Army installations.

3. Department of the Army, Agency-wide (N1–AU–10–6, 1 item, 1 temporary item). Master files of an electronic information system that contains information concerning forensic evidence used in criminal investigations, such as related case number, date evidence was gathered, and examiners' reports.

4. Department of the Army, Agency-wide (N1–AU–10–7, 1 item, 1 temporary item). Master files of an electronic information system that contains resource management data concerning criminal investigative activities that is used for budget planning and execution, personnel management, training, and agent accreditation.

5. Department of the Army, Agency-wide (N1–AU–10–16, 2 items, 2 temporary items). Master files of electronic information systems used in connection with civilian employee personnel management matters, such as recruitment, placement, and workforce planning and analysis.

6. Department of Defense, Joint Staff (N1–218–09–7, 5 items, 5 temporary items). Master files and reports associated with an electronic information system used by the U.S. European Command for personnel and casualty reporting. Most of the information included in these records is also contained in records that were previously approved for permanent retention.

7. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–09–13, 8 items, 8 temporary items). Content and management records associated with the agency's internal and external Web sites.

8. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–09–19, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to track executive correspondence, congressional reports, and Freedom of Information Act requests and appeals.

9. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–10–2, 1 item, 1 temporary item). Records of three standardized patient assessments submitted by health care quality improvement organizations that were never used.

10. Department of Justice, Justice Management Division (N1–60–09–50, 1 item, 1 temporary item). Records of agency-wide programs established to ensure equal employment opportunities for women, minorities, persons with disabilities, and other groups.

11. Department of Justice, Office of the Inspector General (N1–60–09–61, 5 items, 5 temporary items). Content and management records relating to the office's internal Web site.

12. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–09–1, 2 items, 2 temporary items). Digital images and metadata relating to bullets and cartridges recovered from crime scenes and test fires of weapons.

13. Department of Justice, Executive Office of U.S. Trustees (N1–60–09–36, 1 item, 1 temporary item). Master files of automated case tracking system used to maintain data on bankruptcy cases.

14. Department of the Navy, U.S. Marine Corps (N1–127–09–7, 1 item, 1 temporary item). Master files of an electronic information system used in connection with career planning and the assignment of personnel.

15. Department of State, Bureau of East Asian and Pacific Affairs (N1–59–09–14, 5 items, 3 temporary items). Subject files, biographical files and daily activity reports. Proposed for permanent retention are briefing books and historical files. The proposed disposition instructions are limited to paper records for permanent items.

16. Department of Transportation, Federal Aviation Administration (N1–237–09–26, 4 items, 4 temporary items). Electronic data and other records used in connection with credentialing of aviation safety inspectors.

17. Department of Transportation, Federal Highway Administration (N1–406–09–28, 2 items, 2 temporary items). Master files of two electronic information systems maintained by the agency's aerodynamics laboratory. One of the systems contains bridge wind event data recorded at the Deer Isle Bridge in Maine. The other system contains bridge and cable data.

18. Department of the Treasury, Internal Revenue Service (N1–58–10–1, 4 items, 4 temporary items). Master files, outputs, and system documentation associated with an electronic information system that contains data used for scheduling computer runs at agency service centers.

19. Department of the Treasury, Internal Revenue Service (N1–58–10–2, 3 items, 3 temporary items). Master files and system documentation associated with electronic information systems that contain data concerning the examination of returns from employee plans and exempt organizations.

20. Department of the Treasury, Internal Revenue Service (N1–58–10–3, 3 items, 3 temporary items). Master files and system documentation associated with an electronic information system that contains data concerning agency information technology assets.

21. Department of the Treasury, Internal Revenue Service (N1–58–10–4, 4 items, 4 temporary items). Master files, outputs, and system documentation associated with an electronic information system that contains data concerning the case loads and hours worked by Tax Exempt and Government Entities staff.

22. Federal Communications Commission, Wireless Telecommunications Bureau (N1–173–08–1, 32 items, 32 temporary items). Master files of an electronic information system that contain information concerning licensing of wireless and public safety radio services. Included are applications for licenses, designated entity licensees' annual reports, pleadings, correspondence, license records for auctionable and non-auctionable services, granted registrations and leases, audit records, and antenna application and registration information.

23. Federal Energy Regulatory Commission, Agency-wide (N1–138–10–1, 1 item, 1 temporary item). Plans submitted by Federal and state agencies relating to waterway use and improvements and energy conservation.

24. National Prison Rape Elimination Commission, Agency-wide (N1–220–09–1, 4 items, 2 temporary items). Working papers, routine correspondence, recordings of meetings that have been transcribed, and other non-substantive records. Proposed for permanent retention are the Commission's substantive records, including agendas and minutes of meetings, briefing books, reports, and the Commission Web site.

25. Railroad Retirement Board, Office of Programs (N1–184–09–2, 21 items, 21 temporary items). Records relating to administration of the Medicare program and contracted Part B claims on behalf of qualified railroad retirement beneficiaries. Included are electronic case files, input files, reports, and electronic data.

Dated: January 21, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services–Washington, DC.

[FR Doc. 2010–1709 Filed 1–26–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2010–0025]

Florida Power and Light Company; Turkey Point Nuclear Generating Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an Exemption, pursuant to 10 CFR 50.12 and 10 CFR 50.60(b) from the requirements of 10 CFR 50.61 and 10 CFR part 50, Appendix G for Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Units 3 and 4, located in Miami, Florida. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.61, "Fracture Toughness Requirements for Protection Against Thermal Shock Events," and 10 CFR Part 50, Appendix G, "Fracture Toughness Requirements."

The proposed action is in accordance with the licensee's application dated March 18, 2009.

The Need for the Proposed Action

The proposed exemption would allow the licensee to use an alternative method, described in Framatome ANP Topical Report BAW–2308, Revisions 1–A and 2–A (supplemental), for determining the adjusted RT_{NDT} (reference nil-ductility temperature) of the Linde 80 weld materials present in the beltline region of the Turkey Point Units 3 and 4 reactor pressure vessels.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff concluded that the change would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed. There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. The proposed action will be performed inside existing plant buildings. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed exemption. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Turkey Point Units 3 and 4, Docket No. 50–250 and 50–251, issued in 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on January 6, 2010, the staff consulted with the Florida State official, Charles Hamilton of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 18, 2009 (Agencywide Document Access and Management System (ADAMS) No. ML090920408). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 1555 Rockville Pike, Rockville, Maryland 20852. Publicly available records will be accessible electronically from the 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 send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of January 2010.

For the Nuclear Regulatory Commission.

Jason C. Paige,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–1648 Filed 1–26–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275, 50–323; NRC–2009–0552]

Pacific Gas & Electric Company; Notice of Intent To Prepare an Environmental Impact Statement and Conduct the Scoping Process for Diablo Canyon Nuclear Power Plant, Units 1 and 2

Pacific Gas & Electric Company (PG&E) has submitted an application for renewal of facility Operating License Nos. DPR–80 and DPR–82, for an additional 20 years of operation at the Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2. DCPP Units 1 and 2 are located in San Luis Obispo County, California, approximately 12 miles west-southwest of the San Luis Obispo city limits.

The current operating licenses for DCPP, Units 1 and 2, expire on November 2, 2024 and August 26, 2025. The application for renewal, dated November 23, 2009, was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 54, which included the environmental report (ER). A separate notice of receipt and availability of the application was published in the **Federal Register** on December 11, 2009 (74 FR 65811). A notice of acceptance for docketing of the applications and opportunity for hearing regarding renewal of the facility operating licenses is also being published in the **Federal Register**. The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the review of the license renewal applications and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act (NEPA)," the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, PG&E submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The ADAMS Accession Number for the DCPP, Units 1 and 2, ER is ML093340123. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.* The DCPP, Units 1 and 2, ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html.* In addition, the ER is available to the public near the site, at the San Luis Obispo Public Library, 995 Palm Street, San Luis Obispo, California 93401, and at the Paso Robles Public Library, 1000 Spring Street, Paso Robles, California 93446.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the NRC's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) related to the review of the applications for renewal of the DCPP, Unit 1 and 2, operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, PG&E;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the DCPP, Units 1 and 2, license renewal supplement to the GEIS. The scoping meetings will be held on March 3, 2010, and there will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m. The second session will convene at 7:00 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both sessions will be held at the Embassy Suites San Luis Obispo, 333 Madonna Road, San Luis Obispo, California 93405. Both meetings will be transcribed and will include: (1) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed

scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Mr. Andrew L. Stuyvenberg, by telephone at 1–800–368–5642, extension 4006 or by e-mail at *Andrew.Stuyvenberg@nrc.gov* no later than February 26, 2010. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Stuyvenberg will need to be contacted no later than February 26, 2010, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the DCPP, Units 1 and 2, license renewal review to: Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB 5B–01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To be considered in the scoping process, written comments should be postmarked by April 10, 2010. Electronic comments may be sent by e-mail to the NRC at *Diablo CanyonEIS@nrc.gov,* and should be sent no later than April 10, 2010, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

Dated at Rockville, Maryland, this 20th day of January, 2010.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–1647 Filed 1–26–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards; Revised Meeting Notice

The Agenda for the 569th ACRS meeting, scheduled to be held on February 4–6, 2010, has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Thursday, January 21, 2010 (75 FR 3501–3502).

The discussion on the Draft Final Revision 1 to Regulatory Guide 1.141, "Containment Isolation Provisions for Fluid Systems," scheduled to be held on Thursday, February 4, 2010, between 8:35 a.m. and 10 a.m., is being postponed to a future meeting. The discussion on the Draft ACRS Report on the NRC Safety Research Program, scheduled to be held on February 5, 2010, between 1 p.m. and 3 p.m., is now scheduled for February 4, 2010, between 8:35 a.m. and 10 a.m. The Preparation of ACRS Reports will now start at 1 p.m. on Friday, February 5, 2010.

A revised agenda is posted on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Further information regarding this meeting can be obtained by contacting Derek Widmayer, Designated Federal Official (*Telephone:* 301–415–7366, *E-mail: Derek.Widmayer@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (ET).

Dated: 01/21/2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–1659 Filed 1–26–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act Meeting Notice

DATES: Weeks of January 25, and February 1, 8, 15, 22, March 1, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 25, 2010

Tuesday, January 26, 2010

9:30 a.m. Briefing on Office of Nuclear Reactor Regulation—Programs, Performance, and Future Plans (Public Meeting). (*Contact:* Quynh Nguyen, 301–415–5844.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 1, 2010—Tentative

There are no meetings scheduled for the week of February 1, 2010.

Week of February 8, 2010—Tentative

Tuesday, February 9, 2010

9:30 a.m. Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting). (*Contact:* Richard Barkley, 610–337–5065.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 15, 2010—Tentative

Thursday, February 18, 2010

9:30 a.m. Briefing on Office of Nuclear Regulatory Research—Programs, Performance, and Future Plans (Public Meeting). (*Contact:* Patricia Santiago, 301–251–7982.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 22, 2010—Tentative

Tuesday, February 23, 2010

9:30 a.m. Briefing on Decommissioning Funding (Public Meeting). (*Contact:* Thomas Fredrichs, 301–415–5971.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 1, 2010—Tentative

Tuesday, March 2, 2010

9:30 a.m. Briefing on Uranium Recovery (Public Meeting). (*Contact:* Dominick Orlando, 301–415–6749.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with

disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: January 21, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–1661 Filed 1–25–10; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, February 3, 2010 at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The items identified below are on the agenda for the Commission's February meeting.

PORTIONS OPEN TO THE PUBLIC: 1. Report on Congressional Committee staff briefings.

2. Report on international activities.

3. Status of Annual Compliance Review.

4. Status of other active cases.

5. Update on recent activities of Joint Periodicals Task Force and statusof anticipated report to the Congress pursuant to section 708 of the Postal Accountability and Enhancement Act of 2006.

6. Status of preliminary assessment of social benefits of the mail.

7. Report on professional papers prepared by Commission staff members for submission to technical conferences.

8. Discussion of correspondence received from the National Governors Association.

9. Report on additions to the Commission's external website.

10. Discussion of audio streaming and podcasting options for Commission meetings and report on audio streaming policies at other Federal agencies.

PORTIONS CLOSED TO THE PUBLIC: 11. Discussion of pending litigation *(USPS v. PRC).*

12. Personnel matters-alignment of Commission offices with operational goals.

CONTACT PERSON FOR FURTHER INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, at 202-789-6820 or *stephen.sharfman@prc.gov*.

Dated: January 25, 2010.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–1758 Filed 1–25–10; 4:15 pm]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket No. A2010–2; Order No. 395]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Sundance, CO, post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

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: Notice is hereby given that pursuant to 39 U.S.C. 404(d), the Commission has received an appeal of the closing of the Sundance post office located in Steamboat Springs, Colorado 80487. The appeal was received by the Commission on December 29, 2009. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2010–2 to consider the petitioner's appeal. If the petitioner would like to further explain his position with supplemental information or facts, he may either file a Participant Statement on PRC Form 61 or file his own brief with the Commission by no later than February 4, 2010.

Categories of issues apparently raised. The categories of issues that appear to be raised include: Effect on the community [39 U.S.C. 404(d)(2)(A)(i)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is February 1, 2010. 39 CFR 3001.113.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov*. Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Web master via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov*, unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov*, or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Intervention. Those, other than the petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111. Notices of intervention in this case are to be filed on or before February 16, 2010. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov*, unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9(a) and 10(a)].

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date this appeal was filed [39 U.S.C. 404(d)(5)]. A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120–day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by February 1, 2010.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this notice and order and procedural schedule in the **Federal Register**.

Concurring Opinion of Commissioner Blair. I concur in the establishment of the docket to hear the appeal of the closing of the Sundance retail station located in Steamboat Springs, Colorado. The appeal appears to have met the preliminary test of being filed within the timeline prescribed by the statute. However, I have serious concerns about this docket and its timing. These concerns include how this case might impact the Commission's deliberations and anticipated decision in the proceeding regarding an advisory opinion on the Postal Service Station and Branch Optimization and Consolidation Initiative, Docket No. N2009–1 and whether the Commission's consideration of this appeal may pre-empt issues raised in Docket No. N2009–1. It also comes at the time the Commission is receiving public comment on its public investigation into post office suspensions, Docket No. PI2010–1.

By the Commission.

Shoshana M .Grove,

Secretary.

PROCEDURAL SCHEDULE

December 29, 2009	Filing of Appeal.
February 1, 2010	Deadline for Postal Service to file administrative record in this appeal or responsive pleading.
February 4, 2010	Deadline for petitioner's form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
February 16, 2010	Deadline for petitioners to intervene (*see* 39 CFR 3001.111(b)).
February 24, 2010	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
March 11, 2010	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 18, 2010	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 28, 2010	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2010–1612 Filed 1–26–10; 8:45 am]

BILLING CODE 4830–01–S

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61395; File No. SR–FICC–2009–11]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Fee Schedule of the Government Securities Division of the Fixed Income Clearing Corporation

January 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 29, 2009, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends FICC's rules to modify the fee schedules of its Government Securities Division ("GSD").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of this filing is to modify participant fees as outlined below. The fee changes were effective as of January 4, 2010.

(i) The GSD fee structure for submission of a side of a trade and submission of a repo transaction is revised to reflect the following:

	2009 Fee	2010 Proposed fee
Up to 50,000 submissions per month	$0.16 per item	$0.21 per item.
50,000 to 100,001 submissions per month	$0.08 per item	$0.12 per item.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by FICC.

(ii) The following Netting Fee and Charges were revised as follows:

	2009 Fee	2010 Proposed fee
1. For each side of a compared trade, other than a repo transaction, that is netted, a fee equaling the sum (in addition to the comparison fee) of:	(i) $0.16; and (ii) $0.012 per $1 million of par value.	(i) $0.16; and (ii) $0.016 per $1 million of par value.
2. For each start leg or close leg of a repo transaction other than a GCF repo transaction that is netted, a fee equaling the sum (in addition to the comparison fee) of:	(i) $0.16; and (ii) $0.060 per $1 million of par value.	(i) $0.16; and (ii) $0.016 per $1 million of par value.

and;

(iii) The charge for each deliver obligation and receive obligation created as a result of the netting process was a fee of $0.060 per $1 million of par value. This fee was increased to $0.10 per $1 million.

The proposed rule change is consistent with Section 17A of the Act,[5] as amended, and the rules and regulations thereunder applicable to FICC. The proposed rule change updates FICC's fee schedule for GSD thereby providing for the equitable allocation of fees among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change were not and are not intended to be solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder because the proposed rule change changes a due fee or other change applicable only to members. At any time within sixty 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.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

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–FICC–2009–11 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–FICC–2009–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-11.pdf.* 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–FICC–2009–11 and should be submitted on or before February 17, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1603 Filed 1–26–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61388; File No. SR–BX–2010–001]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Registered Representative Fee and Options Regulatory Fee

January 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX") to institute a new transaction-based "Options Regulatory Fee" and eliminate registered representative fees. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change is based on a filing previously submitted by the Chicago Board Options Exchange ("CBOE") that was effective upon filing.[5] The Exchange proposes to amend the BOX Fee Schedule to institute a new transaction-based "Options Regulatory Fee" and eliminate registered representative fees. Each Options Participant that registers an options principal and/or representative who is conducting business on BOX is assessed a registered representative fee ("RR Fee") based on the action associated with the registration. There are annual fees as well as initial, transfer and termination fees. RR Fees as well as other regulatory fees collected by the Exchange were intended to cover only a portion of the cost of the Exchange's regulatory programs.[6] Prior to recent rule changes by other options exchanges, such as CBOE, NASDAQ OMX PHLX ("PHLX") and the International Securities Exchange ("ISE"), all options exchanges, regardless of size, charged registered representative fees.

The Exchange believes that the current RR Fee is not equitable. The options industry has evolved to a structure with many more Internet-based and discount brokerage firms. These firms have few registered representatives and thus pay very little in RR Fees compared to full service brokerage firms that have many registered representatives. Further, due to the manner in which RR Fees are charged, it is possible for a BOX Options Participant to restructure its business to avoid paying these fees altogether. A firm can avoid RR Fees by terminating its Options Participant status and sending its business to BOX through another separate BOX Options Participant, even an affiliated firm that has many fewer registered representatives. If firms terminated their Options Participant status to avoid RR Fees, the Exchange would suffer the loss of a source of funding for its regulatory programs. More importantly, the regulatory effort the Exchange expends to review the transactions of each type of firm is not commensurate with the number of registered representatives that each firm employs.

In order to address the inequity of the current regulatory fee structure and to offset more fully the cost of the Exchange's regulatory programs pertaining to BOX, the Exchange proposes to eliminate the current RR Fee for BOX Options Participants and adopt an Options Regulatory Fee ("ORF") of $0.0030 per contract, with a minimum one-cent charge per trade.[7] This fee would be assessed by the Exchange to each BOX Options Participant for all options transactions executed or cleared by the Options Participant that are cleared by The Options Clearing Corporation ("OCC") in the customer range, i.e., transactions that clear in the customer account of the Options Participant's clearing firm at OCC, regardless of the marketplace of execution. In other words, the Exchange would impose the ORF on all options transactions executed by a BOX Options Participant, even if the transactions do not take place on BOX.[8] The ORF would also be charged for transactions that are not executed by a BOX Options Participant but are ultimately cleared by a BOX Options Participant. In the case where a BOX Options Participant executes a transaction and a BOX Options Participant clears the transaction, the ORF would be assessed to the BOX Options Participant who executed the transaction. In the case where a non-BOX Options Participant executes a transaction and a BOX Options Participant clears the transaction, the ORF would be assessed to the BOX Options Participant who clears the transaction.

As noted, the ORF would replace RR Fees, which relate to a BOX Options Participant's options customer business. Further, RR Fees constituted the single-largest fee assessed that is related to BOX customer trading activity (in that BOX generally does not charge customer transaction fees),[9] and the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to BOX Options Participants' activities supports applying the ORF to transactions cleared but not executed by a BOX Options Participant. The Exchange's regulatory responsibilities are the same regardless of whether a BOX Options Participant executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, frontrunning, contrary exercise advice violations and insider trading.[10] These activities span across multiple exchanges.

[5] *See* Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR–CBOE–2008–105) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Registered Representative Fee and an Options Regulatory Fee).

[6] *See* Securities Exchange Act Release No. 57152 (January 15, 2008), 73 FR 3767 (January 22, 2008) (SR–BSE–2007–55).

[7] A fee similar to the RR fee may still apply to those BOX Options Participants that also conduct business on the NASDAQ OMX BX equities trading platform. Any such fees may be found at *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing*. NASDAQ OMX BX will not charge the applicable annual RR renewal fee for the 2010 calendar year. *See* NASDAQ OMX Equity Regulatory Alert #2009–17. In some instances, the Exchange will refund certain RR fees collected through the CRD system from BOX Options Participants that do not conduct business on NASDAQ OMX BX equities trading platform.

[8] The ORF would apply to all customer orders executed by a BOX Options Participant on BOX. Exchange rules require each BOX Options Participant to submit trade information in order to allow the Exchange to properly prioritize and match orders and quotations and report resulting transactions to the OCC. *See* BOX Rules Chapter V, Section 15. The Exchange represents that it has surveillances in place to verify that BOX Options Participants comply with the rule.

[9] Under BOX's Take or Make fee structure, customer trading may generate Make fees, but these fees are not specifically related to customer activity and are offset by equal Take credits. Therefore, Make fees are not intended to directly raise funds for Exchange programs, including regulatory.

[10] The Exchange also participates in The Options Regulatory Surveillance Authority ("ORSA")

The Exchange believes the initial level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating BOX Options Participants. The Exchange believes the amount of the ORF is fair and reasonably allocated because it is a closer approximation to the Exchange's actual costs in administering its regulatory program.

The ORF would be collected indirectly from BOX Options Participants through their clearing firms by OCC on behalf of the Exchange. The Exchange expects that BOX Options Participants will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by Self Regulatory Organizations ("SROs") to help the SROs meet their obligations under Section 31 of the Exchange Act.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of BOX Options Participants, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities.[11] The Exchange believes that revenue generated from the ORF will cover the substantial majority of the Exchange's regulatory costs related to the BOX market. At present, RR Fees make up the largest part of the Exchange's total options regulatory fee revenue, however, the total amount of BOX specific regulatory fees collected by the Exchange is significantly less than the regulatory costs incurred by BOX on an annual basis. The Exchange notes that its regulatory responsibilities with respect to BOX Options Participant compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other BOX regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor BOX regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines BOX regulatory revenues exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange would notify BOX Options Participants of adjustments to the ORF via a Regulatory Information Circular.

The Exchange believes the proposed ORF is equitably allocated because it would be charged to all BOX Options Participants on all their customer options business. The Exchange believes the proposed ORF is reasonable because it will raise revenue related to the amount of customer options business conducted by BOX Options Participants, and thus the amount of Exchange regulatory services those BOX Options Participants will require, instead of how many registered representative a particular BOX Options Participant employs.[12]

As a fully-electronic exchange without a trading floor, the amount of resources required by the Exchange to surveil non-customer trading activity is significantly less than the amount of resources the Exchange must dedicate to surveil customer trading activity. This is because surveilling customer trading activity is much more labor-intensive and requires greater expenditure of human and technical resources than surveilling non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., market maker) of its regulatory program.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by BOX Options Participants and their associated persons with the Exchange Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-BOX Options Participants) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, frontrunning and contrary exercise advice violations/expiring exercise declarations.[13] Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS") system in order to surveil BOX Options Participant activities across markets.[14]

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG"),[15] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the Exchange Act requirement that it have coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.[16]

The Exchange believes that charging the ORF across markets will avoid having BOX Options Participants direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation. If the ORF did not apply to activity across markets then BOX Options Participants would send their orders to the least cost, least regulated exchange. Other exchanges could impose a similar

national market system plan and in doing so shares information and coordinates with other exchanges designed to detect the unlawful use of undisclosed material information in the trading of securities options. ORSA is a national market system comprised of several self-regulatory organizations whose functions and objectives include the joint development, administration, operation and maintenance of systems and facilities utilized in the regulation, surveillance, investigation and detection of the unlawful use of undisclosed material information in the trading of securities options. The Exchange compensates ORSA for the Exchange's portion of the cost to perform insider trading surveillance on behalf of the Exchange. The ORF will cover the costs associated with the Exchange's arrangement with ORSA.

[11] As stated above, the RR Fees collected by the Exchange were originally intended to cover only a portion of the cost of the Exchange's regulatory programs.

[12] The Exchange expects that implementation of the proposed ORF will result generally in many traditional brokerage firms paying less regulatory fees while Internet and discount brokerage firms will pay more.

[13] The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See* Securities Exchange Act Release No. 56941 (December 11, 2007).

[14] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

[15] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[16] *See* Exchange Act Section 6(h)(3)(I).

fee on their member's activity, including the activity of those members on BOX.[17]

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee[18] and the CBOE's ORF.[19] While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like the CBOE, its broad regulatory responsibilities with respect to BOX Options Participants' activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a BOX Options Participant's customer options transactions.

The Exchange has designated this proposal to be operative on January 1, 2010.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[20] in general, and Section 6(b)(4) of the Act,[21] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the Exchange believes the ORF is objectively allocated to BOX Options Participants because it would be charged to all BOX Options Participants on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those BOX Options Participants that require more Exchange regulatory services based on the amount of customer options business they conduct.

The Commission has addressed the funding of an SRO's regulatory operations in the Concept Release Concerning Self-Regulation[22] and the release on the Fair Administration and Governance of Self-Regulatory Organizations.[23] In the Concept Release, the Commission states that: "Given the inherent tension between an SRO's role as a business and a regulator, there undoubtedly is a temptation for an SRO to fund the business side of its operations at the expense of regulation."[24] In order to address this potential conflict, the Commission proposed in the Governance Release rules that would require an SRO to direct monies collected from regulatory fees, fines, or penalties exclusively to fund the regulatory operations and other programs of the SRO related to its regulatory responsibilities.[25] The Exchange has designed the ORF to generate revenues that will approximately be equal to BOX's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[26] and Rule 19b–4(f)(2)[27] thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BX–2010–001 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–BX–2010–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2010–001 and should be submitted on or before February 17, 2010.

[17] The Exchange notes that CBOE currently assesses an options regulatory fee similar to the one proposed herein, which fee is also assessed on the trading activity of a CBOE member on BOX. Similar regulatory fees have also recently been assessed by PHLX (*See* Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR–Phlx–2009–100)); and ISE (*See* Securities Exchange Act Release No. 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR–ISE–2009–105)).

[18] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 3402 (June 6, 2003).

[19] *See supra* note 5.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4).

[22] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) ("Concept Release").

[23] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) ("Governance Release").

[24] Concept Release at 71268.

[25] Governance Release at 71142.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1604 Filed 1–26–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61394; File No. SR–NYSEAmex–2010–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 975NY

January 21, 2010.

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 January 8, 2010, 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, II, and III 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 amend Exchange Rule 975NY—Obvious Errors and Catastrophic Errors. 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 Exchange is proposing certain changes to Rule 975NY—Obvious Errors and Catastrophic Errors. Under the current rule, an obvious error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by a specified amount. The "Theoretical Price" of an option series is currently defined in Rule 975NY(a)(2) as the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, that comprise the National Best Bid/Offer ("NBBO") as disseminated by the Options Price Reporting Authority ("OPRA"). If there are no quotes for comparison, the Theoretical Price is determined by a designated Trading Official.[4]

The Exchange is now proposing to permit Trading Officials to establish the Theoretical Price when the NBBO for the affected series, just prior to the erroneous transaction, is at least two times the permitted bid/ask differential pursuant to the guidelines contained in Rule 925NY(b)(4)–(5). This provision is similar to Rule 1092(b)(ii) of Nasdaq OMX Phlx ("PHLX") and Rule 6.25(a)(1)(iv) of The Chicago Board Options Exchange ("CBOE").

2. Statutory Basis

This proposed rule change is designed to allow an Exchange officer to review a transaction in order to provide the opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will incorporate a uniform approach in determining obvious errors that is consistent with other national options exchanges.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

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:

[28] 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] Trading Officials are employees or officers of the Exchange and are not affiliated with ATP Holders.

[5] 15 U.S.C. 78f (b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAmex–2010–02. 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,[11] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2010–02 and should be submitted on or before February 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1607 Filed 1–26–10; 8:45 am]

BILLING CODE 8011–01–P

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61392; File No. SR–CHX–2010–02]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Implement a Cancellation Fee

January 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2010, Chicago Stock Exchange, Inc. ("Exchange" or "CHX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective January 25, 2010, to implement a cancellation fee for Participants entering and subsequently cancelling orders under certain circumstances. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange would amend its Fee Schedule, effective January 25, 2010, to impose a charge for order cancellations in issues priced $1.00 per share or more submitted by Participants whose orders rarely are at or near the National Best Bid or Offering ("NBBO").[5] The Exchange believes that the order cancellation fee will either incent Participants to submit orders which are closer to the NBBO or compensate the Exchange for the systems and operational costs and burdens associated with handling and recording orders which rarely execute.

In determining whether the order cancellation fee would be imposed upon a given Participant, the Exchange would utilize a formula which subtracts the number of Quotable or "Q" orders submitted by the Participant in the Regular Trading Session in a particular month from the number of Wide or "W" orders. Q orders are defined as provide orders in issues priced $1.00 per share or more submitted by the Participant in the Regular Trading Session which are priced at the relevant side of the NBBO up to (but not including) two (2) cents inferior to the relevant side of the NBBO (bid for buy orders; offer for sell orders) at the time the order is received by the Matching System.[6] W orders are defined as those submitted by the Participant in the Regular Trading Session in issues priced $1.00 per share or more which are two (2) or more cents inferior to the relevant side of the NBBO at the time the order is received by the Matching System.[7] The difference between these two values is then divided by "E," which is defined as the greater of (a) one (1) or (b) the number of all provide orders (W and Q) which are submitted and executed (in whole or in part) in the Regular Trading Session (excluding cross transactions) within the Matching System during the calendar month in

[5] We are excluding orders and cancellations in issues priced under $1 per share from this proposal as it does not appear that the activity in those issues gives rise to the same concerns as expressed herein for issues priced at or greater than $1 per share.

[6] Provide orders are those which, for some period of time, reside in our Matching System prior to trade execution. They contrast with "take" orders, which interact with orders resting in our book.

[7] As a result, W order can only be "provide" orders and never "takers" of liquidity residing in our Matching System.

question by the Participant.[8] If the remaining value is greater than 100, then the cancellation fee applies to the Participant for that month's activity and the Participant would be assessed a fee of $0.01 per order cancellation. If the value is 100 or less, the Participant would not be assessed any fee on its cancellation instructions.

The cancellation fee will be calculated and applied as to the Account Symbols maintained by each clearing Participant. Individual Account Symbols are assigned to each trading account maintained by a clearing Participant. Each clearing Participant which executes orders on the Exchange has at least one Account Symbol, while some clearing Participants have multiple account symbols. Multiple accounts can be used by clearing Participants, for example, to segregate the order activity of different clients. Calculating and applying the cancellation fee by the Account Symbols maintained by the clearing Participant provides a more precise way of identifying the conduct and correspondent firms implicated by the proposed fee provisions.

The operation of this formula can be illustrated by the use of some examples. For Example 1, we assume that in a given month, a Participant firm submits 1,000,000 provide orders to our Matching System. Of this amount, 950,000 orders are two (2) cents or more inferior to the prevailing NBBO at the time when the Matching System received them, and would therefore be classified as Wide or W orders. The remaining 50,000 orders were priced at the NBBO or within two (2) cents at the time when the Matching System received them, and would therefore be classified as Quotable or Q orders. Of these 1,000,000 orders, we assume that a total of 10,000 orders are executed in whole or in part during the month.[9] Finally, we assume that the Participant submits 1,000,000 cancellation instructions for the W and Q orders noted above during the month. Pursuant to the proposed formula, the difference between W and Q (950,000 less 50,000) would be 900,000. Dividing that figure by the number of orders which were executed (E or 10,000) gives us an amount of 90. Since that value is less than 100, no fee would be imposed on the cancellations.

For Example 2, we assume the same facts as above, with the exception that the Participant firm submits a total of 2,000,000 provide orders to our Matching System and 1,950,000 of those orders are two (2) cents or more inferior to the prevailing NBBO at the time when the Matching System received them, and would therefore be classified as Wide or W orders. Pursuant to the proposed formula, the difference between W and Q (1,950,000 less 50,000) would be 1,900,000. Dividing that figure by the number of orders which were executed (E or 10,000) gives us an amount of 190. Since that value exceeds 100, a fee would be imposed on the cancellations associated with the orders. Multiplying the number of those cancellations (1,000,000) by the proposed rate would result in a monthly cancellation fee to the Participant of ten thousand dollars ($10,000).

For the month of December 2009, CHX Participants entered in total 11,293,590 Wide (W) orders and 5,603,173 Quotable (Q) orders, of which 161,420 were executed in whole or in part (the "E" value under the proposal). Of the approximately 11.3 million W-type orders submitted in December, over 7.75 million of them were entered by a single CHX Participant firm. This same firm was responsible for the entry of 7,754,446 cancellation instructions in December, out of a total of 16,629,795 such instructions for all Participant firms, and it would have been assessed a cancellation fee pursuant to the proposal.

The purpose of this charge is to incent high-frequency trading Participants to submit orders which, when quoted, are at or close to the NBBO or, if their behavior remains unchanged, to compensate the Exchange for the processing and electronic storage costs associated with orders which "quote around" the NBBO and rarely execute. Under the proposed formula, the likelihood that the cancellation fee would be imposed increases the greater the number of Wide orders submitted by the Participant. The formula is designed to isolate a pattern of behavior in which a firm submits orders which are quoted well outside the NBBO and frequently cancels and reenters such order to continuously stay outside the NBBO.[10] Firms which submit a small number of Wide orders or which also submit a relatively significant number of Quotable orders are less likely to be impacted by the proposed fee. In addition, the likelihood that the cancellation fee will be assessed diminishes as the number of provide orders actually executed (E) increases.

The Exchange believes that there is relatively little benefit added to the national market system by the behavior impacted by the proposed cancellation fee. The processing of such orders and the associated cancellation instructions has the potential to impact our systems capacity and does result in increased order and market data storage costs. Because Wide orders are infrequently executed (which normally generates trading fee revenue for the Exchange), such orders are more expensive on a relative basis for the Exchange to receive and process. Moreover the presence of Wide orders in our book can make it more difficult to execute other, Reg NMS trade-through exempt orders, due to our normal price-time order priority provisions. By discouraging the frequent use of Wide orders, the Exchange believes that such trade-through exempt transactions can be more readily executed.

The Exchange proposes to implement the cancellation charge effective January 25, 2010. The formula by which the cancellation fee is derived shall be calculated for the remaining trading days in January and billed after the end of the month, and thereafter calculated for the entire month and billed after the end of that month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the Exchange believes that the cancellation fee described herein should help address the operational costs and burdens associated with the processing and storage of orders well outside the NBBO.

[8] Cancellations from "Immediate or Cancel" or "Fill or Kill" orders will not be counted towards the number of cancellations resulting in a fee charged to a Participant. In the event that a Participant has no executed provide orders in a month, we assume that E has a value of one (1) in order to avoid a mathematical error in applying the cancellation fee formula.

[9] Since orders may be partially executed, the Participants may receive more trade executions than orders. The Exchange believes that the formula should be based upon the number of orders executed and not the number of trades reported.

[10] Although the Exchange is not privy to the trading strategies of the firms submitting large numbers of orders well outside the NBBO, it appears that they are hoping to benefit from Intermarket Sweep Order ("ISO") satisfaction orders sent to the Exchange pursuant to the requirements of Regulation NMS when a trade through occurs on another trading center and the Wide orders are at the CHX BBO. Since the sending of ISO satisfaction orders is not required for non-Regular Trading Session activity, we are excluding such activity from the proposed fee.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4)

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 thereunder [14] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such 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 purpose 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–CHX–2010–02 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–CHX–2010–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–CHX–2010–02 and should be submitted on or before February 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1606 Filed 1–26–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61389; File No. SR–BX–2010–002]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 2342 To Reflect Changes to Corresponding FINRA Rule

January 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Rule 2342 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). BX will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of BX's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX Rule 2342, which sets forth requirements for providing information regarding the Securities Investor Protection Corporation ("SIPC") to customers, and which formerly corresponded to NASD 2342. In SR–FINRA–2009–016,[4] FINRA re-designated that rule as FINRA Rule 2266 with no material change. FINRA Rule 2266 requires members, with certain exceptions, to advise all new customers that they may obtain information about SIPC by contacting SIPC, and to provide SIPC's web site address and telephone numbers.

BX is adopting the new FINRA rule in full and is re-designating the rule as BX Rule 2266, to correspond to the new FINRA rule number.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX Rule 2342 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

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–BX–2010–002 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–BX–2010–002. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2010–002, and should be submitted on or before February 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1605 Filed 1–26–10; 8:45 am]

BILLING CODE 8011–01–P

[4] Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 1069 [sic] (June 4, 2009) (SR–FINRA–2009–016).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6294]

Culturally Significant Objects Imported for Exhibition Determinations: "An Uneasy Communion: Jews, Christians, and the Altarpieces of Medieval Aragon"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "An Uneasy Communion: Jews, Christians, and the Altarpieces of Medieval Aragon," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement

with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Museum of Biblical Art, New York, NY, from on or about February 19 until on or about May 30, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: January 19, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–1594 Filed 1–26–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice Number 6867]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting on February 11, 2010, in the conference room of the International Foundation for Electoral Systems (IFES), located at 1850 K Street, NW., Fifth Floor, Washington, DC 20006. The meeting will be held from 10 a.m. to 11:30 a.m. The Commissioners will discuss public diplomacy issues, including interagency collaboration in advancing U.S. government public diplomacy efforts.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 111–70 (2009), 22 U.S.C. 6553.

The Advisory Commission is a bipartisan panel created by Congress to assess public diplomacy policies and programs of the U.S. government and publicly funded nongovernmental organizations. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include William Hybl of Colorado, who serves as Chairman; Jay Snyder of New York; Penne Korth Peacock of Texas; Lyndon Olson of Texas; John Osborn of Pennsylvania; and Lezlee Westine of Virginia.

Seating at this meeting is limited. To attend and for more information, please contact Carl Chan at (202) 632–2823. E-mail: *chanck@state.gov.*

Dated: January 12, 2010.

Carl Chan,

Executive Director, ACPD, Department of State.

[FR Doc. 2010–1597 Filed 1–26–10; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 6882]

U.S. Department of State Advisory Committee on Private International Law: Organization of American States (OAS) Specialized Conference on Private International Law (CIDIP) Study Group

The OAS CIDIP Study Group will hold another public meeting to continue the discussion that began at the December 15, 2009 meeting and continued at the January 15, 2010 meeting. *This is not a meeting of the full Advisory Committee.*

In the context of the Seventh Inter-American Specialized Conference on Private International Law (CIDIP–VII), the Committee on Juridical and Political Affairs (CJAP) of the Permanent Council of the OAS is carrying out work on consumer rights as part of its program on private international law. Three proposals have been put forward: A revised Brazilian draft convention on applicable law that has recently been expanded to include jurisdiction, a Canadian draft model law on applicable law and jurisdiction, and a United States proposal (with several components) for legislative guidelines/model laws/rules to promote consumer redress mechanisms such as small claims tribunals, collective procedures, on-line dispute resolution, and government actions. The U.S. is considering the possibility of expanding its existing proposal.

The United States is also considering whether to pursue ratification of the Inter-American Convention on the Law Applicable to International Contracts (known as the Mexico City Convention), which was adopted at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP–V). The United States is exploring the process for obtaining official corrections to the English text of the Convention to conform to the Spanish version. Copies of proposed corrections to the English text can be obtained through the contact points listed below. Other developments which may be relevant to work at the OAS include the proposal at UNCITRAL for future work on on-line dispute resolution and the establishment by the Permanent Bureau of the Hague Conference on Private International Law of an experts group to consider development of a non-binding instrument on choice of law in international commercial contracts.

Time and Place: The public meeting of the Study Group will take place at the Federal Trade Commission, 600 Pennsylvania Ave., NW., Room H–481, Washington, DC on February 1, 2010, from 1 p.m. EST to 3 p.m. EST. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: Advisory Committee Study Group meetings are open to the public. Persons wishing to attend must contact Trisha Smeltzer at *smeltzertk@state.gov* or 202–776–8423 and provide their name, e-mail address, and affiliation(s) if any. Please contact Ms. Smeltzer for additional meeting information, any of the documents referenced above, or dial-in information on the conference call. A member of the public needing reasonable accommodation should advise those same contacts not later than January 8th. Requests made after that date will be considered, but might not be able to be fulfilled. Persons who cannot attend or participate by conference call but who wish to comment on any of the topics referred to above are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov* or Hugh Stevenson at *hstevenson@ftc.gov.*

Dated: January 21, 2010.

Michael Dennis,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2010–1596 Filed 1–26–10; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 6885]

Meeting of the Working group on Environmental Cooperation Pursuant to the United States-Morocco Joint Statement on Environmental Cooperation

ACTION: Notice.

SUMMARY: The Department of State is providing notice that the U.S. and Morocco will hold a meeting of the Working Group on Environmental Cooperation ("Working Group") in Rabat, Morocco on February 9, 2010, at a venue to be announced. Meetings of the Working Group were forecast in paragraph five of the United States-Morocco Joint Statement on Environmental Cooperation ("Joint Statement"), signed on June 1, 2004.

During the meeting, the U.S. and Morocco will review cooperative environmental work they have undertaken and will outline plans for future activities pursuant to the Joint Statement. In addition, the U.S. and Morocco will formally review and adopt a new 2010–2012 Plan of Action for implementing environmental cooperation consistent with the Joint Statement. The entire meeting will be open to the public with simultaneous interpretation in English and French. Time will be allocated for question and answer sessions. See below under **SUPPLEMENTARY INFORMATION** for additional details on the background and purpose of the meeting.

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than February 3, 2010.

ADDRESSES: Written comments or suggestions should be e-mailed (*WingRD@state.gov*) or faxed ((202) 647–1052) to Robert Wing, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy, with the subject line "Meeting of the U.S.-Morocco Working Group on Environmental Cooperation." For those with access to the Internet, comments may be submitted at the following address: *http://www.regulations.gov/search/Regs/home.html#home*.

FOR FURTHER INFORMATION CONTACT: Robert Wing, telephone (202) 647–6780.

SUPPLEMENTARY INFORMATION: In paragraph five of the U.S.-Morocco Joint Statement on Environmental Cooperation, the United States and Morocco announced the establishment of a Working Group on Environmental Cooperation intended to meet regularly. The mandate of the Working Group is to advance environmental protection in Morocco by developing cooperative environmental activities that take into account environmental priorities and that are agreed to by the two Governments. The Working Group will develop a Plan of Action towards meeting this goal.

The 2005–2007 Plan of Action focused on a set of mutually identified goals which will advance environmental protection in Morocco and will assist Morocco in meeting its obligations under the U.S.-Morocco Free Trade Agreement. These goals were: (1) Strengthening the capacity to develop, implement and enforce environmental laws and regulations, (2) encouraging the development of incentives and voluntary mechanisms to contribute to the achievement and maintenance of high levels of environmental protection, (3) promoting opportunities for public participation in environmental protection efforts and improving public access to information and access to justice on environmental issues, (4) protecting coastal environmental zones and estuaries and preventing the over-exploitation of fisheries resources, (5) safeguarding important natural resources, such as water, and protected areas in Morocco, and (6) promoting the growth of the environmental-technology business sector. Some indicative actions undertaken in these areas have included workshops on environmental impact assessment and the use of economic incentives for environmental decision making. Ongoing work includes: Assistance to Morocco on enhanced compliance with the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) through legislation; technical assistance for a plan to enforce environmental rules in the textile sector; and development of a plan to manage waste from olive oil factories. The United States Agency for International Development, the Department of the Interior, the Department of Commerce, the Environmental Protection Agency, the Department of Agriculture and the Trade and Development Agency and others have been involved in implementing these activities. Officials from U.S. and Moroccan agencies will present and discuss their activities at the Working Group meeting. The 2010–2012 Plan of Action will seek to build upon the progress made in the previous Plan of Action and will detail cooperative activities in four main priority areas: Institutional and policy strengthening; biodiversity conservation and improved management of protected areas; improved private sector environmental performance; and environmental education, transparency, and public participation in environmental decision-making and enforcement.

For more information, interested parties are encouraged to refer to: (1) The U.S.-Morocco Joint Statement on Environmental Cooperation, (2) the 2005–2007 Plan of Action, (3) Chapter 17 of the Free Trade Agreement between the United States and Morocco, (4) the 2004 Final Environmental Review of the U.S.-Morocco Free Trade Agreement, and (5) the Web site of the Moroccan Ministry of the Environment (French and Arabic) which are all available or linked at: *http://www.state.gov/g/oes/env/trade/morocco*.

Dated: January 22, 2010.

Willem H. Brakel,

Acting Director, Office of Environmental Policy, Department of State.

[FR Doc. 2010–1595 Filed 1–26–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before February 11, 2010.

Address Comments to: Record Center, Pipeline and Hazardous Materials, Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of

comments is desired, include a self-addressed stamped postcard showing the special permit number.

For Further Information: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 12, 2010.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application & Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
13424–M	Taminco Higher Amines, Inc., St. Gabriel, LA.	49 CFR 177.834 (i)(3)	To modify the special permit to authorize additional Class 3; 8 and Division 2.1; 5.1; 6.1 hazardous materials.
13598–M	Jadoo Power Systems, Inc., Folsom, CA.	49 CFR 173.301(a)(1), (d) and (f).	To modify the special permit to authorize DOT approved 100% ultrasonic examination method of DOT–Specification 3AL cylinders every five years in lieu of internal vision inspection and hydrostatic testing and remove the "No periodic retest is required" in paragraph 7b:.
14741–M	Weatherford International, Fort Worth, TX.	49 CFR 173.304	To modify the special permit to authorize rail freight as an additional mode of transportation.

[FR Doc. 2010–1454 Filed 1–26–10; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Meeting on Future Policy and Rulemaking for Normal, Utility, Acrobatic, and Commuter Category Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting to discuss a review of the requirements for small airplanes. This discussion focuses on the future of small airplane regulation; however, we are asking for feedback concerning maintenance and operations, and not just certification.

DATES: The meeting will be held February 23 and 24 from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Marriott, 9100 Corporate Hills Drive, Wichita, Kansas 67207.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell Foster, Regulations and Policy, ACE–111, Federal Aviation Administration, 901 Locust St., Kansas City, MO 64106; telephone: (816) 329–4125; facsimile (816) 329–4090; e-mail: *lowell.foster@faa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public meeting to initiate the review of 14 CFR part 23 regulations. The last thorough review of part 23 requirements occurred more than 25 years ago. Due to this long interval, this regulatory review goes beyond the traditional regulatory reviews.

We are attempting to determine the adequacy of the current airworthiness standards throughout a small airplane's service life while anticipating future requirements. We encourage the public's participation and feedback in developing or amending new and existing policy, guidance, and rulemaking. These efforts will affect the next 20 years of small airplane design, certification, and operations. Specifically, we would like feedback from manufacturers, pilots, owners, mechanics, instructors and anyone else with an interest in the small airplane industry.

The FAA's Small Airplane Directorate plans to host at least three, two-day meetings, depending on public interest. There may be a meeting in the southeast and southwest regions of the United States. The meetings will not follow a fixed agenda, but the discussions will generally follow the findings from a recent two-year study. That study, the "Part 23 Small Airplane Certification Process Study," addressed the following areas:

- Structure and Process of Part 23
- Design Certification
- Continued Airworthiness
- Data Management
- Pilot Interface

The report is available on-line at: *http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/directorates_field/small_airplanes/.*

Included in the study are recommendations associated with certification, maintenance, modifications, and pilot training. Also included in the report is the recommendation to revise part 23 such that requirements are based on airplane performance and complexity. Since the beginning, small airplane certification requirements have been based on propulsion and weight. Many previous assumptions for small airplanes are no longer accurate. This is discussed in detail in the Certification Process Report.

The FAA plans to open each meeting with a detailed presentation from the Certification Process Study findings followed by opening the floor for discussions. There will be an official recorder participating at each meeting. The meeting minutes, as well as any comments, feedback, recommendations or action items will become public record.

Attendance is open to the interested public but limited to space availability. Since seating is limited, we ask anyone interested in attending to notify Lowell Foster at the phone or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Kansas City, Missouri on January 20, 2010.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1523 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

TIME AND DATE: February 11, 2010, 12 noon to 3 p.m., Eastern Standard Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: January 12, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–1770 Filed 1–25–10; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0106]

Petition for Declaratory Order by Fullington Trailways, LLC

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

ACTION: Declaratory order.

SUMMARY: In accordance with an order from the Pennsylvania Public Utilities Commission (PPUC), Fullington Trailways, LLC (Fullington) filed a petition for a declaratory order (Petition) seeking a determination from FMCSA on the following three issues with respect to its State College/Harrisburg and Lewistown/Harrisburg passenger bus routes: (1) Whether Fullington's operations are within the scope of its Federal operating authority; (2) whether PPUC regulation as to rates and schedules is preempted; and (3) whether its operations qualify as a "special operation" under 49 U.S.C. 13902 or "intrastate commuter bus operation" under 49 U.S.C. 14501. The Agency grants Fullington's petition, finding that the passenger bus service in question is within the scope of Fullington's Federal operating authority, that PPUC regulation as to rates and schedules is preempted and that Fullington's operations do not qualify as a "special operation" or an "intrastate commuter bus operation."

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–7056.

SUPPLEMENTARY INFORMATION:

Background

Fullington currently provides passenger bus service along various routes in Pennsylvania. Along two such routes, Lewistown to Harrisburg and State College to Harrisburg, Fullington held intrastate authority from the Pennsylvania Public Utilities Commission (PPUC). Fullington obtained Federal authority to provide service along the Lewistown—Harrisburg route in 1983 and subsequently obtained Federal authority for the State College—Lewistown—Harrisburg route in December 2006. In January 2007, Fullington announced plans to discontinue early morning service on the State College/Harrisburg route and raise rates for early morning service on the Lewistown—Harrisburg route. Two regular passengers on Fullington's routes filed complaints with the PPUC opposing these changes. The PPUC entered an emergency order on January 31, 2007, requiring Fullington to continue to provide service on the early morning State College—Harrisburg run. In order to comply with this order, and in response to low passenger demand for this service, Fullington consolidated its routes to a single State College—Lewiston—Harrisburg route with multiple morning and afternoon runs.

An initial order of an administrative law judge, subsequently adopted by the PPUC on June 24, 2008, concluded that, to the extent the State College—Harrisburg and Lewistown—Harrisburg routes were properly characterized as operations in interstate commerce under federal law, it did not have jurisdiction over the complaint. However, the PPUC further concluded that it lacked jurisdiction to determine whether the operations were properly characterized as in interstate commerce and that FMCSA had primary jurisdiction to make the determination whether Fullington's operations were within the scope of the carrier's Federal operating authority. The PPUC instructed Fullington to seek a determination from FMCSA on the following three issues with respect to its State College—Harrisburg and Lewistown—Harrisburg routes: (1) Whether Fullington's operations are within the scope of its Federal operating authority; (2) whether PPUC regulation over rates and schedules is preempted; and (3) whether the operations in question qualify as a "special operation" or "intrastate commuter bus operation" under 49 U.S.C. 13902.

On September 17, 2008, Fullington submitted the Petition for Declaratory Order to FMCSA seeking a determination on these issues. Before making its determination on the matters raised in the Petition, the Agency invited the public to submit initial and reply comments. [74 FR 26917] We address those comments below.

Analysis and Conclusions

Agencies have the discretion to issue declaratory orders to terminate controversies or resolve uncertainties. 5 U.S.C. 554(e). Prior to its termination, the Interstate Commerce Commission (ICC) regularly exercised this discretionary authority to resolve disputes. However, in transferring several ICC functions to the Department of Transportation (DOT) (first to the Federal Highway Administration (FHWA) and then to FMCSA), Congress envisioned that DOT would generally not become involved in resolving disputes between private parties. To effectuate this congressional intent, FHWA stated that although it reserved the right to issue declaratory orders to resolve controversies between third parties in appropriate circumstances, it would do so only in cases having industry-wide significance that raise issues not adequately addressed by existing legal precedent. *Petition for Declaratory Order Regarding Application of Federal Motor Carrier Truth In-Leasing Regulations,* 63 FR 31827 (Jun. 10, 1998).

In general, FMCSA does not consider the question of whether a carrier is operating in interstate commerce to be the type of controversy rising to the level of industry-wide significance or for which there is not existing legal precedent. However, in its petition, Fullington raises an issue—whether the service in question constitutes a commuter service or special operations—for which there is little recent legal precedent and of which resolution may have industry-wide significance.

Jurisdiction

The PPUC, in its order directing Fullington to petition FMCSA for a declaratory order, correctly concluded that it lacked jurisdiction to determine whether Fullington's operations were within the scope of its interstate operating authority. *Goertz* v. *Fullington*

Trailways, LLC, Opinion and Order, PPUC Case No. P–00072246 (Jun. 24, 2008), p. 10. By order dated December 12, 2006, FMCSA granted Fullington authority to engage in transportation as an interstate common carrier of passengers over certain regular routes. FMCSA has primary jurisdiction to interpret the scope of operations that may lawfully be conducted under this authority. *See Funbus Systems, Inc.* v. *C.P.U.C.,* 801 F.2d 1120, 1129 (9th Cir.1986) (interpreting authority of FMCSA's predecessor). Conversely, State regulatory authorities may not assume power to interpret the boundaries of federally-issued certificates or to impose sanctions based upon operations that are alleged to be authorized by a Federal certificate. *See Service Storage & Transfer Co.* v. *Virginia,* 359 U.S. 171, 177–79 (1959) (interpreting authority of FMCSA's predecessor).

Fullington's Interstate Operations

No party disputes that Fullington holds the necessary authorizations under 49 U.S.C. 3902(a) to provide interstate service along the State College—Lewistown—Harrisburg route. The first inquiry, therefore, is whether the intrastate service described in the PPUC proceeding is sufficiently related to interstate transportation provided over this route to come within the scope of Fullington's Federal operating authority for the purposes of 49 U.S.C. 13902(b)(3). That provision permits carriers to provide intrastate passenger service over interstate routes as follows:

> Intrastate transportation by interstate carriers.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

To determine whether Fullington's intrastate services meet the requirements of § 13902(b)(3), the appropriate standard to apply is that set forth in *Funbus Systems, Inc.-Intrastate Operations-Petition For Declaratory Order,* No. MC–C–10917, 1988 WL 225255 (ICC Aug. 11, 1988) (*Funbus*). See *East West Resort Transportation, Inc.* v. *Binz,* 494 F. Supp. 2d 1197, 1200 (D. Colo. 2007) (*East West*); *Airporter of Colo., Inc.* v. *ICC,* 866 F.2d 1238, 1240–41 (10th Cir. 1989); see also ICC Termination Act (ICCTA), Pub. L. 104–88, § 204 (1995) (all ICC orders and determinations remain in effect until modified or revoked). In *Funbus,* the ICC concluded that "it is not enough for the carrier merely to offer interstate transportation on the route over which it conducts intrastate service" and established a five-part test to determine whether the intrastate service in question is sufficiently related to interstate transportation. That test requires us to consider the following factors: (1) The interstate service must be active; (2) the intrastate service may not operate independently of the interstate service, but instead must be conducted as a part of existing interstate services; (3) the required interstate transportation must be an actual, regularly scheduled service; (4) the interstate transportation must be *bona fide* and involve service in more than one State; and (5) the interstate transportation must be substantial. *Funbus* at *2.

Applying the *Funbus* test to Fullington's passenger bus operations on the State College—Lewistown—Harrisburg route, we conclude that Fullington's intrastate traffic falls within the scope of its federally-authorized interstate operations for the purposes of 49 U.S.C. 13902(b)(3). First, it is undisputed that Fullington's interstate service is active on the State College—Lewistown—Harrisburg route. Based on the PPUC's findings as well as comments submitted by both the complainants and other commuters, all agree that Fullington offers bus service on this route to through-ticketed passengers with interstate origins or destinations. Fullington meets the first prong of the *Funbus* test.

Second, Fullington's interstate service does not operate independently of its intrastate service. Based on evidence Fullington presented in the PPUC proceeding, as well as comments commuters made in this docket, it is undisputed that after Fullington obtained Federal authority in late 2006, any passenger, whether traveling intrastate or to an interstate destination or origin, could purchase tickets and board any bus traveling on the State College—Lewiston—Harrisburg route. Although the evidence presented indicates that certain runs on this route are more heavily used by commuters, nothing presented in either forum suggests that Fullington operates these runs as a separate operation. To the contrary, all evidence and comments point to the opposite conclusion: that all runs on the route are part of the same integrated operations regardless of whether made during peak or off-peak commuting times.

Third, Fullington's interstate transportation is part of an actual, regularly-scheduled service. Based on evidence presented to the PPUC and comments submitted to this docket, it is undisputed that Fullington offers five regularly-scheduled runs on the State College—Lewistown—Harrisburg route each day. Fullington's transportation on these runs is part of an integrated operation that serves both interstate and intrastate passengers.

To satisfy the fourth step, that the interstate transportation must be *bona fide* and involve service in more than one State, we look at whether the intrastate operations have a nexus to interstate operations. *See East West* at 1201–1204. In this case, that nexus clearly exists.

Through-ticketing for interstate destinations is one indicia of interstate service. *Funbus* at 2, note 1. Fullington offers through-ticketing services that allow passengers to buy tickets on the State College—Lewistown—Harrisburg route connecting in Harrisburg with other carriers, such as Greyhound or Amtrak for passenger transportation out of State. *Goertz* v. *Fullington Trailways, LLC,* Opinion and Order, PPUC Case No. P–00072246, Initial Decision (Mar. 10, 2008) ("PPUC Initial Decision"), ¶¶ 19–21. No party or commenter disputes that Fullington offers this service or that through-ticketed passengers use Fullington's services on the State College—Lewistown—Harrisburg route for interstate travel.

The nexus between intrastate and interstate transportation also exists where the intrastate transportation is an integral part of an interstate journey. *See Brown's Crew Car of Wyo. LLC* v. *Nevada Transp. Auth.,* 2009 WL 1240458, at 12 (D. Nev. May 1, 2009). Fullington introduced evidence at the PPUC demonstrating that the State College—Lewistown—Harrisburg route was an integral part of an interstate journey for a significant number of passengers on that route. A traffic study conducted between July and December 2006 showed that approximately 40% of Fullington's passengers on the routes in question were actually engaged in interstate travel. PPUC Initial Decision, ¶ 22.

As a result, based on evidence of through-ticketing presented to the PPUC and actual movements reflected in the traffic study, we conclude that there is a sufficient nexus between the intrastate and interstate transportation to satisfy the fourth prong of the *Funbus* test.

Finally, Fullington argues that due to changes in the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100–17, § 340 (1987), the fifth *Funbus* factor, which requires that the interstate transportation be substantial, is no longer relevant. Petition at 6, note 3. This is consistent with the ICC's position in *Funbus. See*

Funbus at *4. However, as Fullington noted, a number of courts have continued to apply the substantiality requirement regardless of the statutory change. Petition at 6, note 3; *see e.g., East West,* 494 F.Supp. 2d at 1200. Because we conclude that Fullington's interstate transportation is substantial, we do not address this apparent conflict in precedent.

Courts have interpreted the substantiality requirement to mean that the interstate traffic is substantial in relation to the intrastate traffic in the same operation. *East West* at 1200, *citing Airporter of Colo., Inc.,* 866 F.2d at 1240–41 (10th Cir. 1989).

Fullington's Federal authority is not limited to particular runs, but rather applies to the entire State College—Lewistown—Harrisburg route. *See* 49 U.S.C. (b)(3). In evaluating whether it is substantial, we look at the proportion of interstate traffic on those *routes* for which Fullington holds Federal operating authority and do not limit our analysis to individual runs. There is little question that Fullington's interstate traffic is substantial in relation to its intrastate traffic on the routes in question. The traffic study conducted in 2006 shows that approximately 40% of passengers on the State College to Harrisburg route were traveling interstate. Although there is no bright line test to determine what proportion of interstate travel constitutes "substantial," 40% falls within the generally accepted range. *See East West,* 494 F.Supp. 2d. at 1205 (observing that the ICC had found that substantial means at least 24–28% of the traffic be interstate).

In sum, we conclude that Fullington's operations on the State College—Lewistown—Harrisburg route meet the *Funbus* criteria and fall squarely within the scope of its Federal operating authority.

Special Operations

In accordance with the PPUC's order, Fullington requested that we specifically address whether the State College—Lewistown—Harrisburg route constitutes a "special operation" for the purposes of 49 U.S.C. 13902(b)(6). In its petition, Fullington also raised a number of issues related to the application of § 13902(b)(2) to the preemption analysis. *See* Petition at 10. Because we conclude that Fullington's State College—Lewiston—Harrisburg operations do not constitute special operations, we need not address these issues.

Section § 13902(b)(6) provides:

> Special operations.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

Neither FMCSA nor the Federal courts have had the opportunity to interpret "special operations" for the purposes of 49 U.S.C. 13902(b)(6). As a result, we look to the interpretations of our predecessor agency, the ICC. *See* ICCTA, § 204.

The term "special operations" has historically been interpreted to be a catch-all classification for those operations that are neither regular-route transportation of passengers nor charter operations. *Asbury Park-New York Transit Corporation* v. *Bingler Vacation Tours, Inc.,* 62 M.C.C. 731, 739 (1954) (*Asbury Park*). The most common types of special operations are sightseeing or pleasure tours. *Id.; Fordam Bus Corp. Common Carrier Application,* 29 M.C.C. 293, 297 (1941) (*Fordham*). Characteristics *may* include an all-expense-included sightseeing or pleasure tour; additional services such as a guide or meals; or weekend, holiday or special occasion-only service organized by the carrier. *Michaud Bus Lines, Inc., Extension Tours,* 100 M.C.C. 432, 443 (1966); *Asbury Park,* 62 M.C.C. at 739; *Fordam,* 29 M.C.C. at 297. Special operations may also include a variety of different services such as door-to-door service, day trips to race tracks, casinos, sporting events, or other excursions. *Hudson Transit Lines, Inc.* v. *ICC,* 765 F.3d 329, 342 (2d Cir. 1985). Whether a particular service constitutes special operations depends on the individual characteristics of the service (*id.*) and FMCSA's predecessor agency expressly declined to issue regulations defining them with specificity. *See Passenger Transportation in Special Operations,* 112 M.C.C. 160, 174 (1970).

Nothing in the record suggests that Fullington's State College—Lewistown—Harrisburg operations are anything other than regular-route transportation of passengers. Fullington's service does not have any of the above-mentioned characteristics that would distinguish it from traditional regular-route passenger service and necessitate application of the "catch-all" classification of special operations. Accordingly, we find that Fullington's State College—Lewistown—Harrisburg route is not a special operation for the purposes of 49 U.S.C. 13902(b)(6).

Commuter Service

In accordance with the PPUC's order, Fullington has also requested that we determine whether the State College—Lewistown—Harrisburg route constitutes a "commuter bus operation" for the purposes of 49 U.S.C. 14501(a)(1). We conclude that Fullington's State College—Lewistown—Harrisburg route is not a commuter service.

Section 14501(a)(1) provides:

> (a) Motor carriers of passengers.—
>
> (1) Limitation on State law.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—
>
> (A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;
>
> (B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or
>
> (C) the authority to provide intrastate or interstate charter bus transportation.
>
> This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.

Title 49, United States Code, subtitle IV, part B (which contains § 14501(a)(1)) does not define "commuter bus operations." In the absence of a statutory definition, we consider the plain meaning of "commuter service" and DOT regulations for guidance. *See Greyhound Lines, Inc.* v. *The City of New Orleans,* 29 F. Supp.2d 399 (E.D. La. 1998) (*Greyhound* v. *New Orleans*). In *Greyhound* v. *New Orleans,* the court found that "an ordinary reading of 'commuter' suggests regular travel to and from work." FMCSA's regulations provide the following definition of commuter service:

> Commuter service—means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles. The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations.

49 CFR 374.303(g). DOT's Americans with Disabilities Act (ADA) regulations define commuter bus service as follows:

> *Commuter bus service* means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

49 CFR 37.3.

Fullington's State College—Lewistown—Harrisburg operation does not constitute a commuter service under either of these definitions. The route provides interline service to through-ticketed passengers. More importantly, operations on this route are not limited to peak morning and afternoon hours and the route is used by passengers traveling at off-peak hours. We must also take into account that the route accommodates university students, many of whom are engaged in interstate travel, at off-peak and holiday hours. Whether Fullington previously operated the State College—Harrisburg and Lewistown—Harrisburg routes as a commuter service under PPUC authority is not relevant to our inquiry. Our review is limited to Fullington's operations since it obtained Federal operating authority. Since then, the record shows that Fullington has not operated these routes as a commuter service.

Conclusion

Section 14501(a)(1) preempts State or local government entities from regulating the rates or scheduling of carriers that provide intrastate or interstate transportation subject to Federal jurisdiction. Because we find that Fullington is operating its State College—Lewistown—Harrisburg route within its Federal operating authority, we conclude that the PPUC's jurisdiction over rates and schedules is preempted.

Response to Comments

The Agency received eleven initial comments of which five commuters (including complainants in the PPUC action) opposed Federal jurisdiction and three bus companies (including Fullington), an industry association, three county commissioners and four members of Congress supported Federal jurisdiction. The Agency received eleven reply comments of which ten commuters (including complainants in the PPUC action) opposed Federal jurisdiction. One industry association supported Federal jurisdiction. Many of the comments we received repeated information or arguments presented at the PPUC or raised issues well beyond the scope of the **Federal Register** notice. We address the relevant comments below, organized by issue.

Whether Fullington's Operations Are Within the Scope of Its Federal Operating Authority and Whether PPUC Regulation as to Rates and Schedules Is Preempted

Comments

The five commuters who opposed Federal jurisdiction over Fullington's State College—Lewistown—Harrisburg route made three primary arguments: (1) That Fullington's operations on this route do not meet the substantiality test as set forth in *Funbus;* (2) that Fullington's operations on this route do not cross State lines; and (3) that Fullington's current operations should not be the focus of FMCSA's analysis.

Response

As explained above, we acknowledge that there is some conflict between the ICC's *Funbus* decision and subsequent court decisions. Although *Funbus* does not require that we consider substantiality, we nonetheless erred on the side of caution to be consistent with more recent court decisions and included it in our analysis. Traffic studies show that approximately 40% of the traffic on this route originates or terminates out of State. Existing precedent supports our conclusion that this is substantial.

Although Fullington's State College—Lewiston—Harrisburg route does not cross State lines, Federal law provides that passengers along this route may be engaged in interstate transportation if their origin or destination is out of State. We conclude that Fullington has provided ample evidence of through-ticketing and actual interstate movements to conclude that it conducts interstate transportation on this route.

Finally, a number of comments were focused on Fullington's operations when it was operating pursuant to its PPUC authority, prior to when it began operating under its Federal authority. However, those comments relate to operations outside the scope of Fullington's Federal authority. We only consider those services Fullington provided in accordance with its Federal authority and render no opinion on any services provided prior to that date.

Comments

The commenters who supported Federal jurisdiction made four basic arguments: (1) Fullington meets the *Funbus* criteria, including the substantiality requirement; (2) a contrary finding would lead to excessive regulation and put intercity bus operators at a competitive disadvantage; (3) the authority to certificate carriers and the preemption of State laws apply to routes, not to specific line runs; and (4) Fullington's operations, even if only 24% of traffic on the route in question is interstate, are substantial for purposes of the *Funbus* test.

Response

As explained above, we agree that Fullington has met the *Funbus* criteria, including the substantiality requirement. We also agree that the appropriate analysis is whether Fullington's entire State College—Lewistown—Harrisburg route is within the scope of its Federal operating authority and not whether particular runs individually meet the *Funbus* test. As we have already concluded that Fullington's operations along this route are within the scope of its Federal operating authority and that State regulation over rates and schedules is preempted, we do not address the policy implications of reaching the opposite conclusion. Similarly, because we conclude that approximately 40% of Fullington's traffic along this route is interstate, we do not need to make a determination as to whether any other percentage would be considered substantial.

Whether Fullington's Operations Qualify as a "Special Operation" or "Intrastate Commuter Bus Operation" Under 49 U.S.C. 13902

Special Operation

Comment

FMCSA received one comment noting that special operations can include regular route transportation of passengers.

Response

FMSCA agrees that special operations can include operations over regular routes; however, such operations are distinguished from regular route transportation because they entail and are distinguished by additional service features as noted in the analysis above. The Agency believes that the other individual characteristics of Fullington's State College—Lewistown—Harrisburg route are not consistent with the distinguishing service features that characterize special operations.

Intrastate Commuter Bus Operation

A number of commenters argued that the characteristics of State College—Lewistown—Harrisburg route were those of a commuter operation, following a common sense definition. These characteristics include: That the early morning and late afternoon runs are used primarily by commuters; that

the buses do not run on holidays or weekends; that the schedule reflects passengers' commuting schedule; that the bus stops at multiple work places in Harrisburg; that the route is 90 miles; and daily passengers can buy a 20-ride or monthly ticket at reduced prices.

Response

FMCSA acknowledges that all of these characteristics could be associated with an intrastate commuter bus operation. Although such factors, either individually or collectively, could speak to the frequency or regularity of use of a passenger transportation service, they are not dispositive of commuter service. In fact, Fullington's route has other characteristics that support our conclusion that it is not a commuter bus operation. For example, Fullington offers through-ticketing and has demonstrated through traffic studies that passengers actually use the route in interstate transportation. Furthermore, Fullington operates this route several times a day at times other than peak commuting times. Many of the commenters who support a finding of commuter bus operations acknowledge that these non-peak runs exist and that they serve interstate passengers, including Pennsylvania State University students.

Comments

Commenters supporting a finding that Fullington's State College—Lewiston—Harrisburg route is not a commuter bus operation noted that even though the route is used by commuters, it terminates at the Harrisburg Transportation Center, a multi-modal center where passengers can transfer to other bus and rail operators. They further state that the fact that commuters use the early morning and afternoon runs does not make the entire federally-authorized route a commuter bus operation.

Response

FMCSA agrees that these characteristics support its conclusion that Fullington is not operating the route in question as an intrastate commuter bus operation.

Preemption

Comment

One commenter argued that Fullington was obligated to have "closed out" its State operating authority prior to obtaining Federal operating authority.

Response

We disagree with this comment. The Agency is unaware of any provision of law requiring a carrier to surrender or "close out" its State operating authority prior to obtaining and using Federal operating authority.

Dated: January 19, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–1645 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0010]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for Federal Motor Vehicle Safety Standard (FMVSS) No. 106, for which NHTSA intends to seek renewed OMB approval.

DATES: Comments must be received on or before March 29, 2010.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice, and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. Telephone: 1–800–647–2251.

Instructions: All submissions must include the docket number for this document. Please identify the collection of information for which a comment is provided by referencing the OMB Control Number, 2127–0052. 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) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Woods, NHTSA, 1200 New Jersey Avenue, SE., Room W43–467, NVS–122, Washington, DC 20590. Mr. Woods' telephone number is (202) 366–6206.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(4) 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.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Brake Hose Manufacturers Identification, Federal Motor Vehicle Safety Standard (FMVSS) No. 106.

OMB Control Number: 2127–0052.

Form Number: This collection of information uses no standard form.

Type of Request: Extension of a currently approved collection of information.

Abstract: 49 U.S.C. 30101 *et seq.,* as amended ("the Safety Act"), authorizes NHTSA to issue Federal Motor Vehicle Safety Standards (FMVSS). The Safety Act mandates that in issuing any Federal motor vehicle safety standards, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, FMVSS No. 106, Brake Hoses, was issued. This standard specifies labeling and performance requirements which apply to all manufacturers of brake hoses and brake hose end fittings, and to those who assemble brake hoses. Prior to assembling or selling brake hoses, these entities must register their identification marks with NHTSA to comply with the labeling requirements of this standard. In accordance with the Paperwork Reduction Act, the agency must obtain OMB approval to continue collecting labeling information.

Currently, there are 1,944 manufacturers of brake hoses and end fittings, and brake hose assemblers, registered with NHTSA. However, only approximately 20 respondents annually request to have their symbol added to or removed from the NHTSA database. To comply with this standard, each brake hose manufacturer or assembler must contact NHTSA and state that they want to be added to or removed from the NHTSA database of registered brake hose manufacturers. This action is usually initiated by the manufacturer with a brief written request via U.S. mail, facsimile, an e-mail message, or a telephone call. Currently, a majority of the requests are received via U.S. mail and the follow-up paperwork is conducted via facsimile, U.S. mail, or electronic mail. The estimated cost for complying with this regulation is $100 per hour. Therefore, the total annual cost is estimated to be $3,000 (time burden of 30 hours × $100 cost per hour).

Affected Public: Business or other for profit.

Estimated Annual Burden: 30 hours.

Estimated Number of Respondents: 20.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 22, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–1588 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0007]

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 *INFINITE ZEST.*

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–2010–0007 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 February 26, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0007. 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 *INFINIT ZEST* is:

Intended Commercial Use of Vessel: "This is a 50' catamaran with 4 cabins and luxury accommodations. We intend to operate as a term charter vessel for groups up to 12 guests for (approx) week-long charters to the islands off the east coast of Puerto Rico, as well as occasional trips to the Virgin Islands, originating from Puerto Rico. We would like to also provide daysails with captain for tourists to the nearby islands, up to 12 guests."

Geographic Region: "Puerto Rico".

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: January 21, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–1590 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0001]

Requested Administrative Waiver of the Coastwise Trade Laws; Correction

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice; correction.

SUMMARY: On January 15, 2010, the Maritime Administration published notice of administrative waiver of the coastwise trade laws. There was an inadvertent error in the docket number. The correct docket number, MARAD–2010–0001, heads this document.

DATES: Comments received will still be considered on or before February 16, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0001. 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 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, are listed below. The complete application is given in DOT docket MARAD–2010–0001 at *http://www.regulations.gov.*

As described by the applicant the intended service of the vessel BELLISSIMO is:

Intended Commercial Use of Vessel: "Carrying passengers (maximum 6 guest) for pleasure trips of one day to one week."

Geographic Region: "Florida, Georgia, South Carolina, North Carolina, Virginia, Maine, Maryland, Delaware, New Jersey, New York, Rhode Island, Massachusetts, Louisiana, Alabama, Mississippi."

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: January 19, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–1593 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0002]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice; correction.

SUMMARY: On January 15, 2010, the Maritime Administration published notice of administrative waiver of the coastwise trade laws. There was an inadvertent error in the docket number. The correct docket number, MARAD–2010–0002, heads this document.

DATES: Comments received will still be considered on or before February 16, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0002. 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 BOO PACIFIC is:

Intended Commercial Use of Vessel: "Sailing lessons in coastal waters."

Geographic Region: "California."

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: January 19, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–1591 Filed 1–26–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 20, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before February 26, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0196.

Type of Review: Revision of a currently approved collection.

Title: Split-Interest Trust Information Return.

Form: 5227.

Description: The data reported is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation taxes.

Estimated Total Burden Hours: 15,152,550 hours.

OMB Number: 1545–2025.

Type of Review: Revision of a currently approved collection.

Title: Clean Renewable Energy Bond Credit and Gulf Bond Credit.

Form: 8912.

Description: Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit, was developed to carry out the provisions of Internal Revenue Code sections 54 and 1400N(l). The form provides a means for the taxpayer to compute the clean renewable energy bond credit and the Gulf bond credit.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,555 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–1599 Filed 1–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the CDFI Fund), an office within the Department of the Treasury, is soliciting comments concerning the Bank Enterprise Award (BEA) Program Awardee Reporting Form. This notice replaces the notice posted in the **Federal Register**, Vol. 75, No. 2, Tuesday, January 5, 2010 (75 FR 517). Please disregard the former notice.

DATES: Written comments should be received on or before March 29, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Jodie Harris, Associate Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. Please note that this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The BEA Program Awardee Reporting Form may be obtained from the BEA Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Jodie Harris, Associate Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–6355. Please note that this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Bank Enterprise Award (BEA) Program Awardee Reporting Form.

Abstract: The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance within distressed communities and provide financial assistance to community development financial institutions through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. Applicants submit applications and are evaluated in accordance with statutory and regulatory requirements (12 CFR 1806). Beginning in the FY 2009 funding round, the CDFI Fund requires BEA awardees to use an amount equivalent to the BEA Award amount for BEA Qualified Activities, as defined in the BEA Program regulations. Awardees with awards over $50,000 will be required to report to the CDFI Fund on these Qualified Activities.

Current Actions: New collection.

Type of Review: Regular Review.

Affected Public: Insured depository institutions that receive a BEA Program award.

Estimated Number of Respondents: 40.

Estimated Annual Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 40 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Authority: 12 U.S.C. 1834a, 4703, 4713, 4717; 12 CFR part 1806.

Dated: January 21, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–1636 Filed 1–26–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Direct Deposit Sign-Up Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form 1199A "Direct Deposit Sign-Up Form" and Form 1200 "Go Direct

Sign Up Form for Direct Deposit of Federal Benefit Payments."

DATES: Written comments should be received on or before March 29, 2010.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Walt Henderson, Director, EFT Strategy Division, Room 303, 401 14th Street, SW., Washington, DC 20227, (202)874–6624.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Direct Deposit Sign-Up Form, and Go Direct Sign-Up Form for Direct Deposit of Federal Benefit Payments.

OMB Number: 1510–0007.

Form Number(s): SF–1199A, FMS 1200.

Abstract: These forms are used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information on the forms routes the direct deposit payment to the correct account at the financial institution.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households, Business or other for-profit, Federal Government.

Estimated Number of Respondents: 406,715.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 69,142.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 19, 2010.

Sheryl R. Morrow,

Assistant Commissioner, Payment Management.

[FR Doc. 2010–1481 Filed 1–26–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Final Rule—Management of Federal Agency Disbursements.

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "Final Rule—Management of Federal Agency Disbursements".

DATES: Written comments should be received on or before March 29, 2010.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Walt Henderson, Director, EFT Strategy Division, Room 303, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227, (202) 874–6624.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Final Rule—Management of Federal Agency Disbursements.

OMB Number: 15 10–0066.

Form Number: None.

Abstract: Recipients of Federal disbursements must furnish to FMS their bank account number and the name and routing number of their financial institution to receive payment electronically.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses, or other for-profit institutions, Individuals or households, Not-for-profit Institutions.

Estimated Number of Respondents: 1,300.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 19, 2010.

Sheryl R. Morrow,

Assistant Commissioner Payment Management.

[FR Doc. 2010–1482 Filed 1–26–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of United States Mint 2010 Commemorative Coin Pricing

ACTION: Notification of United States Mint 2010 Commemorative Coin Pricing.

SUMMARY: The United States Mint is announcing the prices of the 2010 American Veterans Disabled for Life Silver Dollar and the 2010 Boy Scouts of America Centennial Silver Dollar Programs.

Public Laws 110–227 and 110–363 require the United States Mint to mint and issue American Veterans Disabled for Life and Boy Scouts of America Centennial Silver Dollar Commemorative Coins, respectively.

These coins will be offered in both proof and uncirculated conditions.

The American Veterans Disabled for Life Silver Dollar will be offered at an introductory price on February 25, 2010, through March 29, 2010, when it will be offered at regular pricing. The Boy Scouts of America Centennial Silver Dollar will be offered at an introductory price on March 23, 2010, through April 22, 2010, when it will be offered at regular pricing. Pricing for standard options under both programs is listed below:

Description	Introductory price	Regular price
American Veterans Disabled for Life Silver Dollar:		
Proof Silver Dollar	$39.95	$43.95
Uncirculated Silver Dollar	33.95	35.95
Boy Scouts of America Centennial Silver Dollar:		
Proof Silver Dollar	39.95	43.95
Uncirculated Silver Dollar	33.95	35.95

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: January 21, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–1602 Filed 1–26–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0377]

Agency Information Collection (Claim for Repurchase of Loan) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 26, 2010.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0377" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0377."

SUPPLEMENTARY INFORMATION:

Title: Claim for Repurchase of Loan, VA Form 26–8084.

OMB Control Number: 2900–0377.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of delinquent vendee accounts guaranteed by VA complete VA Form 26–8084 to request VA to repurchase a loan that has been in default for three months and the amount of the delinquency equals or exceeds the sum of two monthly installments. VA notifies the obligor(s) in writing of the loan repurchased, and that the vendee account will be service and maintain by VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 18, 2009, at pages 59604–59605.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 30 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 60.

Dated: January 21, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–1505 Filed 1–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (21–0844)]

Agency Information Collection (Certification of Fully Developed Claim) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 26, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900—New (21–0844)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900—New (21–0844)."

SUPPLEMENTARY INFORMATION:

Title: Certification of Fully Developed Claim, VA Form 21–0844.

OMB Control Number: 2900—New (21–0844).

Type of Review: Existing collection in use without an OMB Control Number.

Abstract: VA Form 21–0844 is used to process a claim within 90 days after receipt by a claimant or their representative. Claimants or their representative are required to sign and date the certification, certifying as of the signed date, no additional information or evidence is available or needs to be submitted in order to adjudicate the claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 17, 2009, at page 59349.

Affected Public: Individuals and Households.

Estimated Annual Burden: 132 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 1,584.

Dated: January 21, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–1506 Filed 1–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Health Services Research and Development Service Merit Review Board will be held March 2–4, 2010, at the Hilton Tampa Airport Westshore, 2225 North Lois Avenue, Tampa, FL. Various subcommittees of the Board will meet. Each subcommittee meeting of the Merit Review Board will be open to the public the first day for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

On March 2, the subcommittee on Nursing Research Initiative will convene from 8 a.m. to 12 noon and Career Development will convene from 8 a.m. to 5 p.m. On March 3, Career Development will reconvene from 8 a.m. to 1 p.m. and five subcommittees on Health Services Research (A, D, E, and G [B/C]) will convene from 8 a.m. to 5 p.m. On March 4, the subcommittee for pilot proposal review (F) will convene from 8 a.m. to 3:30 p.m.

After the subcommittees meet, there will be a debriefing provided to members of the Health Services Research & Development Scientific Merit Review Board. The purposes of the debriefing are to discuss the outcomes of the review sessions and to ensure the integrity and consistency of the review process.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of each meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact Mrs. Kristy Benton-Grover, Scientific Merit Review Program Manager (124R), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Kristy.benton-grover@va.gov,* at least five days before the meeting. For further information, please call (202) 461–1521.

Dated: January 21, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

Scientific Merit Review Board

Health Services Research and Development Service, Department of Veterans Affairs, Hilton Tampa Airport Westshore, 2225 North Lois Avenue, Tampa, FL 33607–2355, Tel: 1–813–877–6688, Fax: 1–813–879–3264.

Agenda

Tuesday, March 2, 2010

7:30 a.m.–8 a.m. Check-in
8 a.m.–12 p.m. Nursing Research Initiative (NRI) Review
8 a.m.–5 p.m. Career Development Award (CDA) Review
4:30 p.m.–5:30 p.m. Director and Chair Meeting
5:30 p.m.–6 p.m. Coffee Reception
6 p.m.–7 p.m. Director's Opening Session

Wednesday, March 3, 2010

Meetings conducted simultaneously.

8 a.m.–1 p.m. Career Development Award (CDA) Review continued
8 a.m.–5 p.m. Health Services Research A, D, E, G (B/C)

Thursday, March 4, 2010

8 a.m.–3:30 p.m. Health Services Research F–Pilots

[FR Doc. 2010–1504 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held February 24–26, 2010, in the Lafayette Park Room at the Hamilton Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC. On February 24 and 25, the meeting will be held from 8 a.m. to 4 p.m. On February 26, the meeting will be held from 8 a.m. to 12 p.m. The meeting is open to the public.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless Veterans. The Committee shall assemble and review information relating to the needs of homeless Veterans and provide on-going advice on the most appropriate means of providing assistance to homeless Veterans. The Committee will make recommendations to the Secretary regarding such activities.

The agenda will include briefings from VA and other officials regarding services for homeless Veterans. The Committee will also discuss final preparation of its upcoming annual report and recommendations to the Secretary.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Designated Federal Officer, at (202) 461–7401 or at *mary.rooney@va.gov.* No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting homeless Veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 21, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–1510 Filed 1–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that VA is amending the system of records currently entitled "Decentralized Hospital Computer Program (DHCP) Medical Management Records-VA" (79VA162) as set forth in the **Federal Register** 56 FR 6048. VA is amending the system by revising the System Name and number and the paragraphs for System Location, Categories of Records in the System, Authority for Maintenance of the System, Routine Uses of Records Maintained in the System, and System Manager. The change in name will more accurately identify the system and the change in number will reflect organizational changes. 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 February 26, 2010 If no public comment is received, the new system will become effective February 26, 2010.

ADDRESSES: Written comments may be submitted through *http://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 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 *http://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: The name and number of the system is changed from "Decentralized Hospital Computer Program (DHCP) Medical Management Records-VA" (79VA162) to the "Veterans Health Information Systems and Technology Architecture (VistA) Records-VA" (79VA19). The change in name will more accurately reflect the new, open systems, client-server based architecture, and the change in system number will reflect organizational changes. The System Location was amended to reflect the current organization structure with Veterans Integrated Service Network Offices having replaced Regional Director Offices. Categories of Records in the System were amended to add five new types of records maintained in VistA. The Authority for Maintenance of the System was amended to reflect current codification of the statute. The System Manager was amended to reflect organization changes.

Background: In the 1980s, the Veterans Health Administration (VHA) developed an electronic health care architecture called the Decentralized Hospital Computer Program (DHCP) that was comprised of software applications that were integrated into a complete hospital information system primarily for hospital-based activities. DHCP was installed at VA medical facilities to provide comprehensive support for clinical and administrative needs and for VA-wide management information. By 1990, VHA upgraded computer capacity at all medical facilities, and implemented software on a national scale that supported integrated health care delivery. In 1996, VHA introduced the VistA, a client-server architecture that tied together workstations and personal computers and supported the day-to-day operations at all health care facilities, as well as software developed by local medical facility staff. VistA also includes the links that allow commercial off-the-shelf software and products to be used with existing and future technologies.

The purpose of the system of records is to provide a repository for the administrative information that is used to accomplish the purposes described. The records include information provided by applicants for employment, employees, volunteers, trainees, contractors and subcontractors, consultants, maintenance personnel, students, patients, and information obtained in the course of routine work done. Quality assurance information that is protected by 38 U.S.C. 5705 and 38 CFR 17.500–17.511 is not within the scope of the Privacy Act and, therefore, is not included in this system of records or filed in a manner in which the information may be retrieved by reference to an individual identifier.

Data stored in VistA is used to prepare various management, tracking and follow-up reports that are used to assist in the management and operation of the health care facility, and the planning and delivery of patient medical care. Data may be used to track and evaluate patient care services, the distribution and utilization of resources, and the performance of vendors and employees. The data may also be used for such purposes as scheduling employees' tours of duty and for scheduling patient treatment services, including nursing care, clinic appointments, survey, diagnostic and therapeutic procedures. Data may also be used to track the ordering, delivery, maintenance and repair of equipment, and for follow-up activities to determine if the actions were accomplished and to evaluate the results.

Routine use disclosures have been added, as described below, to enable efficient administration and operation of health care facilities, and to assist in the planning and delivery of patient medical care:

- Routine use twenty-three (23) states the social security number, universal personal identification number and other identifying information of a health care provider may be disclosed to a third party where the third party requires the agency to provide that information before it will pay for medical care provided by VA. VA, under Public Law 99–272, is required to recover costs for medical services in certain circumstances provided to the veteran from the veteran's third party insurance carrier. Third party insurance

carriers may require VA to provide the social security number(s) of the health care provider(s) before reimbursing VA for medical services rendered.

• Routine use twenty-four (24) states relevant information may be disclosed to individuals, organizations, private or public agencies, *etc.,* with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement. This routine use is being added to allow for the disclosure of information to contractors when performing an agency function. VA must be able to share information with contractors.

• Routine use twenty-five (25) allows disclosure of relevant health care information to individuals or organizations (private or public) with whom VA has a contract or sharing agreement for the provision of health care, administrative or financial services. VA must be able to share information with other organizations participating in the care of veterans.

• Routine use twenty-six (26) allows disclosure to other Federal agencies made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and documentation related to or in support of the reported incident.

• Routine use twenty-seven (27) allows VA to 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 notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: January 8, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

79VA19

SYSTEM NAME:

Veterans Health Information Systems and Technology Architecture (VistA) Records-VA.

SYSTEM LOCATION:

Records are maintained at VA health care facilities, Regional Data Processing Centers and (in most cases), archival storage of the VistA data to back up tapes are maintained at off-site locations. Address locations for VA facilities are listed in VA Appendix 1. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, VA Data Processing Centers, VA Office of Information & Technology (OI&T) Field Offices, Veterans Integrated Service Network (VISN) Offices, and Employee Education Systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning current and former employees, applicants for employment, trainees, contractors, sub-contractors, contract personnel, students, providers and consultants, patients and members of their immediate family, volunteers, maintenance personnel, as well as individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Workload such as orders entered, verified, and edited (*e.g.,* engineering work orders, doctors' orders for patient care including nursing care, the scheduling and delivery of medications, consultations, radiology, laboratory and other diagnostic and therapeutic examinations); results entered; items checked out and items in use (*e.g.,* library books, keys, x-rays, patient medical records, equipment, supplies, reference materials); work plans entered and the subsequent tracking (*e.g.,* construction projects, engineering work orders and equipment maintenance and repairs assigned to employees and status, duty schedules, work assignments, work requirements); reports of contact with individuals or groups; employees' (including volunteers) work performance information (*e.g.,* duties and responsibilities assigned and completed, amount of supplies used, time used, quantity and quality of output, productivity reports, schedules of patients assigned and treatment to be provided);

2. Administrative procedures, duties, and assignments of certain personnel;

3. Computer access authorizations, computer applications available and used, information access attempts, frequency and time of use; identification of the person responsible for, currently assigned, or otherwise engaged in various categories of patient care or support of health care delivery; vehicle registration (motor vehicles and bicycles) and parking space assignments; community and special project participants and attendees (*e.g.,* sports events, concerts, National Wheelchair Games); employee work-related accidents. The record may include identifying information (*e.g.,* name, date of birth, age, sex, social security number, taxpayer identification number); address information (*e.g.,* home and mailing address, home telephone number, emergency contact information such as name, address, telephone number, and relationship); information related to training (*e.g.,* security, safety, in-service), education and continuing education (*e.g.,* name and address of schools and dates of attendance, courses attended and scheduled to attend, type of degree, certificate, grades etc.); information related to military service and status; qualifications for employment (*e.g.,* license, degree, registration or certification, experience); vehicle information (*e.g.,* type make, model, license and registration number); evaluation of clinical and technical skills; services or products purchased (*e.g.,* vendor name and address, details about evaluation of service or product, price, fee, cost, dates purchased and delivered, employee workload and productivity data); employee work-related injuries (cause, severity, type of injury, body part affected);

4. Financial information, such as service line and clinic budgets, projected and actual costs;

5. Supply information, such as services, materials and equipment ordered;

6. Abstract information (*e.g.,* data warehouses, environmental and epidemiological registries, etc.) is maintained in auxiliary paper and automated records;

7. Electronic messages;

8. The social security number and universal personal identification number of health care providers;

9. Practitioner DEA registration numbers; and

10. The Integration Control Number or Veterans Administration Person Identifier.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 7301(a).

PURPOSE(S):

The records and information may be used for statistical analysis to produce various management, workload tracking and follow-up reports; to track and evaluate the ordering and delivery of equipment, services and patient care; the planning, distribution and utilization of resources; the possession and use of equipment or supplies; the performance of vendors, equipment, and employees; and to provide clinical and administrative support to patient medical care. The data may be used for research purposes. The data may be used also for such purposes as assisting in the scheduling of tours of duties and job assignments of employees; the scheduling of patient treatment services, including nursing care, clinic appointments, surgery, diagnostic and therapeutic procedures; the repair and maintenance of equipment and for follow-up activities to determine that the actions were accomplished and to evaluate the results; the registration of vehicles and the assignment and utilization of parking spaces; to plan, schedule, and maintain rosters of patients, employees and others attending or participating in sports, recreational or other events (*e.g.,* National Wheelchair Games, concerts, picnics); for audits, reviews and investigations conducted by staff of the health care facility, the Network Directors Office, VA Central Office, and the VA Office of Inspector General (OIG); for quality assurance audits, reviews, investigations and inspections; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations.

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 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 permitting disclosure. VA may disclose protected health information pursuant to the following routine uses where required by law, or permitted by 45 CFR parts 160 and 164.

1. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed to the appropriate agency whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

2. Disclosure may be made to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

3. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia government in response to its request or at the initiation of VA, in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. Disclosure may be made to National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

7. Hiring, performance, or other personnel-related information may be disclosed to any facility with which there is or there is proposed to be an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

8. Disclosure may be made to a Federal, State or local government licensing board and to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual 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 Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee; or to inform a Federal agency, licensing boards or the appropriate non-government 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 receiving medical care 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.

9. For program review purposes, and the seeking of accreditation and/or certification, disclosure may be made to survey teams of The Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

10. Disclosure may be made to a State or local government entity or national

certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

11. Any information which is relevant to a suspected violation or reasonably imminent violation of 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, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, rule or order issued pursuant thereto.

12. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

13. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

14. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

16. Disclosure may be made to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

17. Disclosure may be made in consideration and selection of employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

18. Disclosure may be made to consider employees for recognition through administrative and quality step increases and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

19. Identifying information such as 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 at 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.

20. Disclosure of relevant information may be made to the National Practitioner Data Bank or to a State or local government licensing board which maintains records concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty when under the following circumstances, through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, or professional misconduct has been assigned to a physician or licensed or certified health care practitioner: (1) On any payment in settlement (or partial settlement) of, or in satisfaction of a judgment in a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician or practitioner for a period of more than 30 days. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

21. Disclosure of medical record data, excluding name and address, unless name and address is furnished by the requester, may be made to epidemiological and other research facilities for research purposes determined to be necessary and proper and approved by the Under Secretary for Health.

22. Disclosure of names and addresses of present or former personnel of the Armed Services, and their dependents, may be made to: (a) A Federal department or agency, at the written request of the head or designee of that agency; or (b) directly to a contractor or subcontractor of a Federal department or agency, for the purpose of conducting Federal research necessary to accomplish a statutory purpose of an agency. When disclosure of this information is made directly to a contractor, VA may impose applicable conditions on the department, agency, or contractor to insure the appropriateness of the disclosure to the contractor.

23. The social security number, universal personal identification number and other identifying information of a health care provider may be disclosed to a third party where the third party requires the agency to provide that information before it will pay for medical care provided by VA.

24. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

25. Disclosure of relevant health care information may be made to individuals or organizations (private or public) with whom VA has a contract or sharing agreement for the provision of health care or administrative or financial services.

26. 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.

27. 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 paper, microfilm, magnetic tape, disk, or laser optical media. In most cases, archival storage of the VistA data to backup tapes are maintained at off-site locations.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a "need-to-know" basis. Strict physical security control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities and regional data processing centers is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VistA may be accessed by authorized VA employees. Access to file information is controlled at two levels. The systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on laptops and other approved government equipment is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes. Access by Office of Inspector General (OIG) staff conducting an audit, investigation, or inspection at the health care facility, or an OIG office location remote from the health care facility, is controlled in the same manner.

3. Information downloaded from VistA and maintained by the OIG headquarters and Field Offices on automated storage media is secured in storage areas for facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States, and VA policies and procedures for media sanitization.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for policies and procedures is the Director, Health Data and Informatics (HDI) (19F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed or made contact. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they are or were employed or made contact.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual, supervisors, other employees, personnel records, or obtained from their interaction with the system.

[FR Doc. 2010–1688 Filed 1–26–10; 8:45 am]

BILLING CODE 8320–01–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 "Disaster Emergency Medical Personnel System (DEMPS)-VA" (98VA104) as set forth in the **Federal Register** 65 FR 25531. VA is amending the system of records by revising the Routine Uses of Records Maintained in the System Including Categories of Users and the Purpose of Such Uses, Retrievability, Systems Manager and Address, and Notification 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 February 26, 2010. If no public comment is received, the amended system will become effective February 26, 2010.

ADDRESSES: Written comments may be submitted through *http://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 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 *http://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: DEMPS is to be used by the Emergency Management Strategic Healthcare Group (EMSHG) primarily in times of national emergencies caused by catastrophic events. This system may be used to respond to internal emergencies occurring within the Veterans Integrated Service Networks (VISNs).

It is the Veterans Health Administration's (VHA) policy to use DEMPS to respond to internal emergencies occurring within the VISNs. In order to provide sufficient health care medical personnel to respond to disasters, it is necessary to develop a nationwide VHA system of special-skilled personnel. These persons would be available to serve for limited periods of time in response to Presidentially-declared and internal VA national emergencies. VHA maintains a nationwide register of clinical personnel who volunteer their special medical skills in response to emergencies.

Information in DEMPS comes from VHA full-time employees who provide the information voluntarily. Information collected and maintained in DEMPS includes personal and demographic information initiated, provided, and authenticated by the employee and contains the necessary approvals and signatures of supervisory officials. Information includes the employee's full name, station and VISN assignment, station address and phone number, home phone number, emergency contact and phone number, professional/job series, grade, specialty, current job assignment, description of advanced degree/certification (if any); physical limitations (if any); prior experience in disaster response (if any); specialized training; related military medical training, other relevant training and dates thereof. DEMPS constitutes a system of records under the Privacy Act of 1974 (5 U.S.C. 552a) and data contained therein are considered private information.

Routine use 7 was amended to disclose information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.). NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

Routine use 20 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and documentation related to or in support of the reported incident.

Routine use 21 was added so that 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.

Dated: December 23, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

98VA104

SYSTEM NAME:

Disaster Emergency Medical Personnel System (DEMPS)–VA.

SYSTEM LOCATION:

Records are maintained at each of the Department of Veterans Affairs (VA) health care facilities. The address locations for VA facilities were listed in VA Appendix I of the biennial publication of the VA systems of record. Information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Network Directors' Offices; Emergency Management Strategic Healthcare Group Headquarters, VA Medical Center, Martinsburg, WV 25401; or with the Area Emergency Managers located at VA facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

VA employees who make application to VA and are considered for deployment as health care providers primarily in times of national emergencies in response to domestic disasters resulting from natural and technological hazards, terrorist attacks, and the employment of nuclear, biological, and chemical weapons of mass destruction. These individuals may include audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, speech pathologists, contracting specialists, building maintenance, engineering, housekeeping, and other personnel associated with emergency management.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on VA employees who make application to be deployed as health care providers primarily in times of national emergencies. This source document provides personal and demographic information initiated, provided and authenticated by the employee, and contains the necessary approvals and signatures of officials in the supervisory chain for the employee's

inclusion in the database. Information is provided on a voluntary basis. Information related to identifying and selecting individuals by the Emergency Management Strategic Healthcare Group, networks and medical centers eligible to support specific job tasking and assignments during either disasters internal to the VHA health care system, or external to VHA for which the VA is tasked to provide support under applicable authorities. Requests for issuance of travel orders and necessary reimbursement to VA for subsequent allocation of funds to home stations of deployed personnel are required to cover costs of travel, overtime and other expenses associated with individual deployments. This information is necessary to account for personnel deployed to support disasters, to identify personnel with specific job skills and experience that may be required to support contingency missions tasked to VA under the VA/Department of Defense (DoD) Contingency Plan, and for the development of plans at the corporate, network and medical center level for utilization of VHA personnel in support of VA internal and external disasters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system of records is Executive Order 12656 dated November 18, 1988.

PURPOSE(S):

The records may be used for such purpose as to provide information on sufficient health care medical personnel to respond to disasters, to provide information to the Emergency Management Strategic Healthcare Group primarily in times of national emergencies caused by catastrophic events, and to respond to internal emergencies occurring within the Veterans Integrated Service Networks.

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. Selected information (such as name, station and telephone numbers) may be disclosed to other Federal departments and agencies that have an interest in or obligation to track or otherwise audit transfer of funds to VA for reimbursement of tasks.

2. Statistical information and other data may be disclosed to Federal, State and local government agencies to assist in disaster planning and after-action reports.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

4. Disclosure may be made to any source, such as a police department or the Federal Bureau of Investigation, from which additional information is requested to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested such as DEMPS personnel present at a crime scene caused by terrorists.

5. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government in response to its request, or at the initiation of VA, for information in connection with the selection of an employee for the deployment and future training of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's deployment/Federal Response Framework needs.

6. Disclosure may be made to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

7. 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 44 U.S.C. 2904 and 2906.

8. Disclosure may be made to a Federal agency or to a State or local government licensing board, or to the Federation of State Medical Boards, or a similar non-government entity, provided the entity maintains records concerning individuals' employment histories, is engaged in the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty. The disclosure is for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee, or to inform a Federal agency, licensing boards or to the appropriate non-government 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 receiving medical care 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.

9. Information may be disclosed to private sector (*i.e.*, non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions (*e.g.*, The Joint Commission) when the disclosure is in the best interest of the government (*e.g.*, to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in VA's or the Federal government's role in the community, then the government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

10. Information may be disclosed to a State or local government entity or national certifying body that has the authority to make decisions concerning the issuance, retention or revocation of licenses.

11. Information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with

review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

12. Information on deployment to Federal/VHA emergencies, performance, or other personnel-related material may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

13. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA/emergency disaster-served client patient, or the representative or guardian of a patient who, due to physical or mental incapacity, lacks sufficient understanding or legal capacity to make decisions concerning his or her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

14. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

15. Information may be disclosed to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

16. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

17. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

18. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, and in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised.

19. Disclosure may be made to agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirement of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

20. 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.

21. 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.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Reports of all transactions dealing with data will be used within VA and will not be provided to any consumer-reporting agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained at all levels of management outlined in system location. Automated information may be stored on microfilm, magnetic tape, disk, or databases.

RETRIEVABILITY:

Records are retrieved from the system by the name, professional title, VISN, home station, professional specialty, job position title, etc., of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a need-to-know basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours, and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to the Veterans Health Information Systems Technology Architecture (VistA) computer room within the health care facilities is generally limited by appropriate security devices and restricted to authorized VA employees and vendor personnel. Automatic Data Processing (ADP) peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Authorized VA employees may access information in the VistA system. Access to file information is controlled at two levels: The system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties.

RETENTION AND DISPOSAL:

An automated database of DEMPS personnel will be maintained at the employing VA facility. If the individual transfers to another VA facility location, the name will be added to the database at the new location. Information stored

on electronic storage media is maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for maintaining the system: Director, Emergency Management Strategic Healthcare Group (EMSHG) (13C), VA Medical Center, Martinsburg, West Virginia, 25401.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application as a deployment volunteer, or are or were employed. Inquiries should include the employee's full name, date of application for employment or dates of employment, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment or are or were employed.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The information will be provided by the individual VA employee and the VA medical facility (home station) or other VA location at which the employee was employed. EMSHG Headquarters will also provide information for updates of deployment status and availability.

[FR Doc. 2010–1689 Filed 1–26–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
January 27, 2010

Part II

Department of Education

34 CFR Subtitle B, Chapter II
Race to the Top Fund; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2009–OESE–0006]

RIN 1810–AB07

Race to the Top Fund

AGENCY: Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria; correction.

SUMMARY: On November 18, 2009, the Department of Education published a document in the **Federal Register** announcing final priorities, requirements, definitions, and selection criteria ("Final Rule") for the Race to the Top Fund. Included as Appendix B to the November 18 Final Rule was the Scoring Rubric that the Department developed for the scoring of State applications submitted under this program. This document makes several corrections to Appendix B to the November 18 Final Rule.

DATES: *Effective Date:* January 27, 2010.

FOR FURTHER INFORMATION CONTACT: James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E108, Washington, DC 20202–6400. *Telephone:* (202) 205–37705 or by *e-mail: racetothetop@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Correction

Appendix B to the November 18 Final Rule (74 FR 59688) provided a scoring rubric containing a rubric and allocation of point values that peer reviewers will use to score applications from States under the Race to the Top Fund. Appendix B contained several errors that we are correcting in this notice.

First, the chart on pages 59814 and 59815 omitted certain maximum point values for the selection criteria. The corrected chart provided in this notice includes new rows for point values 6, 8, and 28. It does not change any of the previously published rows.

Second, in several instances throughout Appendix B, in providing General Reviewer Guidance for certain of the selection criteria, we refer reviewers to application requirement (d) (Current Status and Evidence) when the reference should not have been included or the reference should have been to application requirement (e) (Plan for Use of Funds).

Finally, there was an error in the "*Reviewer Guidance Specific to Criterion (F)(2)(iii)*" on page 59825. We incorrectly stated both that "low" points would be awarded if a State does not have a charter school law and that no points are earned if the State has no charter school law. The reference to "low" points being awarded if a State does not have a charter school law was incorrect.

To correct these errors, the Department makes the following corrections to the November 12 Final Rule:

1. On pages 59814 and 59815, the chart is removed and replaced with the following chart:

Maximum point value	Quality of applicant's response		
	Low	Medium	High
45	0–12	13–33	34–45
40	0–10	11–29	30–40
35	0–9	10–25	26–35
30	0–8	9–21	22–30
28	0–8	9–20	21–28
25	0–7	8–18	19–25
21	0–5	6–15	16–21
20	0–5	6–14	15–20
15	0–4	5–10	11–15
14	0–4	5–9	10–14
10	0–2	3–7	8–10
8	0–2	3–5	6–8
7	0–2	3–4	5–7
6	0–1	2–3	4–6
5	0–1	2–3	4–5

2. On page 59815, under the heading "*General Reviewer Guidance for (A)(1),*" ", and to the elements of a high-quality plan as set forth in application requirement (d)" is removed.

3. On page 59816, under the heading "*General Reviewer Guidance for (A)(2),*" "application requirement (d)" is replaced with "application requirement (e)".

4. On page 59819, under the heading "*General Reviewer Guidance for (B)(3),*" "application requirement (d)" is replaced with "application requirement (e)".

5. On page 59819, under the heading "*General Reviewer Guidance for (C)(2),*" "application requirement (d)" is replaced with "application requirement (e)".

6. On page 59820, under the heading "*General Reviewer Guidance for (C)(3),*" "application requirement (d)" is replaced with "application requirement (e)".

7. On page 59821, under the heading "*General Reviewer Guidance for (D)(2),*" "application requirement (d)" is replaced with "application requirement (e)".

8. On page 59822, under the heading "*General Reviewer Guidance for (D)(3),*" "application requirement (d)" is replaced with "application requirement (e)".

9. On page 59822, under the heading "*General Reviewer Guidance for (D)(4),*" "application requirement (d)" is replaced with "application requirement (e)".

10. On page 59822, under the heading "*General Reviewer Guidance for (D)(5),*" "application requirement (d)" is replaced with "application requirement (e)".

11. On page 59823, under the heading "*General Reviewer Guidance for (E)(2),*" "application requirement (d)" is replaced with "application requirement (e)".

12. On page 59825, under the heading "*Reviewer Guidance Specific to (F)(2)(iii),*" the third bulleted sentence

that reads " 'Low' points are earned if the per-pupil funding to charter school students is ≤79% of that which is provided to traditional public school students, or the State does not have a charter school law." is removed and replaced with the following:

"Low" points are earned if the per-pupil funding to charter school students is ≤79% of that which is provided to traditional public school students.

Program Authority: The American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.395A)

Dated: January 20, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–1502 Filed 1–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OESE–0006]

RIN 1810–AB07

Race to the Top Fund

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On November 18, 2009, the Department of Education published a notice in the **Federal Register** (74 FR 59836) inviting applications for new awards for FY 2010 for the Race to the Top Fund (NIA). Included as Appendix B to the November 18 NIA was the Scoring Rubric that the Department developed for the scoring of State applications submitted under this program. This notice makes several corrections to Appendix B to the November 18 NIA.

FOR FURTHER INFORMATION CONTACT: James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E108, Washington, DC 20202–6400. Telephone: (202) 205–37705 or by e-mail: *racetothetop@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Correction

Appendix B to the November 18 NIA provided a scoring rubric containing a rubric and allocation of point values that peer reviewers will use to score applications from States under the Race to the Top Fund. Appendix B contained several errors that we are correcting in this notice.

First, the chart on pages 59852 and 59853 omitted certain maximum point values for the selection criteria. The corrected chart provided in this notice includes new rows for point values 6, 8, and 28. It does not change any of the previously published rows.

Second, in several instances throughout Appendix B, in providing General Reviewer Guidance for certain of the selection criteria, we refer reviewers to application requirement (d) (Current Status and Evidence) when the reference should not have been included or the reference should have been to application requirement (e) (Plan for Use of Funds).

Finally, there was an error in the *Reviewer Guidance Specific to Criterion (F)(2)(iii)* on page 59863. We incorrectly stated both that "low" points would be awarded if a State does not have a charter school law and that no points are earned if the State has no charter school law. The reference to "low" points being awarded if a State does not have a charter school law was incorrect.

To correct these errors, the Department makes the following corrections to the November 12 NIA:

1. On pages 59852 and 59853, the chart is removed and replaced with the following chart:

Maximum point value	Quality of applicant's response		
	Low	Medium	High
45	0–12	13–33	34–45
40	0–10	11–29	30–40
35	0–9	10–25	26–35
30	0–8	9–21	22–30
28	0–8	9–20	21–28
25	0–7	8–18	19–25
21	0–5	6–15	16–21
20	0–5	6–14	15–20
15	0–4	5–10	11–15
14	0–4	5–9	10–14
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2. On page 59853, under the heading *General Reviewer Guidance for (A)(1),* ", and to the elements of a high-quality plan as set forth in application requirement (d)" is removed.

3. On page 59854, under the heading *General Reviewer Guidance for (A)(2),* "application requirement (d)" is replaced with "application requirement (e)".

4. On page 59857, under the heading *General Reviewer Guidance for (B)(3),* "application requirement (d)" is replaced with "application requirement (e)".

5. On page 59857, under the heading *General Reviewer Guidance for (C)(2),* "application requirement (d)" is replaced with "application requirement (e)".

6. On page 59858, under the heading *General Reviewer Guidance for (C)(3),* "application requirement (d)" is replaced with "application requirement (e)".

7. On page 59859, under the heading *General Reviewer Guidance for (D)(2),* "application requirement (d)" is replaced with "application requirement (e)".

8. On page 59860, under the heading *General Reviewer Guidance for (D)(3),* "application requirement (d)" is replaced with "application requirement (e)".

9. On page 59860, under the heading *General Reviewer Guidance for (D)(4),* "application requirement (d)" is replaced with "application requirement (e)".

10. On page 59860, under the heading *General Reviewer Guidance for (D)(5),* "application requirement (d)" is replaced with "application requirement (e)".

11. On page 59861, under the heading *General Reviewer Guidance for (E)(2),* "application requirement (d)" is replaced with "application requirement (e)".

12. On page 59863, under the heading *Reviewer Guidance Specific to (F)(2)(iii),* the third bulleted sentence that reads "'Low' points are earned if the per-pupil funding to charter school students is ≤79% of that which is provided to traditional public school students, or the State does not have a charter school law." is removed and replaced with the following:

"Low" points are earned if the per-pupil funding to charter school students is ≤79% of that which is provided to traditional public school students.

Program Authority: The American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Pub. L. 111–5.

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(Catalog of Federal Domestic Assistance Number 84.395A)

Dated: January 20, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–1660 Filed 1–26–10; 8:45 am]

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H.R. 4462/P.L. 111–126
To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the earthquake in Haiti. (Jan. 22, 2010; 124 Stat. 3)

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